te kaunihera ā-rohe o
matamata-piako
district council

SECTION 42A REPORT

Officer's Reply (9 May 2024)

Plan Change 54 - Papakāinga

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1 Introduction

1.1 Background

1. My full name is Jaimee Maree Cannon. I am the author of the Section 42A Report for Plan Change 54 ("PC54").

2. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the Section 42A report and request that the Hearings Panel ("the Panel") take this as read.

2 Purpose of Report

3. The purpose of this report is primarily to consider the evidence of the submitters at the hearing for PC54 (held on 17 and 18 April 2024) and provide my reply to the Panel. In this report I also seek to assist the Panel by providing responses to specific questions that the Panel directed to me during the hearing, under the relevant heading.

4. Where I have made a new recommendation that involves a change to the provisions, I have provided a S32AA evaluation to support the recommended changes.

3 Consideration of evidence recieved

5. In this reply, I have only addressed those sections and evidence where I consider additional comment is required. I have grouped these matters into the following headings:

   - Definition of Papakāinga.
   - Broader application of Papakāinga enabling provisions.
   - Flood hazard risks.
   - Infrastructure.
   - Traffic, access and parking.
   - Okauia Block (2E3B) near Te Omeka Marae.
   - Home business.
   - Papakāinga Development Plan.
   - Density, bulk and location standards.
   - Consultation processes.
   - Questions raised by the Hearing Panel.

6. In order to distinguish between the proposed provisions, the recommendations made in the s42A Report and my revised recommendations contained in **Attachment D** of this report:

- The proposed amendments to District-Wide provisions at notification of PC54 are shown in red text. The Māori Purpose Zone is a new zone therefore proposed provisions are shown as a 'clean copy'.
- Section 42A report recommendations are shown in blue text.
- Reply recommendations are shown in green text.
- For the above changes, underline is used for recommended new text and ~~strikethrough~~ for deleted text.

7. For all other submissions not addressed in this report, I maintain my position set out in my original s42A Report.

3.1 Definition of Papakāinga

Overview

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 1 – Definitions From Paragraph 85
The Māori Trustee Submission (S6)	Paragraph 11, page 5
Evidence in chief – Dr Charlotte Severne, the Māori Trustee	Paragraphs 5 – 6 and 19 - 27

Analysis

8. The Māori Trustee (S6.4) provided evidence seeking to amend the recommended definition of Papakāinga to ensure that Māori Freehold owners who are not registered with an iwi or hapū can be considered "tāngata whenua" and utilise the papakāinga enabling provisions.

9. I support this change in principle, and recommend the following amendments to the definition of papakāinga:

> *A development by tāngata whenua on ancestral lands in their traditional rohe and established to be occupied by tāngata whenua for residential activities and ancillary social, cultural, economic, conservation and/or recreation activities to support the cultural, environmental and economic wellbeing of tāngata whenua.*
>
> *Note: for the avoidance of doubt, tāngata whenua is not limited to iwi or hapū organisations. It ~~and~~ includes:*
>
> - *Māori landowners who whakapapa to the whenua and their whanau; and*
> - *Individuals and whānau who are ~~part of~~ a member of iwi or hapū who are tāngata whenua.*

10. I consider that the recommended amendments achieve the same outcome sought by the Māori Trustee in a more efficient and effective manner because:

- It is consistent with the approach supported by the Iwi Working Group (that papakāinga is for Māori who have ancestral connections to the land);
- It does not disadvantage Māori owners of General Land who whakapapa to the whenua but are not registered with an iwi or hapu organisation; and
- It resolves the concern raised by Commissioner Whetu that the definition of papakāinga, by referring to Māori freehold landowners or tāngata whenua only, could perversely preclude partners of Māori landowners or whanau who are non-Māori from living on the whenua.

11. Maria Graham, Principal Liaison officer at the Māori Land Court has also confirmed that in principle, she supports the recommended additions to the definition of papakāinga.

12. As a result, I recommend that submission 6.4 is accepted in part and the definition of 'papakāinga' is amended as set out in paragraph 9 above.

Section 32AA Evaluation

13. The amended version of the definition is more appropriate compared to the notified version of the definition because it clarifies the intent, will aid with interpretation and improve usability of the plan, which will reduce time/cost/uncertainty for plan users and lead to more consistent outcomes.

3.2 Broader application of Papakāinga enabling provisions

Overview

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 6 – Broader Application of Papakāinga Enabling Provisions From paragraph 160
Primary Evidence of Lezel Beneke, Kāinga Ora	From paragraph 8.1

Analysis

14. We heard from Thomas Bougher (S28) and Norm and Rachel Salisbury (S2.1) who sought that the same development rights should be extended to other members of the community or applied to all land (including land not owned by Māori).

