Independent Hearings Panel

Christchurch Replacement District Plan

Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 23 and 24 November 2015

Date of decision: 26 August 2016

Hearing Panel: Environment Judge John Hassan (Chair), Ms Jane Huria, Dr Phil Mitchell, Mr Stephen Daysh

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DECISION 37

Papakāinga/Kāinga Nohoanga Zone and Specific Purpose (Ngā Hau e Whā) Zone (and relevant definitions and associated planning maps)

Outcomes: **Proposals changed as per Schedule 1**

COUNSEL APPEARANCES

Mr M Conway and Ms C McCallum	Christchurch City Council
Mr D Randal and Ms A O'Connor	Crown
Mr D van Mierlo	Te Rūnanga o Ngāi Tahu

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Kia mahi tahi tātou! Let's work together!

INTRODUCTION

[1] This "Stage 2" decision is one of a series by the Independent Hearings Panel ('Hearings Panel'/'Panel') under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('OIC') for the formulation of the Christchurch Replacement District Plan ('CRDP').[1] It concerns Chapter 4, now called the 'Papakāinga/Kāinga Nohoanga zone' ('PKN zone').[2] It follows our hearing and consideration of submissions and evidence on the notified version of those provisions ('Notified Version') and various refinements of it as we will explain.[3]

[2] In essence, the PKN zone would apply to five discrete areas on Banks Peninsula originally set aside, in 19th century land purchase Deeds of Settlement ('PKN areas'), as "Māori Reserves". These areas, in rural or peri-urban localities, have particular significance for Ngāi Tahu. They are as follows:

(a) Rāpaki (near Cass Bay, Lyttelton);

(b) Koukourārata (near Port Levy, Banks Peninsula);

(c) Wairewa (near Little River);

(d) Ōpukutahi (Tikao Bay, Banks Peninsula); and

(e) Ōnuku (beyond Akaroa).

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1 Members of the Hearings Panel who heard and determined this proposal are set out on the cover sheet.

2 When originally notified, Chapter 4 was entitled the 'Papakāinga Zone'. Following mediation and the hearing, the Council recommended, with the support of Te Rūnanga o Ngāi Tahu and ngā rūnanga ('Ngāi Tahu') that it be renamed the 'Papakāinga/Kāinga Nohoanga zone', which we accept as appropriate.

3 Further background on the review process, pursuant to the OIC is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions) ('Strategic Directions decision'), 26 February 2015.

The Revised Version

[3] After hearing some of the evidence of Te Rūnanga o Ngāi Tahu and ngā rūnanga (submitter 2458, further submitter 2821) ('Ngāi Tahu'), we granted the Council's request (supported by Ngāi Tahu and the Crown) for a short recess to allow opportunity for further discussion with a view to narrowing differences concerning the Notified Version. That produced consensus between those parties ('Joint Parties'), reflected in their filing of an updated set of agreed provisions ('Initial Revision').[4]

[4] At the resumed hearing, the Joint Parties' planning experts were jointly sworn,[5] confirmed their support for the Initial Revision and answered Panel questions (including on matters raised by submitter representations).[6] Following the hearing of other submitter representations, the hearing was adjourned for closing submissions. The chronology from that point was as follows:

(a) On 15 December 2015, the Joint Parties filed a further revised version ('Second Revision') addressing various questions and issues raised during the hearing.[7] That was for the purposes of closing submissions.

(b) On 21 December 2015, Jan Cook and David Brailsford (2241, FS2776) filed closing submissions (the only other parties to do so according to the Panel's timetable directions).[8] They expressed general support for the Second Revision "as it will provide for Papakāinga/Kainga Nohanga [sic] development on Maori Land while ensuring that other land in the Zone is subject to the provisions of the Banks Peninsula Rural Zone".[9] They raised some concerns about provisions as to notification, matters of discretion, signs and other matters (which we address later in this decision).

4 Exhibits A and B.
5 Lynda Murchison (Ngāi Tahu), Andrew Willis (the Crown) and Alan Matheson (the Council). No other party sought to cross-examine any witnesses.
6 An approach often referred to as 'hot-tubbing'. As we have noted, no party sought to cross-examine any witnesses.
7 Joint memorandum on behalf of the Council and Ngāi Tahu and the Crown regarding updates to the revised proposal following the hearing, 15 December 2015, Attachment A.
8 Later we refer to a memorandum received out of time from counsel for Wainui Bay Limited (FS2829).
9 Closing statement for Jan Cook and David Brailsford, 21 December 2015, at 2.

