

IMPORTANT NOTE: This council document dated 26 June 2025 was prepared by the policy department of Taupo District Council and is based on a draft version of the Joint Management Agreement (JMA) slightly different to the most current

Should Council consult the community on the proposed joint management agreement with the Tuwharetoa Māori Trust Board?

Background

1. This advice has been prepared to inform the Council workshop on 26 June 2025. No decisions can be made by Council at the workshop and Council is expected to decide on this matter at its normal July meeting. The officer report to that meeting will provide updated advice as part of that decision making process.
2. Council and the Tuwharetoa Māori Trust Board (the Trust Board) have been negotiating a joint management agreement.
3. The draft agreement is required by legislation however the parties have been drafting the agreement on the basis that it will also include a range of matters that are not required by legislation. The draft agreement has also been extended geographically to cover more of the district compared to the legislative requirement.
4. When considering the draft agreement Council needs to be cognisant of its legislative requirements, including whether it is appropriate or necessary to consult the community, or parts thereof, about the draft agreement.
5. At the time this advice was prepared the draft agreement was still in the process of development. While much of the agreement had been prepared there were still drafting decisions under consideration including the resource consent and service infrastructure sections.

The legal context

6. The joint management agreement is required by section 43 of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (the Act). Section 45 of the Act sets out the contents of the agreement that must be included. Section 54 allows the parties to extend the agreement to cover additional duties, functions or powers.
7. The Act explicitly states (section 53(3)) that a local authority must not use the special consultative procedure under section 83 of the Local Government Act 2002 in relation to a joint management agreement.
8. The Local Government Act (section 76) requires that every decision by a local authority must be made in accordance with the applicable provisions in sections 77, 78, 80, 81 and 82. Those decision-making parts of the Local Government Act are still considered relevant despite the explicit reference to the special consultative procedure.
9. In making decisions, a local authority must consider all reasonably practicable options and their advantages and disadvantages. If it involves a significant decision in relation to land or a body of water, a local authority must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga. In this instance the decision is not considered significant and therefore those specific considerations are not required.

10. Of specific relevance to this question about consulting the community, section 78 requires a local authority to give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter. Importantly, this does not automatically require a consultation process or procedure.

11. Council needs to make a judgement call about how it complies with these decision-making requirements of the Local Government Act. It will be different depending on the scale and consequences of the decision. To help guide this Council uses its Significance and Engagement Policy (2022) (the Policy).

Significance and Engagement Policy

12. Council's Policy sets out the approach that it will use to determine the significance of proposals. Council makes decisions about a wide range of matters at both an elected member and officer level. Most of those matters will have a degree of importance but most issues will not be considered significant in terms of the Policy. The appropriate level of engagement on a matter will correspond to its level of significance.

13. Under the Policy (clause 12) there are certain matters that are considered significant:

- a. If they have a high degree of significance based on an assessment against the criteria set out in the Policy;
- b. If they substantially affect Council's ability to deliver a key activity as identified in the Long-term Plan;
- c. If they result in the transfer of ownership or control of a strategic asset defined by the Local Government Act or listed in the Policy;
- d. If they require the sale of Council's shareholding in any council -controlled trading organisation or council-controlled organisation.

14. In the context of the draft joint management agreement, the matters in (c) and (d) are not relevant. That leaves an assessment against the criteria and a judgement on whether the agreement will substantially affect Council's ability to deliver a key activity.

Assessment against the Policy criteria

15. The Policy sets out five criteria and doesn't apply a weighting making it clear that they should be considered as a whole. This process requires an overall broad judgement. Those criteria are:

- a. What are the financial consequences to Council?
- b. Are many people, organisations or businesses affected?
- c. Will additional funding from the community be required?
- d. Will there be a diversion of already committed resources?

Has there been recent community engagement?

16. The starting point for this assessment is a recognition that parts of the joint management agreement are required by the Act. They generally relate to the elements of the draft agreement concerning Resource Management Act processes, with the exception of the resource consent section which has been substantially widened beyond consents related to activities on the surface of the water. Because Council must include those mandatory elements there is no value in seeking community feedback on them to inform Council's decision-making process. This was the approach

Council took when considering the joint management agreements with Raukawa and the Te Arawa River Iwi Trust.

17. When considering the consequences of the decision to approve the draft agreement Council should think in terms of the services and infrastructure that it delivers. That is what is of consequence for people, organisations and businesses.

What are the financial consequences to Council?

18. The draft agreement sets out a range of processes where Council and the Trust Board will work together. Some of those processes are already in place and being implemented, for example, Council provides information to the Trust Board during the development of district plan changes or involves the Trust Board in working groups looking at some service infrastructure. For those existing processes there is not expected to be any unplanned expenses.

