
REPORT 2
(1215/52/IM)

EXECUTING PERMANENT FOREST SINK COVENANTS FOR TE KOPAHOU AND TAWATAWA RESERVE

1. Purpose of Report

This report:

- summarises how legal issues relating to the Public Works Act 1981 with respect to Te Kopahou Station (Te Kopahou) and Tawatawa Reserve (Tawatawa) have been resolved; and
- seeks the Committee's agreement to delegate to the Chief Executive the authority to execute all necessary steps to finalise Permanent Forest Sink Initiative (PFSI) covenants for parts of Te Kopahou and Tawatawa.

2. Executive Summary

On 30 April 2008, the Council resolved to place parts of Te Kopahou and Tawatawa under a protective covenant as part of the Government's Permanent Forest Sink Initiative (PFSI scheme). The Council's agreement was subject to officers resolving possible land transfer issues relating to the PWA. Refer to **Appendix One** for descriptions of the land and maps and **Appendix Two** for a reference to the Council minutes for the 2008 decision.

The Council has received legal advice stating that processes currently underway to classify Te Kopahou and Tawatawa as scenic B reserve will automatically transfer the "public work purpose" to reserve. As a result, the land transfer issues mentioned above will be resolved and there are no impediments under the PWA to bring Te Kopahou and Tawatawa into the PFSI. It is therefore recommended that the Committee delegates to the Chief Executive the authority to finalise agreement with the Ministry of Agriculture and Forestry (MAF) on the PFSI covenants.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Note that Te Kopahou Station and Tawatawa Reserve were purchased under the Public Works Act 1981 (PWA).*

3. *Note that on 30 April 2008, Council resolved to apply to put parts of Te Kopahou Station and Tawatawa Reserve into the Permanent Forest Sink Initiative (PFSI) if and when the Council resolves the land transfer issues relating to the PWA.*
4. *Note that officers have received legal advice indicating that the PWA issues will be resolved through the process of classifying Te Kopahou Station and Tawatawa Reserve as scenic reserve under section 14 of the Reserves Act, meaning there are no impediments arising from the PWA to these lands being brought under the PFSI.*
5. *Authorise the Chief Executive to execute PFSI covenants over Te Kopahou and Tawatawa Reserve.*
6. *Delegate to the Chief Executive all the authority necessary to finalise agreement with the Ministry of Agriculture and Forestry on the PFSI covenants to be executed.*

4. Background

On 30 April 2008, the Council resolved to place parts of Te Kopahou and Tawatawa into the Government's PFSI scheme.

The PFSI scheme provides opportunities for the Council to establish "permanent forest sinks" and obtain tradable emission units in proportion to the carbon sequestered in these forests. Land that is accepted into the PFSI scheme must be placed under a protective PFSI covenant, which binds the land use as a "permanent forest sink". Placing land under a PFSI covenant has similarities to classifying land as scenic reserve (that is, it leads to similar binding land management practices of protection and restoration). The Council, as the landowner, may choose to opt out of the covenant after 50 years at which time it would need to repay all emission units it accrued during that time. However, if the Council retains the covenant then there is no obligation to repay emission units, unless the amount of carbon in the forest falls (such as through a major forest fire).

The Council purchased both Te Kopahou and Tawatawa under the PWA: Te Kopahou for sanitary works (disposal of refuse) and Tawatawa for housing, potential residential development, sanitary works, sewage sludge pipeline and bush protection.

Under the PWA, public works may be transferred to another type of public work by the Council's Chief Executive if the Council demonstrates "reasonable provision for satisfying the requirements of the public interest in that work will continue to exist." Both pieces of land provide valuable recreation, landscape and biodiversity values to the public. The Council therefore has an interest in retaining ownership of the land for the public.

The Council's agreement to place Te Kopahou and Tawatawa into the PFSI scheme was subject to officers resolving land transfer issues relating to the PWA. This would ensure that the "public work purpose" for which the land is held is consistent with the actual use of the land before the land is placed into the PFSI scheme.

5. Discussion

5.1 Resolution of the PWA issues

Council officers have received legal advice on the most effective process for transferring the "public work purpose" of Te Kopahou and Tawatawa. The advice noted that:

- more than 90% of Tawatawa has been through a public notice process to classify it as reserve under section 14 of the Reserves Act and Council agreed to classify these areas as scenic reserve in June 2010 (formal gazettal will occur in 2011)
- Te Kopahou has recently been publicly notified for scenic reserve status (also under section 14 of the Reserves Act) and following oral hearings, Council is scheduled to consider Te Kopahou for classification as scenic reserve in May 2011
- both areas are identified in the relevant management plan (prepared under Section 41 of the Reserves Act 1977) and the Council has already decided to classify them as reserve (subject to completion of the necessary statutory processes)
- the use of the land for the PFSI is consistent with the management plan for the areas as well as the principles of a scenic reserve.

The legal advice received states that the process to classify Tawatawa and Te Kopahou under section 14 of the Reserves Act will automatically change the "public work purpose" to reserve. There is no requirement to carry-out any additional processes through the PWA.

There are therefore no impediments under the PWA to the land being brought under the PFSI.

5.2 Chief Executive authorisation

In order to progress the PFSI application process, it is recommended that the Committee:

- authorise the Chief Executive to execute PFSI covenants for Te Kopahou and Tawatawa
- delegate to the Chief Executive all the authority necessary to finalise agreement with the Ministry of Agriculture and Forestry on the PFSI covenants to be executed.

The process for obtaining a PFSI covenant involves completing detailed GIS maps and submitting technical applications to MAF. The Council has previously resolved to place Te Kopahou and Tawatawa into the PFSI, subject to conditions that have now been met. The recommendations in the report, if agreed, would

allow officers to execute the Council's resolution without further delay and avoid the requirement for the Council to consider administrative matters.

