BEFORE THE AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

IN THE MATTER	of the Resource Management Act 1991 and the Local Government (Auckland Transitional Provisions) Act 2010
AND	
IN THE MATTER	of Topic 036 Māori Land and Treaty Settlement Land, Māori Purpose Zone
AND	
IN THE MATTER	of the submissions and further submissions set out in the Parties and Issues Report

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STATEMENT OF PRIMARY EVIDENCE OF JYM HALLAM CLARK
ON BEHALF OF AUCKLAND COUNCIL

(PLANNING – TOPIC 036)

17 April 2015

TABLE OF CONTENTS

1. SUMMARY 1

2. INTRODUCTION 3

3. CODE OF CONDUCT 3

4. SCOPE 3

5. PROPOSED AMENDMENTS OUTSIDE THE SCOPE OF SUBMISSIONS 5

6. CONSEQUENTIAL AMENDMENTS TO OTHER PARTS OF THE PAUP 6

7. STATUTORY FRAMEWORK 6

8. SECTION 32 ASSESSMENT 7

9. BACKGROUND 7

10. RETAIN AND DELETE 9

11. MĀORI LAND AND TREATY SETTLEMENT LAND IDENTIFICATION (DEFINITIONS, RELATIONSHIP TO PRECINCTS, PLAN STRUCTURE) 11

12. ENABLE ADDITIONAL DEVELOPMENT ON MĀORI LAND AND TREATY SETTLEMENT LAND 15

13. NATURAL HERITAGE AND HISTORIC HERITAGE OVERLAYS 27

14. NOTIFICATION 32

15. PROVIDING FOR INFRASTRUCTURE 33

16. MĀORI PURPOSE ZONE (ASSESSMENT CRITERIA, DEVELOPMENT CONTROLS, POLICIES) 36

17. PLACE BASED (HARBOUR VIEW RESERVE, MAPS) 39

18. CONCLUSION 41

ATTACHMENT A 42

ATTACHMENT B 43

ATTACHMENT C 44

ATTACHMENT D 45

1. SUMMARY

1.1 My full name is Jym Hallam Clark. I hold the position of Planner, Unitary Plan at Auckland Council. I am providing planning evidence in relation to submissions made to the Māori land (C2.1 and H2.1) and Treaty settlement land (C2.2 and H2.2) sections of the Auckland-wide provisions and the Māori Purpose zone (D8.5 and I19). I also consider the associated definitions of Integrated Māori Development and Treaty settlement land and the Chapter A explanation of 'area based planning tools' for 'integrated plan for Māori development'.

1.2 I have previously prepared evidence for Topic 009 RPS Mana Whenua in relation to B5.3. I have also prepared evidence for Topic 026 – General – other non-statutory layers which should be read alongside this statement of evidence.[1] My evidence for Topic 026 addressed matters with respect to the non-statutory layers for Māori land and Treaty settlement land.

1.3 In preparing the Proposed Auckland Unitary Plan (**PAUP**) the Auckland Council (**Council**) is required by section 6(e) of the Resource Management Act 1991 (RMA) to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands.

1.4 The PAUP recognises this relationship by providing flexibility to use, manage and develop lands which Mana Whenua possess either as Māori land as identified by Te Ture Whenua Māori Act 1993 or Treaty settlement land as identified by deeds of settlement and settlement legislation.

1.5 The Māori Purpose zone also recognises this relationship and is typically a roll-over of legacy plan Māori Special Purpose zones. This Zone may be identified over land which is not Māori land or Treaty settlement land and may also be used by mataawaka institutions such as urban marae.

1.6 Subject to amendments, I consider that the Māori land, Treaty settlement land and Māori Purpose zone provisions are the best means of giving effect to Part 2 of the RMA and to ensure than Mana Whenua will be appropriately enabled to use their lands so that they may develop their social, cultural and economic well-beings.

[1] Topic 006: General – Others (non-statutory layers), Auckland Council, Jym Clark, primary evidence, dated: 4 February 2015.

1.7 I attended mediation on this topic which was held on 22 and 23 March 2015. Agreed changes together with recommended changes from my evidence are contained in **Attachment B.**

1.8 Amendments are recommended to address relief sought by submitters which includes:

(a) enabling additional development on Māori land and Treaty settlement land including land use controls, development controls and assessment criteria, including additional density on Māori land as a restricted discretionary activity;

(b) clarifying and improving the implementation of the Integrated Māori Development mechanism;

(c) clearly articulating the objectives and policies to provide for development within natural and historic heritage overlays; and

(d) general amendments to the Māori Purpose zone, including permitting the establishment of new urupā.

1.9 I have also recommended a number of amendments which are outside the scope of submissions. Most are relatively minor and seek to address drafting errors and matters of consistency and structure. More substantive matters beyond scope of submissions include:

(a) Amendment of restricted discretionary activity status activities on Treaty settlement land to a discretionary activity status;

(b) Additional matter of control and criterion for visual effects associated with a new urupā on Māori land and Treaty settlement land (changes agreed at mediation); and

(c) Additional matters of discretion and criterion for provision of wastewater on Māori land and Treaty settlement land.

1.10 Following mediation, there were a number of outstanding matters in dispute. These include clarification regarding the definition of 'Treaty settlement land', additional changes sought to the objectives and policies, the appropriate dwelling and density limits for the Māori land and Treaty settlement provisions, and the appropriate activity statuses' for various activities within these sections. These matters are discussed in this evidence.

2. INTRODUCTION

2.1 My name is Jym Hallam Cark. I hold the position of Planner, Unitary Plan at Auckland Council. I have been in this position since February 2012.

2.2 I have a Bachelor of Planning with honours degree from the University of Auckland. I am a graduate member of the New Zealand Planning Institute. A description of my qualifications and relevant past experience are included in **Attachment A** to this evidence.

2.3 I have previously given evidence on behalf of the Council on Topic 009 RPS Mana Whenua in relation to B5.3. I have also prepared evidence for Topic 026 – General, which addressed matters with respect to the non-statutory layers for Māori land and Treaty Settlement land.[2]

2.4 This evidence addresses the matters covered by Topic 036. This Topic contains the objectives, policies and rules for Auckland-wide Māori land and Treaty settlement land sections and the Māori Purpose zone.

2.5 I have recommended a number of changes to the Māori land and Treaty settlement land sections to respond to submissions. Comparatively I have recommended very few changes to the Māori Purpose zone which reflects the small number of submissions coded to those provisions.

3. CODE OF CONDUCT

3.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

4. SCOPE

4.1 I am providing planning evidence in relation to the submissions made on the Māori land (C2.1 and H2.1) and Treaty settlement land (C2.2 and H2.2) sections of the Auckland-wide provisions and the Māori Purpose zone (D8.5 and I19). I also consider the associated definitions of Integrated Māori Development and Treaty settlement land and the Chapter A explanation of 'area based planning tools' for

[2] Topic 006: General – Others (non-statutory layers), Auckland Council, Jym Clark, primary evidence, dated: 4 February 2015.

'integrated plan for Māori development'. The submission points are those identified in the Independent Hearings Panel Submission Points Pathways (**SPP**) report for Topic 036.

4.2 My evidence provides an overview and background to the objectives, policies and rules. My evidence should be read in conjunction with the relevant sections of the Council's section 32 Evaluation Report which gives a thorough background to these provisions. A further evaluation in terms of section 32AA is made with respect to the changes I propose in section 12.21 below.

4.3 Topic 036 was subject to mediation on 22 and 23 March 2015 which I attended. A document incorporating changes agreed at mediation and changes with respect to this statement of evidence is contained in **Attachment B**. By way of summary as to the changes agreed at mediation, a number of amendments were made to the objectives and policies of the Māori land and Treaty settlement land provisions, generally to provide greater consistency with the underlying purpose of these provisions. Additional changes were also made to the Māori land and Treaty settlement land Activity Tables, generally in response to submitters who sought greater clarity of activities within these tables.

4.4 Following mediation, the substantive areas remaining in dispute in respect of the Māori land and Treaty settlement land provisions are as follows:

(a) The definition of Treaty Settlement land, and specifically whether it includes deferred selection properties, right of first refusal land, and land that is subsequently transferred to a non-claimant group;

(b) Deletion of Policy 4 and parts of Policy 7 which relate to facilitation of consent applications. These amendments were supported by those at mediation except one attendee representing two submitters who reserved their decision on the basis that they sought to retain a measure of facilitation by Council in the consent process;

(c) Policy 7 (natural heritage overlays), as discussed in paragraph 13.22 to 13.25;

(d) Dwelling density and dwelling limit in both the Māori land and Treaty settlement land provisions (and associated matters for discretion on Māori land only);

(e) Limiting rural industries to Rural zones on Māori land, to reflect deletion of matter of discretion and criterion: 'the activity must be proposed in a rural zone';

(f) Amendment of activities with restricted activity status to discretionary activity status on Treaty settlement land;

(g) Minimum site size for marae complex; and

(h) Assessment criteria for elite land and prime land.

4.5 In this evidence, I have also proposed some additional amendments to the changes that were agreed at mediation as follows:[3]

(a) Two new policies, Policy '2A' (integrated approach) and 'xx' (provision for stormwater, wastewater, water, and electricity supply) were agreed to but on reflection I consider that these policies should be re-worded slightly to ensure that the policies will be effective and to match the style of the rest of the PAUP;

(b) The Activity table explanation clause which was agreed to include precincts as a part of the PAUP which the Māori land and Treaty settlement land sections could supersede. I have now proposed to remove the word 'precincts' from the explanation clause as I do not consider it appropriate. See paragraph 11.18.