15. The scope and key objective of PC54 is to enable Māori to maintain and enhance their traditional and cultural relationship with their ancestral lands, water, sites, waahi tapu, and other taonga and to enhance their

social, economic and cultural wellbeing. Council is required to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (as a matter of national importance in the Resource Management Act 1991).

16. Kāinga Ora (S54.4, S54.37, S54.53) and Clarke Mckinney (FS3), also sought that the enabling provisions should be extended to land beyond Māori Freehold land (i.e. that Māori freehold land and General title land should be treated the same when it comes to development rights, and that there should be no differentiation depending on the ownership structure of the underlying record of title).

17. PC54 provides permitted activity status to papakāinga on Māori Freehold land at 21 December 2022 but requires a resource consent for papakāinga (involving two or more kāinga) on General land owned by Māori, Treaty Settlement Land or Land converted to Māori Freehold Land after 21 December 2022. PC54 takes this approach because the location and extent of Māori Freehold land in District is clearly identified and understood. Council has undertaken an analysis of the implications of the permitted level of kāinga on these known sites and considers that the effects of the permitted level of papakāinga, including on infrastructure and on rural character, are appropriate. Council also acknowledges that Douglas Road will require upgrading to safely accommodate the level of papakāinga provided for as a permitted activity, which will be funded by Development Contributions (refer to Paragraph 33 below). For papakāinga on land that is not Māori Freehold land, there is a clear consenting pathway supported by an enabling policy framework, where the effects of the assessment can be considered on a case-by-case basis.

18. I do not support broadening the scope of PC54 to apply the enabling provisions to all landowners. This approach is beyond the scope of PC54. In addition, it would adversely affect rural character, place considerable pressure on existing infrastructure including rural roads, and would be inconsistent with the policy direction of the National Policy Statement for Highly Productive Land. In relation to these matters, I maintain the position and recommendation set out in Section 6.2.6 and paragraph 166 of my Section 42A Report.

3.3 Flood hazard risks

Overview

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 11 – Natural Hazards and Climate Change From paragraph 215 & 229
Waikato Regional Council memorandum - Technical Feedback - Plan Change 54 - Douglas Road	Paragraph 1 – 9 and associated attachments

Relevant Evidence	Key Section / Reference
Submission of Norm and Rachel Salisbury (S2.5)	Verbal Submission
Evidence of Raymond Kett (S38)	Paragraphs 1 - 8

Analysis – Douglas Road

19. Norm and Rachel Salisbury (S2.5) raised concerns about flood risk in the Douglas Road area. In my introduction presentation I referred to a memorandum provided by Waikato Regional Council[1] relating to the extent of existing information on flooding for Douglas Road area. In summary, this memorandum confirms that:

- Waikato Regional Council do not currently have flood models covering the Mangapiko Stream, and are unable to provide flood levels for the area.
- Based on existing available information (LiDAR derived digital elevation model) it is likely that a significant portion of each of the PC54 sites proposed to be rezoned will be elevated above the flood plain of the Mangapiko Stream. However, parts of the sites will most likely be susceptible to flooding from the Mangapiko Stream and from the various smaller tributaries and flow paths.
- Prior to development on these sites, a site suitability report including a flood study will likely be required to determine the flood extent and flood levels.

20. Upon receipt of this information, Council maintains its position that the Māori Purpose zoning of land at Douglas Road is appropriate and should remain, particularly because a significant portion of the land is likely to be elevated above the flood plain of the Mangapiko Stream, and the landowners will be responsible for demonstrating site suitability and undertaking flood studies prior to any development.

Analysis – Waiti Road

21. With respect to land at Waiti Road, Waikato Regional Council (S26.4) made a submission highlighting that a significant portion of the land east of Waiti Road is subject to residual flood risks[2]. Raymond Kett appeared at the hearing and contended that the flood risk mapping that Council has relied upon is incorrect, advising that the placement of the dam was to prevent flooding and also to hold back excess water for a time, to prevent flooding downstream. At the hearing, Mike Paki, a Trustee of Waiti Marae, verbally

[1] Memo - Technical Feedback - Plan Change 54 - Douglas Road, prepared by Joao Paulo Silva, Senior Policy Advisor - Policy Implementation and Steven Cornelius, Senior Engineer - Regional Resilience, Waikato Regional Council, to Matamata-Piako District Council officers and Bill Wasley (Chairperson) - Hearing panel for Plan Change 54 (dated 4 April 2024).
[2] Shown on Figure 3A, Section 42A Report.

advised that the land east of Waiti Road had historically been prone to flooding at times.