5.3 Wording changes to the PFSI covenant

Officers have recently identified a number of problems with the PFSI covenant. Officers are working to resolve these issues with Government officials before placing any Council land under a PFSI covenant. Officers will report back to the Committee if officers and the Crown are unable to agree on wording changes to the covenant.

6. Conclusion

The Council has previously agreed to bring Te Kopahou and Tawatawa under the Government's PFSI scheme if and when land transfer issues under the PWA are resolved. These issues are now resolved.

This report recommends that the Committee give authority and delegations to the Chief Executive Officer to finalise PFSI covenants for Te Kopahou and Tawatawa. This authority and delegation would relate to procedural and administrative matters.

Contact Officer: *Zach Rissel, Senior Advisor*

Supporting Information

1) Strategic Fit / Strategic Outcome

This report implements activities identified in the Council's Climate Change Action Plan that was adopted in June 2010.

2) LTCCP/Annual Plan reference and long term financial impact

Forests covenanted under the PFSI will generate additional revenue for Council. The treatment and accounting of such revenue is addressed under the Council's draft Carbon Management Policy, which is currently under public consultation.

3) Treaty of Waitangi considerations

The Council has consulted the Tenth Trust and Ngati Toa on the potential Treaty of Waitangi implications of the PFSI covenants. No issues have been identified in relation to Treaty claims.

4) Decision-Making

This report does not require a significant decision to be made.

5) Consultation

a) General Consultation

The Council's proposal to bring forests under the PFSI scheme (or the New Zealand Emissions Trading Scheme) was included in the Climate Change Action Plan, which was subject to considerable consultation in early 2010. Feedback on the Climate Change Action Plan was generally supportive of the Council's proposals in respect of forests.

b) Consultation with Maori

Consultation with Maori has been undertaken in relation to establishing PFSI covenants.

6) Legal Implications

The Council's legal advisors were consulted during the preparation of this report.

7) Consistency with existing policy

The recommendations seek to implement existing resolutions by the Council.

Appendix One

Management Plans for Properties in the PFSI Application

1. Tawatawa Reserve

Tawatawa Reserve sits outside of the concept plan for both the Outer Green Belt and the Town Belt. The land was purchased under the PWA for a variety of uses including a sludge pipeline, Frobisher/Quebec Street extension, potential residential development, the protection of native bush, housing purpose and sanitary works (landfill purposes). The landfill has been closed for 30 years and since then it has been managed jointly by Parks and Gardens and CitiOperations. The land has several functions: recreation reserve, regenerating native forest and dedicated grazing land. Placing the land that has been set aside for regenerating native bush under a PFSI covenant is consistent with the land management plans for the area.

2. Te Kopahou Station and Carey's Gully area

The Te Kopahou was purchased by the Council (under the PWA) for sanitary purposes. The landfill sits in north of the property and Te Kopahou is currently being managed as reserve land as part of the Outer Green Belt Management Plan and South Coast Management Plan. The Council is in the process of classifying Te Kopahou (the southern portion) as scenic reserve land¹. The Council is actively managing this land back into native forest from pastoral farmland. Te Kopahou makes up a significant portion of the Council's Outer Green Belt and placing selected pieces of land under covenant will compliment the Council's long-term plans to let Te Kopahou revert back to native forest. Placing parts of Te Kopahou into the PFSI scheme covenants fits with the long-term management plans for this area.

¹ Outer Green Belt Management Plan, 2002



**Tawatawa Reserve
Permanent Forest Sink Area
Total Area : 41 hectares**

DATA PROVIDER
 Road boundaries and information labels (including crown copyright) derived from aerial imagery, vector data, and other sources.
 Wellington City Council
 WCC copyright 2018/19
 Accuracy: +/- 50m

Other data has been compiled from a variety of sources and is provided 'as is'.
 All data is approximate and must not be used for planning purposes.
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Colour Orthorectified 1:800
 Survey data 2008 provided by Wellington City Council

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Te Kopahou
 Permanent Forest Sink Area
 Total Area : 618 hectares

DISCLAIMER
 Road boundaries and information used (including crown copyright) are accurate to the best of our knowledge. Other data has been compiled from a variety of sources and is shown 'as is'.
 Te Kopahou is a Wellington City Council area. All other areas are not.
 All data is shown as of 1/1/2018. All data is shown as of 1/1/2018. All data is shown as of 1/1/2018.
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APPENDIX Two

Reference to Council Minutes from 30 April 2008

Ordinary Meeting of Wednesday 30 April 2008

044/08C **STRATEGY AND POLICY COMMITTEE**
Meeting of Thursday 17 April 2008
(1215/11/IM) (REPORT 11)

1. **ITEM 097/08P PUBLIC WORKS ACT ISSUES WITH TE KOPAHOU STATION AND TAWATAWA RESERVE**
(1215/52/IM) (REPORT 7)

Moved Councillor Ahipene-Mercer, seconded Councillor Pannett the substantive motion.

The substantive motion was put.

Voting for: Mayor Prendergast, Councillors Ahipene-Mercer, Best, Coughlan, Foster, McKinnon, Morrison, Pannett, Pepperell, Ritchie, Wade-Brown and Wain.

Voting against: Nil.

Majority Vote: 12:0

The substantive motion was declared CARRIED.

THAT Council:

1. *Apply to the Ministry of Agriculture and Forestry to place Te Kopahou Reserve and Tawatawa Reserve into the Permanent Forest Sink Initiative scheme if and when the Council resolves the land transfer issues relating to the Public Works Act 1981.*