4.6 Changes to the Māori Purpose zone were generally agreed at mediation with one submitter reserving agreement on a number of matters with respect to their submission.[4] I note that some policies in this zone are the same as the policies for the Māori land and Treaty settlement land sections which if left as notified and amended for mediation would give rise to inconsistency. Accordingly I have amended the objectives and policies in this section to make the provisions consistent, as shown in **Attachment B**.

5. PROPOSED AMENDMENTS OUTSIDE THE SCOPE OF SUBMISSIONS

5.1 Amendments outside of the scope of submissions are proposed as follows:

(a) Amendment of restricted discretionary activity status activities on Treaty settlement land to a discretionary activity status, although limited scope is available from submissions which seek deletion of entire section;

(b) Additional matters of control and criterion for visual effects associated with new urupā on Māori land and Treaty settlement land. These changes were agreed at mediation; and

[3] These diversions are marked as Council track changes without agreement at mediation (black underline text).
[4] Te Kawerau a Maki reserved their position in respect of submission points 4321-48, 4321-61, 4321-79 and 4321-86.

(c) Additional matters of discretion and criterion for provision of wastewater on Māori land and Treaty settlement land.

6. CONSEQUENTIAL AMENDMENTS TO OTHER PARTS OF THE PAUP

6.1 There are consequential amendments that will need to be made to other parts of the PAUP as a result of my evidence. These are:

(a) Amendment of the definition of Treaty settlement land discussed at paragraphs 11.18-19;

(b) Amendment of the definition for Integrated Māori Development discussed at paragraph 12.47;

(c) Removing Integrated Māori Development from Chapter A 'Area Based Tools' discussed at paragraph 12.49;

(d) Including provision for firefighting in the Unitary Plan discussed at paragraph 16.21;

(e) Inclusion of a precinct or special provisions for Te Atatu Marae, Māori Purpose zone discussed at paragraph 17.9; and

(f) Rezoning for the Māori purpose zone discussed at paragraph 17.9.

7. STATUTORY FRAMEWORK

7.1 Section 6(e) of the Resource Management Act 1991 (**RMA**) requires the Council to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands (and water, sites, waahi tapu and other taonga) as a matter of national importance. Council must also recognise and provide for the protection of recognised customary rights as required by section 6(g). Section 7(a) requires the Council to have regard to kaitiakitanga, and section 8 requires the principles of the Treaty of Waitangi to be taken into account. Relevant principles to be taken into account by the Council may include: active protection of Māori interests, the right of development, rangitiratanga, kaitiakitanga and the right of all Māori to express their Māoritanga.[5]

7.2 As addressed in my evidence to the RPS section B5.3, the Mana Whenua provisions in the PAUP have been prepared to respond to Part 2 of the RMA and the relevant

[5] A fuller list of Treaty principles relevant to local government are referred to in Section A.2.2 of the PAUP, see Auckland Council, closing statement, track change document for Hearing Topic 009.

sections in Part 2 listed above. The provisions enable and provide for Mana Whenua to develop their ancestral lands across the whenua of Tamaki Makaurau. The provisions should allow Mana Whenua to exercise their kaitiakitanga more widely for the development of these lands for their purposes. The provisions should also support ahi kā[6] by providing greater opportunity for Māori to live on the land for their aspirations.

8. SECTION 32 ASSESSMENT

8.1 Section 32 of the RMA requires an evaluation of the objectives, policies and methods.

8.2 As outlined in the Auckland Unitary Plan Evaluation Report (**Evaluation Report**), the Council has focussed its section 32 assessment on the objectives and provisions within the PAUP that represent significant changes in approach from those within the current operative Auckland RMA policy statements and plans. Whilst the evaluation report applies to the entire PAUP, the report targets the 50 topics where the provisions represent a significant policy shift from the current provisions.

8.3 The Māori land and Treaty Settlement land sections and the Māori Purpose zone were the subject of a section 32 evaluation as part of the Council's section 32 Evaluation Report prepared prior to notification of the Unitary Plan.[7]

8.4 Section 32AA requires a further evaluation of any changes that have been made to a proposal since the Evaluation Report for the proposal was completed. I have proposed a change to provide for up to 20 dwellings at a density of one dwelling per 4000m^2 as a restricted discretionary activity on Māori land and so in accordance with s32AA, a further evaluation of this proposal is provided in **Attachment D**.

9. BACKGROUND

9.1 The PAUP provisions for Māori land, Treaty settlement land and the Māori Purpose zone directly respond to RPS sections B5.3 Māori economic, social and cultural development, and B5.1 recognising Te Tiriti o Waitangi.[8]

[6] Meaning: burning fires of occupation, continuous occupation - title to land through occupation by a group, generally over a long period of time. The group is able, through the use of *whakapapa*, to trace back to primary ancestors who lived on the land. They held influence over the land through their military strength and defended successfully against challenges, thereby keeping their fires burning (Te Aka Māori-English Dictionary).

[7] Section 32 evaluation report. Section 2.14 ‘Treaty settlements’ and section 2.17 ‘Māori land’. Accessibility: http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Pages/section32report.aspx

[8] Evidence for these sections was heard in Topic 009 RPS Mana Whenua. I submitted evidence which supported section B5.3.

9.2 The provisions were developed through a high level of engagement with Mana Whenua of Tamaki Makaurau and mataawaka. Evidence of this engagement was contained in the evidence of Anaru Vercoe for Council in response to the hearing for Topic 006 RPS 'Issues of Significance to Mana Whenua'.[9] These sections were designed to significantly lift the wellbeing of Māori by allowing them to realise their aspirations through the development and use of their lands.

9.3 Very little land remains in traditional Māori or customary ownership, and it is estimated that less than 1 percent of land in the Auckland region is Māori land.[10] In terms of development, Māori land[11] has remained underdeveloped or dormant when compared to other similar and surrounding land.[12]

9.4 Treaty settlement land is land returned by the Crown pursuant to a deed of settlement and associated legislation, intended to redress some of the historical injustices committed by the Crown. The settlement process, including return of land, is still continuing with a number of Mana Whenua in Auckland although some have already concluded their settlements.

9.5 The Unitary Plan recognises the need to enable development of Treaty settlement land so that it can be used as an economic and community base to support Māori wellbeing. Similarly, Māori land can be used to achieve the same ends.

9.6 The Māori Purpose zone is a harmonisation of Māori special purpose zones in legacy district plans. The zone is in limited locations which are defined by existing marae development or other Māori institutions or by proposed marae.[13] A zone location map is provided in **Attachment C**. The zone provisions are more enabling than the Māori land and Treaty settlement land sections, including providing for a greater range of activities and a higher housing density.

9.7 The Māori land and Treaty settlement land sections provide for Māori development outside of the Māori Purpose zone and over and above the other Unitary Plan zones where Māori Land and Treaty settlement land is present.

9.8 Overall, the Māori land and Treaty settlement land provisions provide development flexibility for Māori through a limited range of permitted activities including housing

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[9] Topic 009 RPS 'Issues of Significance to Mana Whenua', Auckland Council, Andrew Vercoe, primary evidence, section 9, dated 10 October 2014.
[10] Ibid.
[11] For the purposes of this evidence, Māori land is as defined by the PAUP, being land defined under Te Ture Whenua Māori Act 1993 which is typically land still in traditional Māori ownership. I have not included Treaty settlement land in this definition.
[12] See evidence of Tokorangi Kapea for the Independent Māori Statutory Board for Topic 009: RPS Mana Whenua, paragraph 7.
[13] Proposed marae: Te Henga Marae and Te Atatu Marae.

and marae complex and associated activities. The provisions also provide for a discretionary Integrated Māori Development for a range of other activities not otherwise provided.

9.9 The application of the Auckland-wide Māori land and Treaty settlement land sections is identified spatially through other legislation and not through the Unitary Plan planning maps. My evidence on behalf of Council for Topic 026 General detailed this approach and the need for it.[14] My evidence for Topic 026 should be read in conjunction with this evidence.

10. RETAIN AND DELETE

Submitter requests/themes

Retain

10.1 Eighty three (83) submission points from 30 submitters seek to retain all or parts of the Treaty settlement land, Māori land and Māori Purpose zone provisions. Many of these submitters seek that the provisions be retained subject to relief sought in the submission. This relief generally seeks additional development, and in some cases recognition of significant infrastructure. Submitters primarily seek that the provisions be retained to provide for papakāinga development and a range of other supporting activities such as commercial activities which will grow the Māori economy.

10.2 Submissions which seek retention range from requesting that specific provisions be kept (objectives and policies, activity tables or all rules) to points seeking that certain approaches be maintained such as:

- Retain the general approach of the provisions for papakāinga development on Māori land;[15]
- Retain policies which 'provide for a range of activities';[16]
- Retain the Māori Purpose zone in its support for economic development to ensure thriving and self-sustaining Māori communities.[17]

[14] Topic 006: General – Others (non-statutory layers), Auckland Council, Jym Clark, primary evidence, dated: 4 February 2015.
[15] Te Uri o Hau Settlement Trust (866-5)
[16] Waikato-Tainui Te Kauhanganui Inc.(6092-34)
[17] Beacon Pathways Inc. (6138-56)

Delete whole or part

10.3 Nineteen (19) submission points from 13 submitters seek to delete all or parts of the Treaty settlement land, Māori land and Māori Purpose zone provisions. These submitters typically cite the following reasons:

- There is no mandate for a co-governance system;
- The provisions are race-based;
- Māori will have legal supremacy over other Aucklanders;
- The provisions are not in keeping with the true intent of Te Tiriti o Waitangi and its principles;
- There should be no requirement to reflect Mana whenua values;
- Do not support the use of Māori terminology.