(c) On 13 January 2016, the Council filed closing submissions confirming the Joint Parties' support for the Second Revision (and responding to matters raised by other submitters).[10]

(d) On 4 July 2016, the Joint Parties filed a joint memorandum proposing revisions to the Second Revision and, in response to Panel Minutes, subsequently clarified aspects of this, leading to the Joint Parties providing some further refinements to their 4 July provisions with their 2 August 2016 supplementary closing submissions ('2 August submissions').[11] We refer to this collective set of provisions as the 'Revised Version'.[12]

[5] In effect, this Revised Version supersedes all previous ones insofar as the Joint Parties are concerned. As the drafting issues other parties raised were confined and discrete, our evaluation is primarily with reference to this Revised Version.

Decision Version

[6] For the reasons we set out, we have made some changes to the Revised Version in the provisions in Schedule 1 to this decision ('Decision Version'). The procedures that will now apply for implementation of this decision, and incorporation of the Decision Version into the CRDP, are as set out in our earlier decisions.[13]

Provisions deferred

[7] This decision does not determine provisions concerning Chapters 6 (General Rules),[14] 8 (Subdivision, Development and Earthworks), 9 (Natural and Cultural Heritage), and 19 (Coastal Environment). Those provisions are deferred to be determined in conjunction with

10 Closing submissions for the Council on the Papakāinga Stage 2 proposal, 13 January 2016.
11 Joint supplementary closing submissions for CCC, the Crown and Ngāi Tahu, 2 August 2016.
12 Minute Papakāinga/Kāinga Nohoanga Zone Proposed Rule Package, 27 June 2016, and Further Minute Papakāinga/Kāinga Nohoanga Zone Proposed Rule Package, 29 June 2016. Joint Memorandum on behalf of the Christchurch City Council, the Crown (2387) and Te Rūnanga o Ngāi Tahu (2458) and Ngā Rūnanga (2821) regarding amended proposed rule package, dated 4 July 2016. Email from Mr Conway, Simson Grierson, to Secretariat dated 12 July 2016; Minute Papakāinga/Kāinga Nohoanga Zone: Proposed Rule Package, 13 July 2016. Joint Supplementary Legal Submissions on Papakāinga Stage 2 Proposal, Christchurch City Council, Ngāi Tahu and the Crown, 2 August 2016.
13 See in particular Strategic Directions decision at [5]–[9].
14 Including proposed Rule NC1 of the Revised Version.

those related chapters. Nor does it determine definitions, other than the definition of Māori Land, with the balance being deferred to the related Definitions chapter determination.

Identification of parts of Existing Plan to be replaced

[8] The OIC requires that our decision also identifies the parts of the existing Christchurch District Plan ('Existing Plan') that are to be replaced by this decision.[15] It replaces the zoning that the Existing Plan applies to that land this decision includes in the PKN zone, and also the land this decision includes in the Specific Purpose (Ngā Hau e Whā) Zone.

Conflicts of interest

[9] We posted on the Independent Hearings Panel website notice of past or present known associations that Panel members had or have with submitters.[16] None were considered to be such as to raise any impediment to any member's capacity to hear matters. By Minute, we made particular disclosure to all submitters on Chapter 4 of the family relationship between Panel member Ms Jane Huria, and one of the witnesses for Ngāi Tahu, Dr Te Maire Tau.[17] No submitter raised any further issue in relation to this. As recorded to the parties, the Panel is satisfied that Ms Huria's familial relationship did not operate as an impediment to her full participation as a Panel member, given that Dr Tau was called in his capacity as an expert witness, not as a representative of Ngāi Tahu or any of its whānau.

Rights of appeal

[10] Under the OIC, any person who made a submission (and/or further submission) on the Notified Version may appeal our decision to the High Court (within the 20-day time limit specified in the OIC) on any question of law (in relation to matters raised in the submission). Similarly, the Council, and the Ministers have rights of appeal on any question of law.[18]

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15 The Existing Plan comprises what are called the Christchurch City District Plan and Banks Peninsula District Plan, legally constituted as a single operative district plan, but referred to in the plural ("plans") in the OIC.
16 The website address is www.chchplan.ihp.govt.nz.
17 Minute — Disclosure of relationship interest, 23 September 2015.
18 The Minister for Canterbury Earthquake Recovery and the Minister for the Environment, acting jointly.