22. We acknowledge Commissioner Whetu's earlier comments with respect to mātauranga Māori principles and how these have informed our recommendation on this particular issue. We acknowledge that in practice, mātauranga Māori can guide the development of a papakāinga to be adaptable to natural hazards and climate risks.

23. In saying that, Council is required to make recommendations based on the legislative setting, including the requirement to give effect to the Waikato Regional Policy Statement. The Regional Policy Statement contains directive policies that direct District Councils to control use and development, to minimise any increase in vulnerability to residual risk[3]. Retaining Māori Purpose Zoning of land east of Waiti Road, when a significant portion of the land is prone to residual flooding risks, signals that the land is appropriate for development which would be contrary to the RPS policies. By removing the zoning it does not mean that papakāinga cannot be developed on this side of the road it simply means that a resource consent process may need to be undertaken where the potential flood risk can be addressed and mitigated if possible.

24. I maintain my original position that removing the Māori Purpose Zoning from RT318271 and RT315700 where it occupies the eastern side of Waiti Road, is appropriate. I acknowledge that land west of Waiti Road (RT315700), where Waiti Marae is located, would continue to be Māori Purpose Zoning. The removal of Māori Purpose Zoning on land east of Waiti Road will not preclude the establishment of marae and papakāinga on these sites, however, it will restrict the intensity to which it could occur as a permitted activity. The record of title for RT318271 and RT315700 are Māori Freehold Land parcels. The maximum density standards of PC54 are:

- one kāinga per hectare, up to a maximum of five **per site** (my emphasis added) in the Rural Zone; and
- one kāinga per 5000m^2, up to a maximum of 10 **per site** in the Māori Purpose zone.

25. The development potential for each site under the PC54 recommended framework is shown in Table 1 (subject to demonstrating site suitability and provided that development is located outside of the identified 'Detention Ponds and Spillways' layer).

[3] Policy HAZ-P2, Method HAZ-M12.

Table 1 Development Potential for RT318271 and RT315700 Sites on Waiti Road under PC54 Recommended framework

Title Reference	Māori Land Block reference	Recommended zoning	Area	Total site size	Maximum development potential for site (as a permitted activity under recommended framework)
RT315700	"Part" Hoe o Tainui North 2B1A2B2 Block (Waiti Marae)	Māori Purpose Zone (west of Waiti Road)	0.87 ha (8,724m^2)	15.2 ha	1 kāinga[4]
	"Part" Hoe o Tainui North 2B1A2B2 Block.	Rural Zoning (east of Waiti Road)	14.33 ha		1 kāinga per one hectare of site area, up to a maximum of five.
RT318271	"Part" Hoe o Tainui North 2B3B 1E2B Block	Rural Zone (west of Waiti Road)	0.4 ha (4,640m^2)	20.1 ha	1 kāinga per one hectare of site area, up to a maximum of five kāinga for the whole site.
	"Part" Hoe o Tainui North 2B3B1E2B Block	Rural Zone (east of Waiti Road)	19.7 ha		

26. A papakāinga development exceeding the permitted density standards would be considered through a resource consent process.

27. With respect to the wider issue of how Mātauranga Māori has been incorporated into the Plan change framework (raised by Commissioner Whetu), Council acknowledges that there is reference to Kaupapa Māori and tikanga within the objective framework (Objectives MPZ-O3 and Papakāinga-O3) but there is currently no specific recognition of mātauranga Māori. We consider that there would be merit in referencing mātauranga Māori in the plan change provisions, however the submissions unfortunately do not provide Council with the scope to do so.

28. Council can also work with the Iwi Working Group to understand opportunities for mātauranga Māori principles to be incorporated into its Papakāinga Guide. These discussions will occur after the Reply is issued,

[4] Because one kāinga per 5000m^2 of site area is permitted and the portion of the site that is zoned Māori Purpose Zone is only 0.87 ha in area.

because the Papakāinga Guidance material sits outside of the Plan Change provisions.

29. In practice, when considering Papakāinga Development Plans or resource consent applications, Council officers will also draw upon the expertise of its Iwi Liaison Officer or relevant iwi representative to ensure that mātauranga Māori principles are understood and recognised in relevant processes.

3.4 Infrastructure

Overview

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 10 – Infrastructure Services and Rates From paragraph 205

Analysis

30. Several submitters including John Harris (S25.2) were seeking assurance that infrastructure and services would be provided and that the people living in the papakāinga would be contributing to the costs of these services. Council confirms that developers of papakāinga would need to comply with Council's Development Contributions Policy and Financial Contributions under the RMA. We do note that the policy allows for a special assessment for papakāinga development.