Discussion

10.4 The provisions for Māori land, Treaty settlement land and the Māori Purpose zone have strong support from Mana Whenua, Māori developers and some individuals. There is support for the provisions as they recognise and provide for the economic, cultural and social development outcomes of Māori owned land, for the benefit of iwi, hapū, whānau and mataawaka. A primary means of achieving these outcomes is by enabling a range of activities to support papakāinga development. Whilst support for the provisions is strong, it is tempered with the request that the provisions be made more enabling.

10.5 Submissions which seek deletion of the chapter are largely from individuals. In many instances the submitter has cited the reference to the Māori Land and Treaty settlement land sections, but has instead discussed the Māori cultural heritage provisions (part of Hearing Topic 037). The submissions reflect perceptions of what the provisions set out to achieve, rather than the reality of what is contained in these provisions.

Response

10.6 I consider that the Treaty settlement land, Māori land and Māori Purpose zone provisions should be retained because they assist the Council to fulfil its statutory obligations under the RMA, and are also appropriate methods to implement the

policy framework established in RPS Chapter 5 and I therefore support the submissions of those who seek this outcome.

11. MĀORI LAND AND TREATY SETTLEMENT LAND IDENTIFICATION (DEFINITIONS, RELATIONSHIP TO PRECINCTS, PLAN STRUCTURE)

Background to provisions

11.1 The background and introductory parts of the Māori land and Treaty settlement land sections repeat the definitions for these lands.

11.2 I have previously recommended changes to the definition of Māori land for Topic 009[18] RPS Mana Whenua, to refer to the correct reference of Te Ture Whenua Māori Act 1993.

11.3 The definition of Treaty settlement land was intended to apply to cultural and commercial redress sites returned to claimant groups. It is limited to land that is specifically identified in deeds of settlement and settlement legislation. It was intended to include "deferred selection" properties[19] and so I have amended the definition of Treaty settlement land to reflect that intention (discussed further at paragraph 11.24 below). However, it does not include properties where rights of first refusal have been awarded to claimant groups.

11.4 The PAUP has clearly signalled (in the RPS) that right of first refusal land is excluded from Treaty settlement land in the definition of Treaty settlement land, and in the background and introduction sections of the Treaty settlement land section.

11.5 There are some key distinctions between right of first refusal land and deferred selection properties. For example, it is known at settlement what properties the Crown wishes to divest through deferred selection processes and a short time frame is available for the claimant group to accept purchase of that land (ie 3 years). In contrast, the location and extent of right of first refusal land will not be known until after settlement and the time period can typically last for around 100 years.

Plan structure and relationship to precincts

11.6 The Māori land and Treaty settlement land provisions are located in the Auckland-wide part of the Unitary Plan. Locating the rules in the Auckland-wide section reflects

[18] Topic 009: RPS Mana Whenua, Auckland Council, Jym Clark, rebuttal evidence, dated: 12 November 2014.
[19] Deferred selection properties are sites held by the Crown and offered through a Treaty settlement deed of settlement. A limited time period is allowed for this offer, typically a two to five year period. If accepted, a recalculation of the total settlement will occur.

the unique status of this land and the need to identify the rules in a non-zone and non-precinct context. The location the rules allow the rules to have spatial flexibility to respond to the changing identification of these lands through Te Ture Whenua Māori Act 1993 and various and ongoing Treaty settlement legislation.

11.7 The general provisions in Council's track change version[20] for determining status of an activity or use, Rule 2.1(d) states that:

> If there are no relevant precincts then the rules in the zone or Auckland-wide rules apply.

Submitter requests/themes

11.8 Submitters request that the definition of Treaty Settlement land be amended so that it includes land that was once vested with a claimant group but in respect of which ownership has since been transferred to a non-claimant group. Submitters also request that the definition incorporates land over which right of first refusal has been granted.

11.9 Te Kawerau a Maki requests that the definition of Treaty settlement land be amended to include a site at Onekitetea / Bomb Point acquired through first right of refusal.[21]

11.10 Seven submission points from four Mana Whenua submitters seek that the policies and rules for the Treaty Settlement land and Māori land sections be amended to clarify that these sections are in addition to the development potential provided by a precinct.

Discussion

Ownership

11.11 The definition of Treaty settlement land as notified is as follows:

> **Treaty settlement land**
>
> Properties vested with claimant groups by the Crown as a result of Treaty settlement legislation and final deeds of settlement.
>
> Includes:
> - cultural redress properties
> - commercial redress properties.
>
> Excludes:
> - properties over which claimant groups have been awarded Right of First Refusal

[20] Topic 004: Auckland Council, Michele Perwick, primary evidence, Attachment B, pages 19-20, dated 10 November 2012.
[21] Te Kawerau a Maki 5814-11.

- land covered by Statutory Acknowledgement or Deed of Recognition but not owned by claimant groups.

11.12 The Council's interpretation of this definition is that it only includes land which is at any particular point in time (ie when the ownership status of the land determines the applicable rule framework), vested with a claimant group. It was never intended that the provisions would apply to land that is on-sold. The land would no longer be Treaty settlement land once it is transferred to another party. The interpretation of the definition by others at mediation is that Treaty settlement land provisions also apply to land which was once, but is no longer owned by the claimant group. I recognise that the definition of Treaty settlement land as notified is ambiguous with respect to the time-bound nature of ownership by claimant groups.

11.13 However, land which is transferred to a non-claimant group may carry with it any PAUP rezoning or precincts which were developed to recognise a Treaty settlement. This post-settlement review of the PAUP provisions is recognised by RPS Section B5.1 Policy 7. This recognises that iwi can benefit from their Treaty settlement through an increased land value attracted by a change of plan provisions, despite ownership and development being transferred to a non-claimant group. A fully notified plan change would consider the appropriateness of any changes sought.

Right of first refusal land

11.14 In the context of Treaty settlements, the right of first refusal is a process whereby claimant groups are granted the first opportunity to purchase specific land which the Crown proposes to divest at some future unspecified time. The transfer of this land is not a public process as it is for other Treaty settlement land. Council is not notified of a transfer. Other Treaty settlement land is subject to a public process through the signing of a deed of settlement and subsequent legislation. Chloe Trenouth in evidence for Council to RPS Topic 009 ‘Mana Whenua’ ‘Recognition of Te Tiriti o Waitangi partnerships and participation’ did not support the inclusion of right of first refusal in the definition of Treaty settlements.[22]

11.15 Submitters have not identified a process or mechanism by which right of first refusal land could be included within the Plan as it is acquired over time. I do not know of a mechanism which could overcome the uncertain and un-notified aspects of right of first refusal land.

[22] Topic 009: RPS Mana Whenua. Chloe Trenouth, Auckland Council, rebuttal evidence, paragraphs 7.1 – 7.5, dated 12 November 2014.

11.16 I note that right of first refusal land is not expressly identified in the RPS, but is captured broadly within the discussion of redress land as identified by Chloe Trenouth in evidence for RPS Topic 005 'Issues of significance to Mana Whenua'.[23] In my view, the PAUP provisions did not intend to provide for right of first refusal land within the definition of Treaty settlement land, and I do not support its inclusion within this definition.

11.17 Furthermore, I do not consider that individual properties should be included in the definition of Treaty settlement land where they are identified through a first right of refusal process. In response to Te Kawerau a Maiki's request for Onekitetea/Bomb Point to be included in the definition of Treaty settlement land I note that this site has been identified as the Māori Purpose zone in the Unitary Plan. The Māori purpose zone is more enabling than the Treaty settlement land section, so in my view there is no advantage to be gained by changing its status.

Precincts

11.18 I refer to the Council's track change version of the general provisions in Rule 2.1(c) to determine the status of an activity or use with respect to precincts:[24]

> c. The activity status within a precinct takes precedence over the same activity within a zone and /or an Auckland-wide provision, whether more restrictive or enabling.

11.19 Based on this, I do not consider that any changes should be made to the Māori land and Treaty settlement land activity table clause to enable them to override a precinct, as sought by submitters. A precinct should be able to take precedence over zone and Auckland-wide sections, including the Māori land and Treaty settlement land sections, where appropriate. A precinct may be drafted to ensure that it does not override the Māori land and Treaty settlement land sections as appropriate. Any new precinct prepared after the Unitary Plan becomes operative would be subject to a fully notified plan change process where the appropriateness of the precinct provisions can be fully scrutinised.

Response

11.20 I recommend that the background and introduction be amended to remove any repetition of the definitions for Māori land and Treaty settlement land. This approach was supported by parties at mediation.

[23] Topic 005: RPS Issue of significance to Mana Whenua, Chloe Trenouth, Auckland Council, primary evidence, paragraph 7.3 -7.4, dated 10 October 2014.
[24] Topic 004 Chapter G: General Provisions, Auckland council Michele Perwick, track changes, Attachment B, dated 10 November 2014.

11.21 I consider that the definition of Treaty settlement land be amended to clearly address the matter of land ownership by the claimant group, and the effect of the definition with respect to which the ownership has been transferred to non-settlement parties since settlement.

11.22 I recommend that the definition of Treaty settlement land be amended to exclude land which is no longer exclusively vested with the claimant group.