REASONS

Overview

[11] The Notified Version identified six areas for inclusion in what it termed the 'Papakāinga zone'. In addition to the PKN areas, this included the Ngā Hau e Whā National Marae. Following mediation, the Council asked that this be moved to a Specific Purpose zone of Chapter 21.[19] We are satisfied that this is the most appropriate approach and have reflected it in the Decision Version.

[12] Under the Papakāinga zone of the Notified Version, both Māori Land and 'Other Land' were treated on the same basis. It conferred significantly greater development opportunity for land within the Papakāinga zone than is proposed for rural-zoned land generally.

[13] The Council's planning witness, Alan Matheson, told us of significant pressures arising from the condensed timeframes the Council was working to in preparing the Notified Version. That meant, for example, that the Council did not fulfil what it had intended concerning consultation with owners and occupiers within the proposed Papakāinga zone. As a consequence, the Council relied on Panel-facilitated mediation to address a number of things that it had intended to have addressed through consultation.[20]

[14] In his evidence in chief, Mr Matheson recommended a significant structural and other changes to the Notified Version ('Matheson EIC Version'). Central to his recommendations was that the more permissive development approach be confined to Māori Land in the five PKN areas. He recommended a structural change to achieve this, whereby the Papakāinga zone boundaries were confined to a "central area of Māori land" (generally of and around marae) and an overlay was applied to the Rural zone with the effect of applying provisions specific to Māori Land there. His recommended overlay included provisions to the effect that development of Māori Land would be a restricted discretionary activity ('RDA'), subject to a requirement for an Outline Development Plan ('ODP'). The overlay would have no application

[19] Opening submissions for the Council, at 1.4.
[20] Evidence in chief of Alan Matheson on behalf of the Council at 4.12.

to Other Land (the usual rural zone provisions applying). In response to concerns in submissions about interface issues, he proposed development standards to apply at the boundary of Māori Land and Other Land.[21]

[15] In opening, the Council proposed a refinement to this, in response to concerns Ngāi Tahu and the Crown expressed about the potential for confusion. The refinement involved restoring the original Papakāinga zone boundaries but providing for different regimes within the zone for Māori Land and Other Land.[22] That refined approach was favoured by Ngāi Tahu and the Crown and it led to the development of the Revised Version.

[16] In essence, the Revised Version proposes a renamed Papakāinga/Kāinga Nohoanga zone, encompassing the PKN areas. Each PKN area includes both Māori Land (as defined)[23] and Other Land. For Māori Land, the Revised Version proposes specific standards and controls (as we describe at [92]). For Other Land, the usual Rural Banks Peninsula zone activity and built form standards would apply.

[17] Mr Matheson explained that the Revised Version (like the Notified Version) was designed to facilitate whānau connection to whenua. That includes facilitating some restoration in the fact that only a remnant of what was formally Māori Reserve land remains Māori Land. That is recognised in the Revised Version's definition of 'Māori Land', which extends to what becomes Māori Land in the future. Hence, the intention is to assist the aspirations of each rūnanga "to exercise management, through future purchase, lease or other arrangements with landowners".[24] That design intention was not contested in other evidence or representations.

[18] Jamie-Lee Tuuta,[25] an Environmental Advisor for Ngāi Tahu, explained how Te Ture Whenua Māori Act 1993 ('TTWMA') applies to the PKN areas, including the original Māori Reserves there. We accept her interpretation that a key objective of the TTWMA is for Māori

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21 Evidence in chief of Alan Matheson at 13.2 and 14.1.

22 Opening submissions for the Council, at 4.4.

23 "Maori Land means land with the following status: … a) Maori communal land gazetted under s338 Te Ture Whenua Maori Act 1993; and … b) Maori customary land and Maori freehold land as defined in s4 and s129 Te Ture Whenua Act 1993 [sic]".

24 Evidence in chief of Alan Matheson at 4.1(a).

25 Ms Tuuta graduated from the University of Canterbury with a Bachelor of Arts degree in Māori and Indigenous studies and Psychology and a Bachelor of Laws degree. She is a member of the New Zealand Law Society and Te Hunga Roia Māori o Aotearoa (New Zealand Māori Law Society) and holds an executive position on Te Hunga Rōia Māori o Aotearoa as the Ōtautahi regional representative. Her whakapapa is to Ngāi Tahu and she has ancestral links to the hapū of Ngāti Irakehu, namely in Wairewa and Ōnuku. Her great-great-great Grandfather, Amure Abner Clough, was born at Ōnuku in 1840. She is a current member of both Ōnuku Rūnanga and Wairewa Rūnanga.