31. With respect to ongoing maintenance and management of infrastructure (including roading) within the papakāinga developments, most Māori freehold land is administered using a Management Structure or entity, under the Māori land Court, which is similar to a body corporate, irrespective of the resource consent processes. The maintenance of infrastructure is the responsibility of the Trust which owns the land, and the responsibilities are set out in the Trust order.

3.5 Traffic, access and parking

Overview

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 12 – Traffic, Access and Parking From paragraph 253
Memorandum: Douglas Road Traffic Assessment, prepared by Susanne Kampshof, Asset Manager Strategy and Policy, Matamata-Piako District Council.	Paragraph 1 – 15 (contained as **Attachment E** to this Report)

Analysis

32. Some submitters raised concerns about traffic safety as a result of papakāinga development in rural areas. Specifically, Thomas Bougher (S28.1) sought that any private accessway serving more than five houses should be a road. The District Plan contains performance standards[5] requiring compliance with Council's Development Manual, however it specifically exempts private roads or private ways within a papakāinga development for up to five residential units from complying with Development Manual[6]. Any papakāinga exceeding five kāinga (i.e. six or more kāinga) needs to provide a private road or private way in accordance with the Development Manual (refer to paragraphs 265 - 266 of my S42A Report). The Development Manual allows private access, including rights of way to be constructed for access to a maximum of six residential units across all zones. For any development involving more than six units, the expectation is that the access will be a road with a road name and numbers for postal purposes (either a private road, or public road to be vested in Council).

33. Norm and Rachel Salisbury (S2) raised concerns about the impact of development on traffic with reference to Douglas Road. Susan Kampshoft, Council's Asset Manager Strategy and Policy, has prepared a memorandum explaining that road upgrades will be required for Douglas Road, which will likely be staged, and funded by development contributions (**Attachment E** to this Report).

34. In my view, the existing District Plan provisions ensure safe and efficient parking and access. No changes to the provisions are recommended in response to traffic safety matters raised by submitters.

3.6 Okauia Block (2E3B) near Te Omeka Marae

Overview

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 2 – Site-Specific Requests / Spatial Extent of Māori Purpose Zone From paragraph 104
Evidence of Leo George Whaiapu (S50)	Entirety of evidence

Analysis

35. Leo George Whaiapu (S50.1) (supported by Andrea Julian from Raukawa) sought that Okauia 2E3B Block is rezoned from Rural Zone to Māori Purpose Zone – PREC1. In his evidence at the hearing, Mr Whaiapu highlighted that:

[5] Section 9.1.2 of the Matamata-Piako District Plan
[6] Section 9.1.2(v)(iii) of the PC54 recommended provisions (**Attachment D** to this Report).

- The Okauia 2E3B Block does not have an address or a lot and DP number, that the identifier "Okauia 2E3B Block" is the best publicly available location identifier for the property.

- The land is relatively flat with several "developable areas", well-setback from adjacent landowners.

- The land is immediately adjoining other Māori Purpose zoned land;

- Discussions with neighbours about his submission had occurred, and neighbouring landowners did not raise any concerns; and

- That a safe access could be provided at the existing accessway to State Highway 24 (for which, consultation with Waka Kotahi is underway).

36. The submission from Mr Whaiapu referred to "Okauia 2e.3b.2b.1b Whaiti Kuranui 6a.1b.3b.2b.blocks" and the suggested amendments to PC54 were "to see if the blocks could get through". Council officers were unsure of the specific relief sought in the submission from Mr Whaiapu, primarily because the submission referred to many land blocks that were already included within the Māori Purpose Zone surrounding Te Omeka Marae, and the relief sought was not immediately clear. Council officers met with Mr Whaiapu on 8 August 2023 to clarify the relief sought in his submission. At this meeting, Mr Whaiapu clarified that he was specifically seeking that the Okauia 2E3B Block was included in the Māori Purpose Zone – PREC1.

37. I acknowledge that the land may be suitable for rezoning to Māori Purpose Zone and for papakāinga development, however I maintain my position that accepting the submission from Leo George Whaiapu could raise fairness issues because the submission was broad in nature, referring to several blocks of land, and did not expressly, or specifically, identify the Okauia 2E3B Block (e.g. by image in the submission) and request to be re-zoned to Māori Purpose Zone. As a result, affected neighbouring landowners have not had a reasonable opportunity to make further submissions on the proposal, possibly raising issues of natural justice.