11.23 I recommend a second change to the definition of Treaty Settlement Land to clarify that it includes deferred selection properties.

11.24 In order to give effect to the definitions, I recommend that land use controls be added to the Māori land and Treaty settlement land sections. This would require documentation to be supplied at building and resource consent stage to confirm the status of the subject land. I consider that this degree of documentation is necessary given the non-zone and non-precinct approach to identification. The onus is on the applicant to confirm compliance with the definition as the Council will not hold definitive information to confirm land ownership status.

11.25 I note that some submitters sought to delete the requirement to provide documentation with building consent applications, and I understand that their concern is that this duplicates processes where documentation is already required at the resource consent application stage. However, resource consent may not always be required (ie for permitted activities), and I do not consider the requirement to provide documentation at the building consent stage to be onerous where consent has already been obtained. This is because the documentation provided as part of the resource consent stage can be provided again for the building consent stage.

11.26 I consider that right of first refusal land should not be added to the definition of Treaty settlement land for the reasons set out above.

12. ENABLE ADDITIONAL DEVELOPMENT ON MĀORI LAND AND TREATY SETTLEMENT LAND

Background to provisions

12.1 The PAUP has an enabling approach for the development of Māori land and Treaty settlement land. These sections, located in the Auckland-wide part of the PAUP, are designed to be read in conjunction with the relevant underlying zone. Māori land and Treaty settlement land is typically found in the Rural zones. The underlying zone will

provide for a wide range of activities not otherwise identified in the Auckland-wide sections. This includes some activities which have been sought by submitters such as informal recreation, farm industry activity and rural commercial activities in the Rural zones.

12.2 The provision for dwellings in the Māori land and Treaty settlement land sections allows up to ten dwellings as a permitted activity at a density of one per hectare where located in a Rural zone. This would allow for a small scale papakāinga development where combined with one or two other activities, such as a marae complex which is permitted where it has a gross floor area of no more than $700m^2$. The ability to achieve up to 10 dwellings would be limited to a few Māori land sites, since approximately half of all Māori land blocks in Auckland are one hectare or less. Treaty settlement land is typically much larger, for example production forestry land represents a significant amount of this land.

12.3 Consent may be sought for more than ten dwellings without a density limit as a discretionary activity where application is made for an Integrated Māori Development (**IMD**). An IMD as notified is a resource consent which provides for a range of activities. These activities may be of a character, scale or intensity that is not provided for in the applicable zone, or that is specifically listed in the Māori land or Treaty settlement land sections. An IMD is defined as a:

> Integrated development comprising a range of cultural and commercial activities on Māori land, or land zoned for Māori Purposes or Treaty settlement land. The development must include an integrated approach to access, parking, building design and layout, infrastructure, landscaping, lighting and open space areas.

12.4 It must include more than one of the following activities:

- dwellings;
- marae complex;
- economic activities;
- tourism activities;
- care centres, including kohanga reo;
- educational facilities;
- healthcare services;

- community facilities;
- organised recreation and sport;
- urupā.

12.5 The IMD approach was developed to enable Mana Whenua to identify what activities and development they wished to pursue on their land on a case-by-case basis. This enables Mana Whenua to pursue their development aspirations under a flexible regulatory framework.

12.6 An IMD is an activity for which resource consent can be sought. It would be processed with full consideration of the relevant objectivities and policies of the PAUP to determine if the application should be granted or declined (a discretionary activity). An IMD activity, like other discretionary activities in the Māori and Treaty settlement land sections, is not subject to the normal test to determine notification, except where special circumstances exist. The notification rule is discussed further in section 14.1 of this evidence. The purpose of the IMD activity is to allow for land to be used in an efficient and flexible manner, as it provides an opportunity to undertake long term planning over a defined area of land. This planning would consider the unique circumstances regarding the physical and locational characteristics of the land, and other factors such as access to adequate infrastructure, for example. It may also form the basis of providing information to the Māori Land Court in order to establish occupation orders and partitions as appropriate.

Submitter requests/themes

Activities and land use controls

12.7 Ninety (90) submission points seek that the land use and activity controls be broadened and made more enabling to allow for greater use and development in the Māori land and Treaty settlement land sections. Generally, submissions seek to allow:

- a range of permitted and controlled commercial activities (unspecified);
- more than 10 dwellings as a permitted activity;
- more flexibility for papakāinga;
- a greater range of cultural activities and customary uses;

- buildings associated with rural commercial services and cultural activities;
- informal recreation as a restricted discretionary activity rather than as a discretionary activity;
- farms parks as a permitted activity;
- urupā as a permitted rather than a controlled activity; and
- some submitters identify that the current rule framework is too limiting and is a challenge to tikanga Māori.

12.8 Most Mana Whenua submitters have requested that the ten dwelling limit be removed, but they have not provided details of their preferred density limit.

12.9 Submitters have also expressed concerns about the lack of provision for commercial development and seek that a range of commercial activities be provided for as permitted or controlled activities. They state that the RPS framework actively supports the use of Māori owned land for economic, cultural and social purposes, which extends to enabling commercial development and papakāinga. Submitters state that the rules at present are inconsistent with these objectives and policies and should recognise Māori owned land as a limited and fixed resource.

12.10 Some individual submitters are concerned about the impact that the Treaty settlement land rules may have on their land. They either seek clarification of the impact of the potential activities or to delete the section in its entirety.[25]

Integrated Māori Development

12.11 Seven submission points from six submitters seek changes and clarification with respect to the IMD activity. Six of the points request that the activity status for an IMD be reduced to a restricted discretionary activity from the discretionary status that it presently has. Most submitters identify that matters of discretion would need to be added to ensure that development is of a scale and character which is similar to that of adjacent sites and the underlying zone.

12.12 One submission point seeks to amend the relevant special information requirements to identify under what circumstances an IMD is required, and what content is required, or alternatively remove reference to the IMD altogether.[26]

[25] 3354-14.
[26] Waimango Papakāinga Charitable Trust (2411-3).

Development controls

12.13 Thirty five (35) submission points seek to amend the development controls so that:

- building height controls are removed from the Treaty settlement and Māori land provisions [and rely on the underlying zone] or that they be amended so that they are less restrictive, including for pou haki (flag poles);
- communal facilities needed for papakāinga is better provided for;
- sustainable development is better provided for; and
- suitable infrastructure can be established for future development.

12.14 Specifically, with respect to building height, 27 submission points request that the building height of 10m be made less restrictive. Submitters are also concerned that the controls for pou haki (flag poles) are too restrictive and should not need to be located within the footprint of a building as currently required.

12.15 Other submissions are not specific about what changes are requested to achieve better provision for communal facilities, sustainable development and future suitable infrastructure.

Assessment criteria: Elite and prime soils

12.16 Twelve submitters seek amendment to assessment for restricted discretionary activities criteria 5.2.1(f) to recognise that there may be no alternative sites to building on elite or prime soils on Māori land or Treaty settlement land.

Discussion and response

Dwelling Density

12.17 I consider that the density limit should be increased for Māori land, given the need to strengthen and re-establish occupation of Māori land. Ten or less dwellings may not support a thriving papakāinga development. Generally papakāinga development on the ground or at conceptual stage in Tamaki Makaurau is between 11 and 20 dwellings. One of the key outcomes of the Auckland Plan is to ensure many more papakāinga are established in this region.

12.18 Typically many rural Māori land blocks will be of a size and nature to be able to appropriately accommodate a papakāinga of up to 20 dwellings at one dwelling per 4000m^2 in terms of the visual characteristics and servicing matters. I consider that

one dwelling per 4000m^2 is appropriate as this aligns with the density or minimum site size for Countryside Living zone and the Rural and Coastal Settlements zone. It would be reasonable to expect that development for papakāinga will be very different to typical development within those zones. Papakāinga is more likely to be clustered and provide for some communal facilities, focal points and shared services.

12.19 Some discretion would need to be maintained over this density of development in a rural setting given that the Rural zones contain existing activities which may be sensitive to new surrounding dwellings. As such assessment criteria through a restricted discretionary status would be needed to manage these effects. This assessment should also include discretion over servicing which is a major constraint in rural areas the assessment criteria I have proposed is shown in the track changes in **Attachment B**.

12.20 However, I consider that the 10 dwelling limit at one dwelling per hectare within the Rural zones for Treaty settlement land should remain as notified. This is because of the uncertain location of future Treaty settlement land due to the ongoing settlement process. The location of Treaty settlement land is less stable than Māori land because it can easily be transferred to a new owner/non claimant group, whereas Māori land is difficult to transfer because of it has multiple owners.

Response

12.21 The following recommendation for dwelling density and associated matters of discretion was proposed at meditation but was not agreed.

12.22 I recommend that up to twenty dwellings be provided for as a restricted discretionary activity at a density of one per 4000m^2 on Māori land in the Rural zones.

12.23 I have amended the assessment criteria to reflect this change and additional matters for discretion for dwellings to include:

(a) Reverse sensitivity on existing rural activities;

(b) Reverse sensitivity on existing infrastructure;

(c) Stormwater and wastewater disposal.

Integrated Māori Development

Discussion

12.24 Submissions have not stated what additional activities should be provided for, other than they say to 'add a range' of activities. Submitters also seek activities which are otherwise already provided by typical underlying zones.

12.25 The IMD activity should in my view be the focus for providing significant development of Māori land and Treaty settlement land. The benefit of an IMD is that it encourages a more integrated and co-ordinated approach to use of the land. Enabling more permitted and controlled activities would limit the use of the IMD and may result in a piecemeal outcome and a less than optimal use of the land resource.