Land to be retained as taonga tuku iho in the hands of its owners and their whānau, hapū and descendants, and to promote the land being used, developed and controlled by these parties.[26] She pointed out that the TTWMA imposes significant restrictions on the transfer of ownership of land.[27] We also concur in those explanations.

[19] We are also satisfied that the TTWMA review that is underway does not render the proposed definition of Māori Land inappropriate. While we enquired of counsel about this during the hearing, we are satisfied with the explanation given in Ngāi Tahu's closing submissions (supported by the Council) that the proposed definition would most likely remain suitable, in any event[28].

[20] For all of those reasons, we are satisfied that the proposed definition of Māori Land is sufficiently fit for purpose (subject to minor drafting refinements). Later in this decision, we address the more fundamental issue as to whether it is appropriate to treat Māori Land in the PKN areas on a different basis to Other Land.

THE STATUTORY FRAMEWORK

[21] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.[29]

[22] It sets out what we must and may consider in making that decision.[30] It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.[31] It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').[32] The OIC also specifies additional matters for our consideration.

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26 Evidence in chief of Jamie-Lee Tuuta on behalf of Ngāi Tahu at 12.
27 Evidence in chief of Jamie-Lee Tuuta at 11.
28 Closing submissions on behalf of Ngāi Tahu, at paras 14-27
29 OIC, cl 12(1).
30 OIC, cl 14(1).
31 OIC, cl 5.
32 Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website. The CER Act was repealed and replaced by the Greater Christchurch Regeneration Act 2016 ('GCRA'), which came into force on 19 April 2016. However, s 148 of the GCRA provides that the OIC continues to apply and the GCRA does not effect any material change to the applicable statutory framework for our decision or to related Higher Order Documents. That is because s 147 of the GCRA provides that the OIC continues in force. Further, Schedule 1 of the GCRA (setting out transitional, savings and related provisions) specifies, in cl 10, that nothing in that Part affects or limits the application of the

[23] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision as we address the various issues in this decision.[33] As with all our decisions, we apply our Strategic Directions decision throughout. On the requirements of ss 32 and 32AA RMA, we endorse and adopt [48]–[54] of our Natural Hazards decision.[34]

Relevant provisions of Part 2, RMA

[24] As Ngāi Tahu's planning witness, Lynda Murchison,[35] noted, the purpose of a district plan is to assist the Council to carry out its functions to achieve the purpose of the RMA (s 72) and the RMA purpose is to promote the sustainable management of natural and physical resources (s 5(1)).[36]

[25] As part of the statutory framework for our decision, we note the following relevant provisions of Part 2:[37]

(a) The s 5 purpose to promote the sustainable management of natural and physical resources, and the related definition of "sustainable management", including its reference to:

> …enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while … (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment;

(b) Section 6 as to "matters of national importance", including its directive to "recognise and provide for":

> (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and

Interpretation Act 1999 which, in turn, provides that the OIC continues in force under the now-repealed CER Act (s 20) and preserves our related duties (s 17).

33 At [25]–[28] and [40]–[62].

34 Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pp 20-21.

35 Ms Murchison holds a Master of Arts degree (First Class hons) in Geography from Canterbury University, is a full member of the New Zealand Planning Institute and an accredited hearings commissioner. She is contracted by Ngāi Tahu to provide independent advice and services in relation to resource management and environmental policy and planning issues.

36 Evidence in chief of Lynda Murchison on behalf of Ngāi Tahu, 5 November 2015, at 49.

37 We refer only to those Part 2 provisions that are relevant to the issues we must determine.

their margins, and the protection of them from inappropriate subdivision, use, and development;

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;

(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga

(c) Section 7 as to "other matters", including its directive that we "have particular regard to":

(a) kaitiakitanga;

(b) the efficient use and development of natural and physical resources;

(c) the maintenance and enhancement of amenity values;

(f) maintenance and enhancement of the quality of the environment.