19. There are some new processes that have the potential to create additional costs for Council including:

a. Servicing of the Joint Management Agreement Committee proposed to oversee the implementation of the agreement. This committee is intended to meet at least once per year. The committee will likely require officers to prepare reports, attend to provide advice and manage the logistics of the meeting as well as elected member time. This is the same commitment Council currently has through the joint management agreements with Raukawa and the Te Arawa River Iwi Trust. The very limited number of meetings means that the additional work by officers should be minimal.

b. Monitoring and enforcement meetings twice per year. These would involve officers preparing information on monitoring and enforcement activity over the previous six months as well as anticipated work. The extent of this work is difficult to establish until meetings start, and Council has a better idea of the types of information that the Trust Board is interested in. This is largely an exercise in pooling together information Council already holds.

c. Preparing a formal issues and options paper near the start of a plan change process. Currently officers do not always prepare a formal paper however this requirement is limited to plan change processes affecting the Waikato River and Taupo Moana. This is expected to be quite limited. In addition, any such paper is likely to be a collection of information already held by officers and

d. Liaising with the Trust Board in relation to resource consent applications. Some additional work will be involved working with the Trust Board staff on resource consents that might be of interest to them. The extent of this additional work is hard to determine at this point as it is driven by the nature of the applications lodged. The time that officers spend will be recovered from applicants therefore there will be no additional costs to Council. This element of the agreement is an extension matter.

e. Discussing whether the ability to undertake customary activities is impacted by Council. The commitment in the draft agreement is to hold discussions on this matter. Potentially this generates additional work, however Council has the ability to align those discussions with already planned reviews of the relevant policies, plans or regulations. The draft agreement makes it clear that the ability of the partners to provide resources for a review is an important consideration of the timing and extent of any review. That will allow Council to plan for any future costs through the long-term and annual plans and minimise costs by aligning conversations with already planned reviews.

f. A commitment to capability and capacity building. There will be additional work as a result of the proposed commitments, however Council has the ability to control the timing and level of investment through the long-term plan and annual plan budget setting processes. This is an extension matter. If it becomes financially unsustainable Council has the ability to negotiate changes to the agreement or ultimately to terminate that part.

g. Consideration of section 33 transfer of powers and economic development opportunities. Council commitment in this regard is to hold a conversation. This will only impact officer time and is not expected to be material. This is an extension matter.

h. Engagement on service infrastructure projects. Council already involves the Trust Board in the development of options to provide service infrastructure, for example the northern wastewater project and the Turangi wastewater consent renewal. There is a reasonable expectation that the Trust Board will want to be more involved in a wider range of service infrastructure projects. That may increase the costs to deliver those projects, however Council can control the scale and timing of those costs. The service infrastructure part of the agreement makes it clear that the partners must agree on which projects are relevant and how and when they will work together. The budget for that work must be approved by Council through the long-term plan or annual plans.

i. Preparation of a 3-year work plan. This is a new piece of work, however it is a relatively minor time commitment given officers already work with the Trust Board through long-term planning processes to understand their priorities. The actual formation of the plan is a small additional action. Council will continue to have final decision-making powers in relation to the funding of any proposed projects, therefore the agreement does not commit Council to any specific future projects.

20. The common theme through the above assessments is Council's ability to maintain control over future costs. The agreement signals a closer working relationship with an emphasis on involving the Trust Board earlier in these processes. However, the agreement also makes it clear that resource availability is an important consideration and funding decisions continue to remain with Council. Many of these new processes are also extension matters which would enable their termination if deemed absolutely necessary by Council in the future.

21. Given Council's ability to control costs associated with implementation of the agreement there are not expected to be any unplanned for costs. On that basis, this criteria is considered insignificant.

Are many people, organisations or businesses affected?

22. The draft agreement covers much of the district including all of the substantial urban settlements. Given that, most people living in the district will fall within the joint management agreement area. 23. Those people are not automatically considered to be impacted by the agreement simply because they live and work within the joint management agreement area. The key is to consider whether the delivery of the services and infrastructure that they receive from Council will be altered in a way that affects them.

24. The draft agreement is focused on improving the way that Council and the Trust Board work together. It does not change the services that Council provides, and it doesn't change the infrastructure that Council provides. Council will continue to talk to the community about those services and infrastructure and make decisions on priorities and funding.

25. What may well change is the time it takes to deliver the services and infrastructure. Sometimes that will be faster because the Trust Board will be involved earlier and able to make their views known to Council before too much work has been done. Other times it may take longer compared to previous processes. This is most likely to be the case if the Trust Board becomes involved in more

service infrastructure projects. As noted earlier, Council has the ability to control those impacts on time and cost although the agreement does set expectations for the Trust Board's involvement.

26. The other area where there is some uncertainty is the delivery of resource consent services. The resource consent section of the agreement only applies to resource consents that relate to the Waikato River or activities within its catchment affecting the River, or Taupo Moana and activities within its catchment affecting Taupo Moana. An understanding of which types of consent application this relates to will evolve through practice.

27. Resource consent applications will continue to be processed according to the requirements of the Resource Management Act 1991 and the relevant planning documents like the District Plan. This draft agreement does not change those statutory requirements and tests. What might change is the need for additional liaison between Council and the Trust over applications and therefore additional time that is charged to applicants.