12.26 An IMD can provide for the range of activities which are sought by submissions, including commercial activities, and development within natural heritage overlays, which is discussed later in this statement of evidence.

12.27 In some locations it is referred to as a 'plan' whereas closer analysis reveals that it is an activity which provides for a number of activities for Māori development. The IMD is identified in Chapter A: 4.2 'Area Based Tools' along with precincts and framework plans, but the IMD is an activity and not a special place based 'tool'. Accordingly the IMD should not be contained and defined in the Area Based Tools section.

12.28 Policies which provide for the IMD activity also refer to facilitation of the activity by Council. I do not consider that Council can facilitate a consent activity, whilst simultaneously acting in its capacity as a consent authority (i.e. granting, declining consents) so I have recommended a series of amendments to address these matters.

12.29 There appears to be no justification for requiring two or more activities for an IMD. An IMD for two activities would have a discretionary activity status, whereas an application for only one of the activities would result in a non-complying status, even though the level of effect could be less. Integration of development would still occur where only one activity is applied for.

Response

12.30 I therefore recommend that the definition of Integrated Māori Development should be amended to remove the "two or more" activity requirement. I also recommend that the list of activities should remain as an optional range. In addition to these changes,

I consider that a second change is required to relocate the following sentence also contained in the definition to a new Policy 2A:

> The development must include an integrated approach to access, parking, building design and layout, infrastructure, landscaping, lighting and open space areas

12.31 The sentence reads as an assessment or rule rather than setting the scope of a definition for an IMD. Definitions should not act as rules within the structure of the PAUP, and so I have relocated this provision into the policies.

12.32 The IMD is an activity and not a 'tool'. I recommend that it be removed from the Chapter A: 4.2 'Area Based Tools'.

12.33 I consider that the policies should be amended to remove any references to the Council acting to facilitate an IMD whilst acting as a consent authority. Changes to this effect would need to occur with respect to policies in the Māori land and Treaty settlement land sections, i.e. deleting part of Policy 3(c), deleting Policy 4, amending Policy 5, and amending Policy 7. This approach was agreed at mediation by most but not all parties.[27] Similar changes would need to occur to the Māori Purpose zone which also provides for an IMD. Specifically this would involve deleting Policy 2 and amending Policy 7 in the same way that Policy 7 is amended for Māori land and Treaty settlement land.

12.34 Like other activities, an IMD is an optional activity. I consider that Policy 7(a) of the Māori land and Treaty settlement land and Māori Purpose zone should be amended to remove the requirement wording.

12.35 The changes described above for IMD were agreed by parties at mediation. However, one attendee on behalf of two submitters reserved their decision with respect to the policy change to remove references to a facilitated IMD consent process.[28]

Restricted discretionary activities on Treaty settlement land

12.36 In my opinion a more conservative approach to the range and status of activities on Treaty settlement land is warranted because the land that falls within this definition is continuing to change through the Treaty settlement process. The location of future Treaty settlement land is not yet known, whereas in comparison, Māori land is relatively stable as its location and extent is known. In addition, Treaty settlement

[27] Ngati Paoa (6147) and Te Kawerau-a-Maki (4321).
[28] Ngati Paoa (6147) and Te Kawerau-a-Maki (4321).

land is much more likely than Māori land to be located in urban areas in the Auckland context.

12.37 The range and status of activities for Treaty settlement land as notified is identical to the Māori land section and in my opinion does not reflect the actual differences between the two categories of land. To more appropriately reflect these differences, I consider that changes to the restricted discretionary statuses of ‘rural industries’, ‘activities associated with a marae complex or papakāinga greater than 250m^2, and ‘marae complex greater than 700m^2, need to be amended to discretionary activities for Treaty settlement land. This would recognise that in many circumstances the location of these activities may not be appropriate as a matter of context. For example, in a residential context full discretion over a ‘marae complex greater than 700m^2, would be appropriate. A rural industry may not be appropriate at all in the same context.

12.38 The IMD activity would still be available to apply for these activities where they are otherwise not provided for by the underlying zone.

Response

12.39 I recommend that the activity statuses change from restricted discretionary to discretionary for ‘rural industries’, ‘activities associated with a marae complex and papakāinga greater than 250m^2, and ‘marae complex greater than 700m^2. I have made these changes to the track changes shown in **Attachment B**.

12.40 These changes were not agreed at mediation, but I consider there to be scope for these changes to be made.[29] In light of these changes, the assessment criteria in the Treaty settlement land section needs to be removed as there are no corresponding restricted discretionary activities in this section.

Development controls

Building height

12.41 The majority of submission points regarding development controls were directed at controls for building height and pou haki.[30]

12.42 The building height control in the Treaty settlement land and Māori land sections is already more enabling than other zones. Ten metres (10m) is permitted for marae

[29] Scope for changes provided by submissions which seek to delete the entire Treaty settlement land section (for example see 5667-16)

[30] Meaning: Flag pole

and Māori cultural activities in these sections whereas dwellings must comply with the underlying zone controls. Most Māori land is located in the Rural zones where the maximum height is 9m (in all Rural zones except the Rural Coastal zone which is 7m). The Mixed Rural and Rural Production zones permit 12m for accessory buildings. A more enabling development control contained in a zone will apply instead of the Māori land and Treaty settlement land sections and thus the 12m height for accessory buildings in the Mixed Rural and Rural Production would apply instead of the 10m height controls. The provision for allowing a more enabling development control is only explained in the introduction to the rules section which is non-statutory.

12.43 Pou haki are likely to be erected at the front of a building such as in front of a marae complex ātea.[31] A pou haki is unlikely to be erected within the footprint of a building as required by the rule for pou haki. It is unclear why this requirement within the rule exists.

Building coverage and maximum impervious area

12.44 The present control of a 2,500m^2 cap on building coverage is very limiting to the development of Māori and Treaty settlement for the establishment of papakāinga, marae complex and associated activities. Many sites already have buildings, such as farm buildings, which would limit opportunities for new development. Impervious surfaces are not controlled in the Rural zones as stormwater effects should be appropriately managed within a large rural site in co-ordination with regional controls.

12.45 Effects on rural character will be appropriately managed through a limited range and scale of permitted activities, through the assessment criteria as notified and recommended for restricted discretionary activities, and through the application of a discretionary Integrated Māori Development.

Access, services and building platform, firefighting

12.46 Development controls are contained in the Māori land and Treaty settlement land sections, including for: legal and physical access between each building; provision for services including wastewater, stormwater treatment and disposal and water and electricity supply; and, requirement for a stable, flood free building platform (see rules 3.5 – 3.7).

[31] Meaning: Courtyard, public forum - open area in front of the wharenui where formal welcomes to visitors takes place and issues are debated.

12.47 The services and building platform rules duplicate the rules in the Auckland-wide sections which manage this development. Subdivision controls also manage these uses including access.

12.48 I understand that Council is undertaking work to include a range of development controls to apply to proposals which do not include subdivisions. This may include controls for access and firefighting.

Response

12.49 I recommend a change to the introduction of the development controls for Māori land and Treaty settlement land to clarify that more enabling controls in the underlying zone apply. This addition was not discussed at mediation as I had not identified it in the Council track change document for mediation.

12.50 I recommend that the development control for pou haki be amended so that there is no requirement for it to be located within the footprint of a building.

12.51 I consider that changes need to be made to the maximum impervious area and building coverage Rule 3.4 to be as follows:

Table 1:

Zone	Building coverage	Maxim~~i~~um impervious area
All rural zones	~~The lesser of~~ 20 per cent of the site area ~~or 2500m²~~	~~The lesser of 25 per cent of the site area or 5,000m2~~ NA
All other zones	As provided for in zone	As provided for in zone

12.52 This amendment aligns this rule with the underlying Rural zones which do not control building coverage and impervious surfaces. Also this change would support a greater number of buildings on Māori Land as a restricted discretionary activity as recommended above. I have also included a new sentence at the beginning of this table, to clarify that the controls only apply to buildings that are proposed as part of these provisions.

12.53 The amendments for pou haki and building and impervious cover were agreed at mediation, though my support for these changes was reserved pending review. I

now support these changes and so have shown them as an agreed change at mediation in **Attachment B**.

Assessment Criteria: Elite and prime land, Urupā

12.54 The assessment criteria 5.2.1(f) of Māori land and Treaty settlement land sections as notified states:

> (f) Elite or prime land
>
> (i) If the site contains elite or prime land, the proposed buildings, structures, or site development should not prevent or compromise its availability or use for activities that directly rely on it.
>
> (ii) To avoid or mitigate this potentially adverse effect, the council may decline to grant consent to an application, or may attach conditions to a consent that require the buildings or associated site works to be relocated.

12.55 Elite and prime soils are recognised in the RPS as a limited and non-renewable resource which is important to the security of the region's food supply. The assessment criteria above requires the assessment of applications to ensure that development does not prevent or compromise the use of elite and prime soils and consider to what extent adverse effects are minimised on these soils.

12.56 Generally, Māori land and Treaty settlement land and potential future commercial redress Treaty settlement land (such as existing Crown owned farms and forests) does not contain elite and prime soils. The assessment criteria would therefore not be applicable in most cases. However, these soils are present within a large tract of Māori land north of Parakai, Kaipara. This is one of the largest conglomerations of blocks of Māori land in Tamaki Makaurau. The Māori land near Parakai, would have opportunities to build outside the elite and prime soils given the size of the land and the mix of elite/prime soils and sandy soils.