38. We recommend that the land is retained in Rural Zoning but because the land is Māori Freehold land, up to five kāinga could be established on the Okauia 2E3B Block as a permitted activity. Any papakāinga for more than five kāinga would need to go through a resource consent process. The application would be assessed against the enabling objective and policy framework and the existing environment which includes the closely proximate Te Omeka Marae.

39. If the panel is of the mind to accept the submission from Mr Whaiapu and rezone the Okauia 2E3B Block to Māori Purpose Zone, I recommend a partial zoning with an appropriate setback from the SH29 boundary to manage potential reverse sensitivity effects of locating kāinga in close proximity to the effluent discharge disposal area.

3.7 Home business

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 20: Commercial Activity and Homes Businesses From paragraph 351
Submission of Clarke McKinney (FS3)	Verbal Submission

40. Clarke McKinney (FS3) elaborated on his submission at the hearing, noting that communal commercial activities are more akin to papakāinga living rather than home businesses, and these should be enabled as a permitted activity. These points are acknowledged and understood.

41. I note that home business activity is permitted as part of a papakāinga, subject to standards to manage the size and scale of the activity. This approach was supported by Iwi Working Group and provides papakāinga with the same development opportunities as others in the Rural Zone.

42. Commercial activities associated with papakāinga would require resource consent as a Discretionary activity. I consider that discretionary activity status is appropriate within a rural context, to enable a case-by-case assessment and appropriate management of environmental effects, within the relevant context.

43. Any application for a resource consent for a commercial activity associated with a papakāinga would be supported by the enabling objectives and policies. A permitted baseline argument could also be used to support a resource consent application (for example, if there were no home businesses on site but the effects of the communal commercial activity are the same as those as a permitted home business).

3.8 Papakāinga Development Plan

Relevant Document	Key Section / Reference
Section 42A Report	Key Theme 14: Papakāinga Development Plan From paragraph 289
Primary Evidence of Lezel Beneke, Kāinga Ora (S54)	Paragraph 12.1 to 12.3

44. Kāinga Ora (S54) and Clarke McKinney (FS3) questioned the necessity and appropriateness of the requirement to submit a Papakāinga Development Plan to Council. I consider that the requirement for a Papakāinga Development Plan is appropriate because:

- A Papakāinga Development Plan is accepted as best-practice country-wide. It is a key step in developing papakāinga, as recommended in

the Te Puni Kōkiri Guide to Papakāinga Housing[7] (and Council's Papakāinga Development Guide).

- Preparing a Papakāinga Development Plan encourages integrated development;
- The approach of providing a Papakāinga Development Plan to Council was supported by the Iwi Working Group;
- It does not introduce a significant additional information burden because applicants are already required to demonstrate compliance with development and performance standards at the building consent stage of development.

45. I maintain my position as set out in my Section 42A Report and recommend that the requirement for a Papakāinga Development Plan to be submitted to the Council is retained in the decisions version of the PC54 provisions.

3.9 Density, bulk and location standards

Relevant Document	Key Section / Reference
Section 42A Report	Key Theme 15: Maximum Density Key Theme 16: Maximum Building coverage Key Theme 17: Yards / Setbacks Key Theme 18: Height in Relation to Boundary
Primary Evidence of Lezel Beneke, Kāinga Ora (S54)	From paragraph 8.1

46. Several submitters, including Kāinga Ora, sought a greater density of development, including an increase in the maximum number of houses as a permitted activity.

47. Kāinga Ora has provided corporate evidence, supported by Clarke McKinney, seeking a number of detailed amendments to the provisions to make them more enabling. I have addressed each of Kāinga Ora's points in more detail in **Attachment A** to this Report.

48. In general, I consider that the bulk and density standards in the recommended version of PC54 provisions strike an appropriate balance between maintaining rural character and enabling Māori to maintain and enhance their traditional and cultural relationship with their ancestral lands, for the reasons stated in the Section 42A Report. I recommend the provisions are retained as stated in the Section 42A Report.

49. However, when considering maximum density and associated effects on rural character and infrastructure, I acknowledge Kāinga Ora's point that there is a difference between a standard three-to-four-bedroom kāinga, and a one-or two-bedroom kaumatua unit. I acknowledge that papakāinga

[7] A Guide to Papakāinga Housing (tpk.govt.nz)

are often comprised of a mixture of three-to-four-bedroom kāinga and kaumatua units therefore it is appropriate that the provisions are sufficiently flexible to accommodate the varying housing typologies.

50. I recommend maintaining the maximum of 10 kāinga per site (for Māori Purpose Zone – PREC1) and five kāinga per site (for Māori Freehold land in Rural Zones) but providing the option of two kaumatua units being equivalent to one kāinga. The provisions in **Attachment D** to this Report have been amended to reflect this approach, as follows:

New standard incorporated into rules 6.1.1 and MPZ-PREC1-R(1)(f):

For the purpose of calculating maximum density, one duplex building, up to 120m^2 total floor area comprised of two kaumatua units is equivalent to one kāinga.