28. Both the service infrastructure and most of the resource consent requirements in the draft agreement are extension matters.

29. Given that Council will continue to deliver the same services and infrastructure the community is not expected to see a noticeable difference. There is the potential that some specific resource consent applications may require additional time from Council officers, however overall, the assessment is that very few people will be affected by the agreement's implementation. On that basis, this criteria is of low significance.

Will additional funding from the community be required?

30. This agreement is largely about how the parties work better together on work that the Council is already doing. The formalised processes have the potential to create additional work, however this is expected to result in additional officer time in most situations. Those costs related to officer time are already part of Council's budgets.

31. Where officers spend more time working through processes with the Trust Board this will come at an opportunity cost. It essentially means that the officers are unable to progress other work. It is impossible to quantify that potential loss of time at this stage.

32. As Council comes to implement the joint management agreement the potential impacts on officer time will become clearer. Council will be able to make decisions on whether to provide additional funding related to service infrastructure projects or capacity and capability building through the long-term plan and annual plans. Council always retains control over budget decisions.

33. The other new aspect the agreement introduces is the 3-year work plan. This could include new projects that the Trust Board wishes to promote that Council has not otherwise planned to do. However, no projects can be included in that work plan unless Council has agreed to them and made a conscious decision to fund them through the Long-term Plan process.

34. Given that the draft agreement is focused on processes for the parties to work together better there is not expected to be a substantial need for additional funding from the community. The long-term plan and annual plans provide the opportunity for Council to consider any requests for additional funding to implement the agreement, and it is in that context that Council should consider whether the additional funding is significant.

35. Approving the draft agreement is not expected to introduce substantial additional costs to users of Council services and therefore this criteria is considered to be of low significance.

Will there be a diversion of already committed resources?

36. The area where this agreement is most likely to result in the diversion of committed resources is in terms of the service infrastructure. Council has set out a capital delivery plan in the long-term plan and there is the potential that the Trust Board wishes to be more heavily involve in some of those projects.

37. As explained earlier this could actually result in those projects being delivered faster because of the early involvement of the Trust Board. However, there is also a risk that some service infrastructure projects take longer. This is most likely to be the case for three waters related projects.

38. It is important to note that the agreement recognises that Council has regulatory responsibilities and statutory processes and timeframes that must be adhered to. While involving the Trust Board in the work that Council does is important and adds value, producing better long-term outcomes, it cannot come at the expense of those regulatory requirements.

39. There is some risk, particularly for service infrastructure, that implementing the agreement could require some diversion of resources that may result in project delivery delays of up to 12 months. That would make this criteria of moderate significance.

40. Any such risks around the diversion of resources could be mitigated because Council must agree to which service infrastructure projects we will work on together. Council must also agree on the process and timeframes for that work.

Has there been recent community engagement?

41. This final criteria is about recognising that where Council has already discussed a proposal with the community it may not always be necessary to reengage on that same matter.

42. In regard to this draft agreement there has not been any previous engagement given this is the first time it has been developed and considered by Council. As such this criteria is not considered relevant.

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Overall judgement against the criteria

43. When considered against the criteria as a whole, the draft agreement is not of high significance. This is essentially because it is about formalising the way that Council and the Trust Board work together on the delivery of services and service infrastructure that Council is already planning to deliver.

44. It is not expected to substantially impact the timing and nature of that delivery although there may be some additional time required to progress the likes of particular service infrastructure projects.

45. Overall, Council will continue to maintain control over which projects are potentially impacted, and must agree to the processes and timeframes as well as the funding impacts.

46. If there is the likelihood that regulatory requirements, processes or timeframes will not be met, the agreement enables Council to proceed without the Trust Board's involvement.

Could the agreement substantially affect Council's ability to deliver a key activity as identified in the Long-term Plan?

47. For the reasons noted above, the draft agreement is not expected to substantially affect Council's ability to deliver any of the key activities identified in the long-term plan.

Conclusions

48. Agreeing to enter into the joint management agreement with the Trust Board is a decision of Council and therefore subject to the decision-making requirements of the Local Government Act.

49. The Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 explicitly states that Council shall not use the special consultative procedure. However, Council must still give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter when making a decision.

50. There is not requirement to consult the community before making a decision on the draft agreement, but Council does need to weigh the significance of the decision when considering if it is appropriate to engage with the community.

51. Having assessed the proposal against the Council Significance and Engagement Policy the conclusion is that the matter is of overall low significance. That indicates that Council could proceed to make a decision without engaging the community assuming it was comfortable in its understanding of the views and preferences of the community.

52. Of particular relevance to the decision-making are the assumptions that Council will:

- a. Continue to deliver the same services and service infrastructure to the community as agreed through the long-term plan and annual plans;
- b. Need to agree to which service infrastructure projects will be worked on together, and the process and timeframes for doing so;
- c. Continue to retain decision-making in relation to funding; and
- d. If there are unintended consequences, have the ability to renegotiate those parts of the agreement that are extensions of the legislation and ultimately to terminate those parts if necessary.