12.57 Accordingly, I support retention of assessment criteria regarding elite or prime land, although changes are required so that the criteria is consistent with the assessment criterion used in the Rural section of the PAUP. The changes that I have proposed are shown in the track changes in **Attachment B**.

12.58 Urupā is a controlled activity with matters of control limited to effects on groundwater. I consider that visual effects, which include visual privacy with respect to existing dwellings, will be of concern in many circumstances where new urupā are proposed. This approach and wording as contained in the track changes in **Attachment B** was

agreed by all parties present at mediation, though I note that these changes are beyond the scope of submissions.

Response

12.59 I recommend that the assessment criteria for elite and prime land be amended to be consistent with the assessment criterion used in the Rural zones. I do not consider that the assessment criteria should include recognition that there may be no alternative sites. However, the new assessment criterion would have a lesser threshold of assessment as it would seek to minimise the adverse effects of buildings and site development on elite and prime land rather than avoiding or mitigating the potentially adverse effects. This amendment to criteria did not reach agreement at mediation, as attendees still seek for these assessment criteria to be removed.

12.60 I consider that matters of control should be added for the assessment of new urupā to consider visual effects, to ensure visual privacy is protected. This additional matter was agreed by all parties at mediation.

13. NATURAL HERITAGE AND HISTORIC HERITAGE OVERLAYS

Background to provisions

13.1 In referring to the natural heritage overlays I refer to four overlays including: the Significant Ecological Area (SEA) overlay, and the landscape overlays: Outstanding Natural Character (ONC), High Natural Character (HNC) and Outstanding Natural Landscape (ONL).

13.2 Almost 40 per cent of Māori land is covered by a SEA and about 16 per cent is within the natural landscape overlays. Commercial redress Treaty settlement land is not affected by the natural heritage overlay to an extent which is greater than other general land. Cultural redress land is more likely to be affected by natural heritage overlays given that it is typically identified over conservation land and reserves.

13.3 A summary of the rules as notified have the following thresholds for development on Māori land within the natural heritage overlays:

> Significant Ecological Areas (SEA) overlay (38.4% of Māori land):
> - Vegetation removal for one dwelling per site – Controlled, where there is no practicable alternative outside of the SEA, clearance up to 300m^2
> - Other vegetation removal – Discretionary
>
> Outstanding Natural Landscapes (ONC) (16% of Māori land) and High Natural Character (HNC) overlays (11.4% of Māori land):

- Buildings up to 50m^2 GFA – Permitted
- Buildings over 50m^2 GFA – Restricted Discretionary

Outstanding Natural Character overlay (11% of Māori land):

- Buildings up to 25m^2 GFA – Permitted
- Buildings over 25m^2 GFA – Restricted Discretionary

13.4 Policy 7 in the Māori land, Treaty settlement land and the Māori Purpose zone sections balances the need to enable the development and use of Māori and Treaty settlement land while protecting the natural and historic heritage values contained in an overlay. The policy recognises there may be limited alternative locations for whānau, hapu and iwi to develop their ancestral lands. There are no methods associated with the objective and policy.

Submitter requests/themes

Natural heritage

13.5 Forty seven (47) submission points seek to amend the assessment criteria to ensure that development can occur on Māori land and Treaty settlement land despite the presence of natural heritage overlays. Various changes are sought to achieve this including amending objectives and policies.

13.6 The following submission is typical of others:

> Amend objectives to provide a more balanced approach to enable a range of activities on Treaty settlement land as controlled, restricted discretionary and discretionary activities where natural heritage values form part of the matters of control, rather than being restrictive. The objectives as notified place emphasis on recognising and providing for natural heritage values, which is restrictive rather than enabling.[32]

13.7 Generally, the submitters seek amendment to provide for the occupation, development and use of Māori and Treaty settlement land as permitted, controlled and restricted discretionary activities and use the IMD activity to assess proposals with significant adverse effects.

13.8 I note that Policy 5, Section B5.3 of the RPS states the PAUP will "enable … [development] within scheduled natural heritage and historic heritage areas …". However, minimal provision has been made for this in the natural heritage overlay

[32] Ngati Manuhiri Settlement Trust (5805-14)

rules in Chapter J(6).[33] My previous evidence to section Policy 5 of B5.3 included the following changes:

> Enable Mana Whenua to occupy, develop and use Māori land <u>and Treaty settlement land</u> within areas scheduled for natural heritage or historic heritage values in ways that recognise and provide for those values <u>while taking into account the principles of the Treaty.</u>

Historic heritage

13.9 Heritage New Zealand Pouhere Taonga (HNZ) and the New Zealand Archaeological Association (NZAA)[34] have made submissions seeking that the objectives and policies for the Treaty settlement land and Māori land provide for 'historic heritage vales, rather than just 'heritage values.

13.10 To clarify this, HNZ seek amendment to Treaty settlement land Objective 4 and Policy 7, and Māori land Objective 3 and Policy 7 to include the words 'and historic' to read 'natural and historic heritage values'.[35]

13.11 Both submitters state there is equally as much reason to provide for historic heritage values as there are to provide for natural heritage values.

Natural heritage

13.12 The overlays which protect natural heritage are seen to be restrictive of development on Māori land and Treaty settlement land. I consider that the IMD is the best approach to balance the need for Māori development versus the need to protect Auckland's natural heritage.

13.13 Development on Māori land has been constrained for a number of reasons, one being past and existing planning documents which have generally not adequately provided for its development and use. I agree that the SEA overlay, and to a lesser extent the landscape overlays, are potential constraints on Māori land and Treaty settlement land development aspirations, however this is a matter that can in my view be taken into account through the resource consent process, and a balanced decision made, particularly in light of the objectives and policies which recognise this tension.

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[33] Kirkwood Whanau (7366-62)
[34] NZ Archaeological Association (3370-34,35)
[35] Heritage NZ (371- 62, 63, 65, 66)

13.14 Cultural redress Treaty settlement land is more likely to be affected by natural heritage overlays. Given the sensitivity of this land, often with high conservation value, it is considered that it should be subject to the normal consent status for development. Cultural redress land can also be subject to a reserve management plan as required by the Reserves Act 1977 which places additional limitations on its use. Some cultural redress land is also managed by a co-governance authority such as the Maunga Authority for the volcanic cones which will ensure careful stewardship.

Objectives and policies

13.15 I consider that the objectives (Māori land, Objective 3 and Treaty settlement land Objective 4) should be amended to include historic heritage and to incorporate the need to take into account the principles of the Treaty when making an assessment of effects on natural and historic heritage values. These changes are a consequential amendment from Council's track change for RPS Section B5.3.

13.16 Policy 7, which responds to Objective 4 above, was discussed in detail at mediation. An amended version was developed between some of the submitters at mediation, and while I generally accepted this amended version, I reserved my position on the basis of having it reviewed by colleagues with expert knowledge of the natural heritage overlays, biodiversity and landscapes. This discussion revealed that they were not comfortable with the wording as proposed by submitters for the reason that 'avoiding, mitigating, remedying' adverse effects is not adequate to protect the values associated with the natural heritage overlays. The policy setting must 'avoid' effects on matters of landscape value, in-line with the NZCPS. For biodiversity 'avoid' is the first approach, and where not possible, 'mitigate' and then 'remedy' adverse effects. This policy and assessment framework is contained in the SEA overlay which also applies to Māori land and Treaty settlement land. I agree with their view and have proposed a version of Policy 7 which is mostly as prepared before mediation with some changes made in light of discussions at mediation.

13.17 Policy 7(b) for Māori land, Treaty Settlement land and the Māori Purpose zone provides an opportunity for the extent of the scheduled overlay area to be reassessed. I consider that this is an ultra vires matter. Reassessment of a scheduled area may only occur via a plan change and cannot be considered by an application for resource consent.

13.18 Policy 7(d) for Māori land, Treaty Settlement land and the Māori Purpose zone provides for transferring development rights to other properties. The transfer of development rights is a complex process which needs to be supported by methods. I do not consider that Māori land, Treaty settlement land and the Māori Purpose zone should provide for the transfer of development rights.

13.19 I recommend that additional changes be made to the same Policy 7 to clearly signal that there is a need to enable development on Māori land and Treaty settlement land (although the scope for development on Treaty settlement land needs to be reduced, as discussed in the following paragraph) while avoiding adverse effects on the associated values of the schedules.

13.20 The scope of Policy 7 for Treaty settlement land should in my view be limited to marae complex, papakāinga and Māori cultural activities. The potential for other commercial development is much higher on commercial redress properties and should be subject to the normal natural heritage overlay assessment.

13.21 I recommend that the objectives for (Māori land, Objective 3 and Treaty settlement land Objective 4) be amended as follows:

> Mana Whenua use and develop Māori land within areas scheduled for natural heritage and historic heritage values in ways that recognise and provide for those ~~natural heritage~~ values while taking into account the principles of the Treaty.

13.22 I consider that changes to Policy 7 for Māori land, Treaty Settlement land and the Māori Purpose zone should be made to address the discussion above. This includes deleting Policy 7(b) to remove the reference to scheduled overlay area being reassessed through a resource consent process, and 7(d) to remove a matter of transferable development rights which is not supported by a method.

13.23 Other amendments to Policy 7 for Māori land, Treaty Settlement land and the Māori Purpose zone, as shown in **Attachment B**, should be made to ensure that the polices are drafted so that they enable appropriate development whilst avoiding adverse effects on the natural heritage values.