New definition of Kaumātua unit:

means a self-contained one or two bedroom unit that is primarily occupied by a kaumātua couple or an individual kuia or koroua.

51. As an example, with the recommended amendments, for a site in the Māori Purpose Zone-PREC1, six kaumatua units and seven kāinga could be developed as a permitted activity.

52. With respect to setbacks, Kāinga Ora are seeking reduced setbacks for Māori Purpose-PREC1 so that the setbacks are consistent with the Rural-Residential Zone. I do not support the changes requested for the reasons set out in **Attachment A** to this Report. However, upon further consideration after hearing Clarke Mckinney's example of a 40 m wide "dead space" between sites in the Māori Purpose Zone – PREC1 I acknowledge that the 20m setback from side or rear boundaries may be unnecessarily onerous. This is particularly so in circumstances where a papakāinga could be located within Māori Purpose Zone-PREC1 on land that adjoins another Māori Purpose Zoned-PREC1 site, where the 20m setback from boundaries would limit opportunities for papakāinga development spanning multiple sites.

53. For consistency with the equivalent clause in the District-wide provisions[8] I recommend the following amendments to provide a 1.5 m boundary setback for site and rear yards in circumstances where a papakāinga spans multiple sites:

Where a building is part of a Papakāinga that spans multiple Records of Title, a minimum of 1.5m from the relevant Record of Title boundary is required.

54. I note that the when the written consent of adjoining property owners is obtained, buildings can be built within the side and rear yards (subject to compliance with the Building Act 2004), and the side and rear yard for

[8] Standard 3.2.1(iii) Yards which provides that: *Where a building is part of a Papakāinga that spans multiple Records of Title a minimum of 1.5m from the Record of Title boundary is required.*

habitable buildings can be reduced to 10m (Standards MPZ-PREC1-R(5)(c)(i) and (ii)).

55. I recommend that the submissions 54.16, 54.32, 54.41 and 54.42 from from Kāinga Ora are accepted in part and the remainder of submissions on density, bulk and location standards[9] are rejected.

Section 32AA Evaluation

56. The amendments to density standards recognise that the effects of two kaumatua units are generally equivalent to the effects of one three-to-four-bedroom kāinga. It is appropriate to adapt the density standards so they are relevant to the effects of the different building types and enable a mix of different housing typologies so that kaumatua can live close to whanau, which enhances the social economic and cultural wellbeing of Māori. The recommended amendments may result in reduced costs for Māori landowners, with increased ability to live on ancestral whenua.

57. The 1.5 metre setback from boundaries for papakāinga spanning multiple Records of title is appropriate because it enables more efficient use of land and encourages integrated papakāinga development on land zoned Māori Purpose Zone – PREC1. The costs and potential effects of this approach are potential effects on rural character however the effects are localised to the "clusters" of Māori Purpose Zoned land and encourage more efficient use of land through integrated papakāinga development across multiple records of title surrounding the District's 13 marae.

58. For the above reasons, the recommended amendments are considered to be more appropriate in achieving the purpose of the RMA and the PC54 objectives than the notified version of the PC54 and the section 42A report recommendations.

3.10 Consultation processes

Relevant Evidence	Key Section / Reference
Section 42A Report	Key Theme 26: Miscellaneous Paragraphs 422-424
Submission of Raymond Kett (S38)	Verbal Submission

59. Raymond Kett (S38.1-3) raised concerns about the consultation process for PC54. In response, Council undertook extensive engagement in relation to the development of PC54. This included but was not limited to; formation of an Iwi Working Group; an invitation to all marae in the district to present on the plan change, a letter drop to all properties proposed to be re-zoned as Māori Purpose Zone and adjacent properties, and listing the draft plan change provisions and re-zoning maps on the Council

[9] Table 24 (Maximum Density Standards) and Table 29 (Yards / Setbacks) of Section 42A Report.

website for the public to provide feedback prior to the formal notification and submissions process.

3.11 Specific questions raised by the Hearing Panel

Question 1: How do the landowners / applicants demonstrate that the land will be maintained in either iwi, hapū or whanau ownership in perpetuity? What are the legal mechanisms?

60. The requirement to have a legal mechanism in place to demonstrate that the land will remain in iwi, hapu or whanau ownership is only required for land that is not Māori Freehold Land (as at 21 December 2022).