13.24 I recommend that the scope of Policy 7 for Treaty settlement land is reduced to exclude activities encompassing commercial development. The scope should be limited to marae complex, papakāinga and Māori cultural activities which should be provided for on Treaty settlement land.

13.25 The changes described above are shown in the track change document in **Attachment B**.

14. NOTIFICATION

Background to provisions

14.1 The General provisions contain Rule 2.4.1 which states 'controlled and restricted discretionary activities will be considered without public or limited notification, or the need to obtain written approval from affected parties.' The exception exists where there are special circumstances in accordance with RMA s95A(4).

14.2 Similarly, the provisions for Māori land and Treaty settlement land allows for non-notification of discretionary activities, unless special circumstances exist.

Submitter requests/themes

14.3 Seven submitters seek to delete the notification provisions in the Māori Land and Treaty Settlement land Section 2 that allow discretionary activities to be considered without public or limited notification, or the need to obtain written approval from affected parties, unless special circumstances exist in accordance with s95A(4) of the RMA that make notification desirable.

14.4 Four submissions seek that the same notification provision above be amended so that it also applies to restricted discretionary activities.

14.5 My position is that non-notification for discretionary activities on Māori land and Treaty settlement land should remain as notified. No arguments have been presented by submitters in support of removing the rule that provides for non-notification. The only activities to which the non-notification rule applies are the Integrated Māori Development on Māori land and Treaty settlement land, and rural commercial services on Māori land within an underlying Rural zone, as recommended in the track changes shown in **Attachment B**.

14.6 I consider that the non-notification of discretionary activities rule of the Māori land and Treaty settlement land sections should be retained.

15. PROVIDING FOR INFRASTRUCTURE

Background to provisions

15.1 The Māori land and Treaty settlement land sections both contain the same objective and policy with respect to encouraging new infrastructure which may have adverse effects to consider alternative routes. There are no associated methods with the objective and policy.

15.2 The objectives and policies relating to infrastructure were included after feedback from Mana Whenua who identified that historical compulsory acquisition had a significant impact on Māori owned land. This view is supported by the 'Review of the Public Works Act', compiled by Land Information New Zealand in 2001.[36] From that review report:

> 'Many Māori submissions noted that public works legislation used for the development of New Zealand's infrastructure had resulted in considerable loss of Māori land and a number of these referred to historical Treaty grievances involving ancestral lands.

15.3 The policy framework for significant infrastructure is provided for in the RPS Section 3.2 and the objectives, policies and rules are found principally in the Auckland-wide section for network utilities (H1.1). This framework provides for the operation, maintenance, repair and minor upgrade of existing infrastructure as a permitted activity. In most circumstance, new infrastructure is provided as a restricted discretionary activity. The provisions for new infrastructure may only vary according to the underlying zone.

Submitter requests/themes

15.4 Nine infrastructure provider submitters seek to amend objectives and policies to allow for the occupation, development and use of Māori land and Treaty settlement land for significant infrastructure.

15.5 The submitters recognise the importance of Māori land and Treaty settlement land to Mana Whenua and as such generally seek that the provisions be retained, subject to amendment. These submitters consider that a balance is required to respond to the technical and operational needs of infrastructure.

[36] See Appendix 3.17.3 of the section 32 report. http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/Section32report/Appendices/Appendix%203.17.3.pdf

15.6 Specifically, submitters seek amendment to Māori land Objective 4 and Policy 8, and the corresponding Treaty settlement land Objective 5 and Policy 9. Most submitters are not specific about wording changes, except for the following submission points.

15.7 Transpower seek amendments to Māori land Objective 4, and Treaty settlement land Objective 5 to read:

> The occupation, development and use of Māori land is not adversely affected by the <u>inappropriate</u> location of new significant infrastructure, <u>whilst recognising the need to operate, maintain, develop and upgrade existing and nationally significant infrastructure (located on Māori land).</u>

15.8 Auckland International Airport seeks Māori land section Objective 4 to read:

> The <u>location of new significant infrastructure should avoid, remedy or mitigate adverse effects that will impact on the</u> occupation, development and use of Māori land ~~is not adversely affected by the location of new significant infrastructure~~.

15.9 Transpower seeks a new policy to be added:

> <u>Provide for the operation, maintenance, upgrade and development of existing nationally significant infrastructure located on Māori land.</u>'[37]

15.10 Transpower cite that the national electricity grid, which they are responsible for, is recognised by Policy 3 of the National Policy Statement on Electricity Transmission.

15.11 Auckland International Airport seeks that significant infrastructure should only need to 'avoid, remedy or mitigate adverse effects' rather than ensure that Māori land or Treaty settlement land is 'not adversely affected'.

15.12 Infrastructure providers which have not provided specific wording changes seek that the occupation, development and use of Māori land and Treaty settlement land for significant infrastructure be recognised and provided for if the adverse effects can be avoided, remedied or mitigated.

15.13 Generally, the submissions seek two outcomes to be identified in the objectives and policies of the Māori land and Treaty settlement land sections, ie that provision be given to existing infrastructure, and additional provision for new infrastructure be given.

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[37] Transpower NZ Ltd. (3766-120).

15.14 The Māori land and Treaty settlement land sections are not afforded any special outcomes with respect to infrastructure as they are contained in the Auckland-wide section. The Network Utilities section which manages infrastructure only varies its approach to new infrastructure with respect to zones and overlays.

15.15 I consider that the objectives and policies in the Māori land and Treaty settlement land sections have no real impact on infrastructure given the structural constraints described above. The changes as sought by submitters would therefore have little bearing on most infrastructure development.

15.16 The objectives and policies in the Māori land and Treaty settlement land sections with respect to encouraging infrastructure to limit adverse effects on these lands may have a bearing on new large scale infrastructure. This would typically be a discretionary or non-complying activity, or may require a notice of requirement for a designation. Large scale infrastructure involve activities such as new schools, roads, ports, airports or any other activity that would require the acquisition of land or designation of land. In these instances the objectives and policies in the Māori land and Treaty settlement land sections should be referred to, along with other relevant objectives and policies, including those in the network utilities section. Many objectives and policies in the network utilities and infrastructure sections already strongly signal the need for infrastructure.

15.17 I do not consider that there would be any benefit in repeating the objectives and policies of the network utilities and infrastructure sections in the Māori land and Treaty settlement land sections as sought by submitters.

15.18 Some infrastructure submitters were represented at mediation. Changes sought by them at mediation were not accepted by other parties present.

15.19 I do not consider that the objectives and policies for Māori land and Treaty settlement land should be amended to include greater provision for new and existing infrastructure as infrastructure is already adequately provided for by the infrastructure and network utilities sections.

16. MĀORI PURPOSE ZONE (ASSESSMENT CRITERIA, DEVELOPMENT CONTROLS, POLICIES)

Background to provisions

16.1 The Māori Purpose zone, unlike the Treaty Settlement land and Māori land sections, is a land-use zone. It enables residential use, provides for small scale care centres, small scale retail, marae, education facilities, organised sport and urupā. Consequently, it requires a full suite of rules, and associated assessment criteria, for the zone's seven restricted discretionary activities and for the assessment of development control infringements which are treated as a restricted discretionary activity.

16.2 The Māori Purpose zone is identified in the planning maps and its location is generally a rollover from legacy plans, most of which had a zone which provided for place-based Māori cultural activities, such as marae and papakāinga. The locations of this zone are shown on a map in **Appendix C** which are also listed below. Locations of the rollover of this zone from legacy plans are:

(a) Awataha Marae, Akoranga Drive;

(b) Ōrakei (Bastion Point), Kupe Street and Kepa Road, Ōrakei;

(c) Te Piringatahi o te Maungaarongo Marae, Luckens Road, West Harbour;

(d) Te Atatu Marae, Harbour View Reserve, Te Atatu Road;

(e) Te Henga Marae, Bethells Road, Bethels Beach;

(f) Makaurau Ihumatao Road, Mangere;

(g) Pukaki Road, Mangere;

(h) Umupuia Marae, Maraetai Coast Road;

(i) Matahuru Papakāinga, Miro Road, Mangere Bridge;

(j) Ōtara Marae, Alexander Crescent, Ōtara;

(k) Manurewa Marae, Finlayson Avenue, Manurewa;

(l) Hoani Waititi Marae, Pars Cross Road, Glen Eden,

and additional locations as notified in the Unitary Plan:

(a) Te Onekiritea / Bomb Point, Hobsonville;

(b) Puketutu Island, Mangere;

(c) Pukaki urupā, Puhinui.

Submitter requests/themes

16.3 Very few submission points were received to amend the provisions of the Māori Purpose zone.

16.4 One submitter requests that urupā be a permitted activity in the Māori Purpose zone rather than a restricted discretionary activity.

16.5 Two submitters note that the height in relation to boundary Figure 1 is incorrect as it shows a vertical height dimension of 2.5m rather than 3m which is inconsistent with the text of rule 3.2. They seek that the diagram be amended accordingly.

16.6 One submitter Whai Rawa (which is the commercial arm of Ngati Whatua o Ōrakei) considers that the criteria, particularly those relating to new buildings and alterations to buildings, are too extensive, and instead should be amended and refined to focus on the key issues.

16.7 The New Zealand Fire Service Commission has requested that the where there is no reticulated water supply, provision shall be made for sufficient water supply and access to water supplies for firefighting purposes consistent with NZ Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008.