61. The proposed approach, demonstrating appropriate mechanisms to secure long-term Māori ownership of the land title, is similar to the District-wide approach taken for Papakāinga provisions in District by other councils including Hastings District Council, Whangarei District Council, Kapiti Coast District Council, Porirua District Council and Nelson City Council.

62. As stated in paragraph 131 of the S42A Report, the landowners essentially have the option to convert the land to Māori Freehold land or demonstrate that land will be held in perpetuity by legal mechanism, which becomes an encumbrance on the Record if Title, that is acceptable to and enforceable by the Council.

63. The land could be vested in a Trust, constituted under Part 12 of the Te Ture Whenua Māori Land Act 1993 (TTWMLA), whose authority is defined in a Trust Order or other empowering instrument which will ensure that the land remains vested in the trustees or the incorporation without power of sale; and the possession and/or beneficial interest on the land is restricted to the beneficiaries of the Trust. The legal mechanism would be an encumbrance to be registered on the title to ensure long-term Māori ownership.

64. The different scenarios and appropriate legal mechanisms are set out in **Table 2** below.

Table 2 Legal Mechanisms for Māori ownership in different scenarios

Scenario	Activity status[10]	Legal mechanism
Papakāinga on land that is converted to Māori Freehold Land after 21 December 2022.	Discretionary (District-Wide)	Conversion to Māori Freehold land is an appropriate legal mechanism in itself. Council understands that Māori Freehold land status can be reversed but this is difficult and unlikely[11].

[10] Provided that a legal mechanism is put in place to ensure the land will be maintained in whānau, hapū or iwi ownership in perpetuity.

[11] In addition to any plan rules, if someone wants to undertake certain activities in relation to papakāinga on Māori freehold land, they will need to receive consent of the Māori Land Court. This includes partitioning or subdividing

Scenario	Activity status[10]	Legal mechanism
Papakāinga on General Land	Discretionary (District-Wide)	A condition of land use consent that an encumbrance is to be registered on the title to ensure that the land will remain in iwi, hapū or whanau ownership in perpetuity (the landowners would need MPDC approval to remove the encumbrance[12]).
Subdivision of papakāinga on General Land	Discretionary (District-Wide)	Any application will need to demonstrate how it will be retained in Māori ownership and this can be incorporated on a consent notice (s221 RMA) to ensure that the land will remain in iwi, hapū or whanau ownership in perpetuity.
Papakāinga on MPZ-PREC2 land (General land) that is not converted to Māori Freehold Land	Permitted (1 kāinga per site or per 500m^2)	An encumbrance registered on the title to ensure that the land will remain in iwi, hapu or whanau ownership in perpetuity (the landowners would need MPDC approval to remove the encumbrance[13])

65. Andrew Green, Council's legal counsel has advised that the terms of the encumbrance would need to be reflected in the tenure instrument, and that the appropriate landowners or governance structure concerned (i.e. a Trust) would pre-approve purchasers.

Question 2: How will the ancestral link to the whenua be demonstrated in practice?

66. The District-Wide provisions of PC54 provide a consenting pathway for papakāinga on sites that are not included in the new Māori Purpose Zone, or Māori Freehold Land. There are many reasons why the whenua proposed for papakāinga may be General Land instead of Māori freehold

land for the provision of a home, or occupation licences over Māori reservations which have been created by the Court. Similarly, *occupation orders* under s328 grant a right to occupy a house site on Māori freehold land.

[12] Similar to how a QEII encumbrance works.

[13] Similar to how a QEII encumbrance works. Generally the same concept as S147 of TTMLA where, if there is an alienation of Māori Freehold land by sale, a Right of First Refusal must be provided to prospective purchasers who belong to 1 or more of the preferred class of alienees, to ensure ongoing Māori ownership.

land. One of the most common reasons is that historic legislation[14] converted large amounts of Māori freehold land to General or Crown Land. In other cases, Māori may have applied to have their whenua converted to General Land by the Māori Land Court for a variety of reasons. As a result of the above, Māori may have a strong connection to the whenua without it currently being Māori Land.

67. PC54 provides for Papakāinga on General Land, Treaty Settlement Land or converted to Māori Freehold Land after 21 December 2022 in the Rural or Rural-Residential Zones as a discretionary activity, provided that the following standards are complied with[15]:

    i. The land must be ancestral Māori land; and

    ii. an appropriate legal mechanism(s) must be in place to ensure that the land remains in either iwi, hapū or whānau ownership in perpetuity.