Discussion

Urupā

16.8 Urupā are a restricted discretionary activity in the Māori Purpose zone as notified. Matters of discretion are limited to the extent to with leachates are managed with respect to ground water, and the integration of mātauranga and tikanga.

16.9 Urupā in the Māori Purpose zone is an acceptable activity given that it is relatively passive except for associated Māori cultural practices which are otherwise permitted. Urupā would be widely anticipated in this zone given that Objective 1 for the zone is to meet the unique social and cultural needs of Auckland's Māori communities.

16.10 Assessment criteria that would be lost through the change to a permitted activity status would include managing ground discharge and incorporating mātauranga and

tikanga. In terms of the RMA burial of human remains is a discharge to the ground. However burial is exempt from the need to obtain resource consent in the regional provisions of the Unitary Plan. Therefore I do not consider that at district plan level there is a need to manage the discharge effects of burials. I do not consider that it would be possible for the Council's resource consent processing staff to ensure that mātauranga and tikanga has been appropriately integrated, therefore the loss of this assessment criteria would not have any real impact.

16.11 The above changes to the assessment criteria were not reflected in the track changes at mediation. I have reflected the changes in the track change document in **Attachment B** as a proposed amendment.

Care centres, healthcare facilities and education facilities

16.12 Care centres, healthcare facilities and education facilities are all included in the definition of marae complex which also includes a range of other activities. The zone also seeks to manage the effects of these activities by permitting their use up to 250m^2 each. Additional floor area would require a restricted discretionary activity consent. Marae complex in this zone are permitted, without a floor area limit. Development of care centres, healthcare facilities and education facilities greater that 250m^2 each would occur as a sub-activity to a marae complex, therefore avoiding the need to apply for restricted discretionary consent.

16.13 I do not consider that avoiding a restricted discretionary was the outcome anticipated due to the level of detail afforded to managing these activities. I consider that the text should be amended to apply a land use control rule to these activities. I consider this out of scope change to be a general administrative amendment.

Height in relation to boundary Figure

16.14 I recommend an amendment to Figure 1 of the Māori Purpose zone so that it is consistent with corresponding rule 3.2.

Firefighting

16.15 I consider that the request by the Fire Services Commission to require compliance with the Fire Fighting Water Supplies Code through the Māori Purposes zone should be directed to the Auckland-wide section on subdivision. Council is working to identify how firefighting will be appropriately included in the subdivision rules to ensure that this code can be addressed at subdivision and at other stages when

development does not include subdivision. The outcome of this work will be addressed in the Council's evidence for Topic 064: Subdivision.

Assessment Criteria

16.16 Assessment criteria provides the basis to provide assessment of where the effects proposes by an activity are acceptable. The assessment criteria provides clarity of the level of assessment required and what conditions that may be imposed. Reducing the assessment criteria would reduce the clarity of assessment.

Response

16.17 I recommend that that urupā should be a permitted activity in the Māori Purpose zone, where there are performance criteria which restrict its proximity to neighbouring sites. A yard control for new urupā is recommended to achieve this outcome.

16.18 I recommend that a land use control be added to manage the floor area extent of care centres, healthcare facilities and education facilities as these were not appropriately managed by the activity table.

16.19 The height in relation to boundary figure 1 should be amended to align with the corresponding rule text.

16.20 All track changes to the Māori Purpose zone were agreed by attendees at mediation.

16.21 I support the Fire Services Commission request to require compliance with the Fire Fighting Water Supplies Code, and consider that it should be addressed through the Auckland-wide rules rather than individual zones.

17. PLACE BASED (HARBOUR VIEW RESERVE, MAPS)

Submitter requests

Additional Māori Purpose zone identification

17.1 Ten Mana Whenua submitters seek that the Māori Purpose zone be identified at new sites, where they are supported by Māori. Generally the submitters are not specific about which sites should be identified. Three Mana Whenua submitters: Ngati Manuhiri Settlement Trust, Te Wahanga Manaakitanga o Te Tai Ao, and Te Kawerau a Maki have provided lists of locations to be identified with this zone.

Te Atatu Marae

17.2 Six submitters seek that amendment be made to ensure that marae development in Harbour View Reserve in Te Atatu, which is identified as the Māori Purpose zone in the PAUP, be subject to the same conditions as Environment Court decision W041/2007. Similarly other submitters seek that controls be amended to achieve similar outcomes, such as using the provisions of the 'Auckland Council District Plan – Waitakere Section, Special Purpose Marae zone'. Submitters also cite the need to recognise the existing ecology of the area through these rules.

Discussion

Additional Māori Purpose zone identification

17.3 The opportunity to identify new locations of zones including the Māori Purpose zone will occur during the mediation and hearings for the rezoning topic. Submitters who seek specific new locations for the Māori Purpose zone should provide evidence to the rezoning topic to support the new locations.

Te Atatu Marae

17.4 The Marae Special Area (Te Atatu) in the 'Auckland Council District Plan – Waitakere Section' (an operative legacy plan) anticipated outcomes that have not been incorporated into the Unitary Plan. This special area incorporated the final outcomes of the Environment Court decision.

17.5 On review of the legacy provisions for the subject site, I consider that these need to be incorporated into the PAUP. The rules provided in the Māori Purpose zone which applies to the site are too general to guide the detailed development outcomes anticipated by the legacy provisions.

17.6 Therefore a precinct should be developed, or special rules incorporated into the Māori Purpose zone specifically for the land identified at Te Atatu. The appropriate course should be determined through the new precincts work. The outcome may need to change from the legacy provisions as the receiving environment would have changed since the associated Environment Court decision was over seven years ago.

Response

17.7 I consider that special provisions be consequentially developed for Te Atatu Marae, Special Purpose zone through a precinct or additional rules to the Māori Special purpose zone.

17.8 I support opportunities to identify additional locations for the Māori Special purpose zone as appropriate in the rezoning mediation and hearings.

18. CONCLUSION

18.1 Overall, I consider that the Māori land, Treaty settlement land and Māori Purpose zone provisions with the amendments as discussed in this statement of evidence will give effect to Part 2 of the RMA and ensure than Mana Whenua will appropriately be enabled to use their lands so that they may develop their social, cultural and economic wellbeing.

Jym Hallam Clark

17 April 2015

ATTACHMENT A

Career Summary: Jym Hallam Clark

Planner, Unitary Plan, Auckland Council: February 2012 to present

Planner, Resource Consents, Auckland Council / Waitakere City Council: January 2009 – June 2011

Planner (part-time, student role), Haines Planning: Part time July 2008 – December 2008.

Planner (summer role), MWH International: November 2007 – February 2008.

Planner (part-time), Planning Help Desk, Auckland City Environments, Auckland City Council: December 2006 – October 2007.

Qualifications

Batchelor of Planning with honours, University of Auckland, 2008

Affiliations

Graduate member of the New Zealand Planning Institute

ATTACHMENT B

Council's proposed track changes

(See separate attachment)

ATTACHMENT C

Te Piringatahi o te Maungaarongo Marae
Te Onekiritea
Awataha Marae
Te Atatu Marae
Orakei Marae
Pourewa
Te Henga Marae
Hoani Waititi Marae
Umupuia Marae
Matahuru Papakainga
Otara Marae
Puketutu Island
Makaurau Marae
Pukaki urupa
Pukaki
Manurewa Marae

Created Date: 13 Apr 2015
Scale @ A1: 1:155,256
Projection: NZTM
Datum: NZGD2000
File Name: Maori Special Purpose Zones.mxd

N

The Proposed Auckland Unitary Plan
Maori Special Purpose Locations

Date: 13/04/2015
Document Name: Maori Special Purpose Zones

ATTACHMENT D

Section 32AA assessment:

Restricted discretionary status for up to 20 dwellings at a density of one per 4000m^2, matters for discretion limited to reverse sensitivity effects on existing rural activities and infrastructure, and provision for wastewater and stormwater.

Regulatory options	Costs and benefits (environmental, social, cultural, economic)	Efficiency and effectiveness
Notified PAUP Permitted activity for up to 10 dwellings at a density of one per 1ha. Otherwise discretionary status for Integrated Māori Development activity.	<u>Costs</u> Limited cost due to permitted status. <u>Benefits</u> Allows for a small scale papakāinga without need for resource consent.	Limit of 10 dwellings may not support a thriving papakāinga. Most papakāinga on the ground or at conceptual stage in Auckland are between 10 and 20 dwellings. Almost all new or extending papakāinga would require a discretionary consent for an Integrated Māori Development. Large site required, i.e. 10ha for ten dwellings.
Recommended amendments Permitted standard above, with additional restricted discretionary status for up to 20 dwellings at a density of one per 4000m^2 on Māori land. Matters for discretion limited to reverse sensitivity effects on existing rural activities and infrastructure, and management of wastewater and stormwater.	<u>Costs</u> Costs of applying for consent. Cost may arise where reverse sensitivity effects may be present or servicing is difficult to achieve. <u>Benefits</u> Allows for the establishment or extension of a papakāinga without the need for a more complex Matter of assessment limited to very few matters. Does not impose potentially costly visual and amenity assessment	Responds to submitters concerns of limited papakāinga outcomes. 10 dwellings would be achieved on 4ha and 20 dwellings on 8ha sites. Recommended amended density would still encourage the use of an Integrated Māori Development (IMD) which full discretion may be applied to. Recommended density still supports the IMD activity. Existing rural activities and infrastructure continued operation would not be adversely affected by new dwellings. May result in piecemeal development rather than an integrated approach provided for an IMD which may manage the land resource more efficiently.