68. To be suitable for a papakāinga development under Rule 6.2.1 (as a Discretionary activity) and confirm compliance with Standard 4.4.2, an applicant needs to demonstrate that the land is ancestral Māori land as part of the resource consent process. The Māori landowner(s) can demonstrate their ancestral link to the whenua by providing information or evidential sources to the Council, which may include (but is not limited to):

    - Demonstrating that the land has been held in the same whanau ownership for multiple generations (through the same whanau ownership on historic record of titles, or records obtained from the Māori Land Court or Land Information New Zealand); or

    - Written confirmation from the relevant iwi organisation confirming that one or more owners of the land are a direct descendent of the original grantees of the land and whakapapa to the land and the management structure that they are proposing ensures that at least one occupier of each kāinga has an ancestral link; or

    - Settlement legislation for the associated iwi or hapū.

69. I contacted several other District Councils[16] who have provisions for papakāinga on ancestral land to understand how they identify (or intend to identify) the ancestral link to the whenua in practice. Around New Zealand, the uptake for papakāinga on General land has been slow, meaning other Council's District Plan provisions for papakāinga on General land have not been tested. However, in general the methods identified above will be used, and the onus is on the applicant to demonstrate the ancestral link now and into the future. The gathering of evidential sources should be done in consultation with the Māori Land Court, because the evidence required above is similar to that required to convert General Land to Māori Land under the Te Ture Whenua Māori Land Act 1993 (TTWMLA)

[14] Including the Māori Affairs Amendment Act 1967.
[15] Standard 4.4.2, recommended version of provisions.
[16] Waimakariri District Council, Whangarei District Council, Nelson City Council, Far North District Council and Porirua City Council and Kapiti Coast District Council.

and consistency is important. In practice, Council may take advice from the Māori Land Court on whether evidential sources are sufficient, and may also provide the opportunity for the relevant iwi or hapū to comment. In some districts (e.g. Kapiti District), the expectation is that the relevant iwi organisation will have a key role in assisting applicants to gather their evidential sources to demonstrate their ancestral connection.

70. The expected process for resource consents on general land under the Matamata-Piako District Plan is outlined in **Attachment B** below.

71. The PC54 provisions do not require landowner(s) developing papakāinga on Māori Freehold land to demonstrate their ancestral connection. A shareholding in Māori Freehold land is sufficient to demonstrate ancestral connection. I understand that the Māori Land Court has a centralised list of all owners of Māori Land, now available through their online tool Pātaka Whenua, which confirms a shareholding in Māori freehold land. Ownership reports and/or Management Structure Details Reports are also able to be produced using Pātaka Whenua.

72. As mentioned in the Hearing, Council officers intend to prepare a Practice Note for the implementation of the PC54 papakāinga provisions, which will include a list of acceptable evidential sources to demonstrate ancestral connection to the whenua, drawing on experience from other Councils and any feedback or guidance provided by the Iwi Working Group and Māori Land Court. This will be a live document as practices change over time.

Question 3: Does the Māori Purpose Zoning or otherwise influence the ability to renew a licence to occupy?

73. Mike Paki had concerns that his ability to renew his licence to occupy the land at Māori Freehold land block (Hoe O Tainui North 2B1A2B2) would be influenced by the zoning of the land (Māori Purpose Zone or Rural Zone) in the District Plan. To confirm, the zoning of the land does not influence his right or ability to renew his licence to occupy, which is issued by the Trust. Council officers verbally confirmed this with Mike Paki at the closing of his submission and will follow up with a written letter.

Question 4: How would a boundary adjustment affecting land converted to Māori Freehold land before 21 December 2022 be considered?

74. The District Plan manages subdivision of papakāinga on General land as a Discretionary activity (Rule 9(a)). Partitioning of Māori freehold land is primarily managed by the Māori Land Court[17].

75. Commissioner Whetu advised that in some cases the conversion to Māori Freehold land can result in a part-cancelled title and queried how the controlled activity rules for "boundary adjustments"[18] would be applied in the circumstance that it affected a part-cancelled title where land has been converted to Māori Freehold land.

[17] Sections 289 and 198 of the TTWMLA 1993
[18] Rule 6.1.1(a) Boundary Adjustment.

76. Any boundary adjustment is a controlled activity under Rule 6.1(1)(a) of the District Plan, provided that the standards in 6.3.6 of the District Plan are complied with, including that the boundary adjustment must not result in additional lots being created and shall leave each of the allotments involved with substantially unchanged frontages and areas. Any boundary adjustment affecting a 'part-cancelled' title, in theory could be considered a creation of a new title, in which case the subdivision would default to a non-complying activity (Rule 6.3.6(iii)). Council considers that this scenario is primarily a surveying issue and would be unlikely within the Matamata-Piako context. In any case, there is no scope in submissions to consider this matter further or make any amendments to the provisions to address this particular scenario.