(d) The direction in s 8 that we take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Related provisions of the Higher Order Documents[38]

NZCPS

[26] The PKN zone includes land within the coastal environment. The New Zealand Coastal Policy Statement 2010 ('NZCPS'), to which we must give effect, includes the following relevant objectives and policies:

Objective 3

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

[38] On the matter of the relevant statutory documents ('Higher Order Documents'/'Documents') and our obligations in regard to them, we endorse and adopt [39]–[45] of our Strategic Directions decision. We confirm that, in making this decision, we have considered and responded to those Documents in accordance with those obligations. No party contested the interpretation of the Higher Order Documents. We refer only to those provisions of them that are relevant to the issues we must determine. We note that changes were made to the CRPS and Regional Coastal Environment Coastal Plan to enable the Council to either avoid or mitigate new development in urban areas located within high hazard areas and in relation to the responsibilities for managing coastal hazards which took effect from 12 June 2015 and 23 July 2015. They do not affect this decision.

- recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;
- promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;
- incorporating mātauranga Māori into sustainable management practices; and
- recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

(a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;

Policy 6 Activities in the coastal environment

(1) In relation to the coastal environment:

…

(d) recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them;

[27] The NZCPS defines 'papakāinga development' broadly as development of a communal nature on ancestral land owned development by Māori.

[28] The NZCPS also includes relevant objectives and policies as to the preservation of the natural character of the coastal environment and the protection of natural features and landscapes, to which we return later in this decision.

CRPS

[29] The Canterbury Regional Policy Statement 2013 ('CRPS'), to which we must give effect, identifies the difficulty in establishing papakāinga housing, marae and activities ancillary to these, on ancestral land, as a specific issue.[39] The CRPS gives us relevant direction, including on the various Part 2, RMA matters we have identified.

[39] CRPS, Chapter 5, Issue 5.1.5.

[30] Objective 5.2.1 relates broadly to development across the Canterbury region. It specifies nine intended development outcomes. This is as part of an overall outcome that development is located and designed so that it functions in a way that enables people and communities, including future generations, to provide for their social, economic and cultural well-being and health and safety. One specified outcome is that development is "located and designed so that it functions in a way that facilitates the establishment of papakāinga and marae" (Objective 5.2.1(2)(h)). Other outcomes include those in relation to landscape values and environmental effects.

[31] CRPS Policy 5.3.4 is specific to papakāinga housing and marae. It reads:

> To recognise that the following activities, when undertaken by tāngata whenua with mana whenua, are appropriate when they occur on their ancestral land in a manner that enhances their ongoing relationship and culture and traditions with that land:
>
> (1) papakāinga housing;
>
> (2) marae; and
>
> (3) ancillary activities associated with the above
>
> And provide for these activities if:
>
> (4) adverse effects on the health and safety of people are avoided or mitigated; and
>
> (5) as a result of the location, design, landscaping and management of the papakāinga housing and marae:
>
> (a) adverse effects on the following are avoided, and if avoidance is not practicable, mitigated:
>
> (i) the important natural character values of coastal environment, wetlands, lakes, rivers and their margins
>
> (ii) the values of the outstanding natural features and landscapes
>
> (iii) the values of the historic heritage, and
>
> (iv) the values of areas of significant indigenous vegetation and habitats of indigenous fauna; and
>
> (b) regard has been given to amenity values of the surrounding environment.

[32] CRPS Policy 6.3.10 provides direction on Māori Reserves, but only within Greater Christchurch (such that, of the specified PKN areas, it applies only to Rāpaki). It is as follows:

Policy 6.3.10 — Māori Reserves

Recognise and provide for the relationship of local Ngāi Tahu with their ancestral lands, waters, wāhi tapu and taonga by enabling Māori Reserves within the Greater Christchurch area to be developed and used for their intended purposes for which they were originally reserved, taking into account the following matters where relevant:

(a) flooding, inundation and other natural hazards;

(b) rural amenity and outlook;

(c) compact urban form;

(d) range of housing options;

(e) provision of appropriately sized local retail/commercial centres;

(f) any outline development plan; and

(g) the range of lot sizes and densities.

This policy implements the following objectives:

Objectives 6.2.1, 6.2.2

Methods

Territorial authorities:

Will

(1) Include in district plans objectives, policies and rules (if any) in relation to Māori Reserve Land in Greater Christchurch that recognise and provide for their intended purpose, and give effect to Policies 6.3.2, 6.3.3 (except 6.3.3(1) and (4)) and 6.3.4.

(2) Consult with Te Rūnanga o Ngāi Tahu and Papatipu Rūnanga to develop those plan provisions.

(3) In relation to development at Māori Reserve 873, provide for development opportunities for Ngāi Tūāhuriri by the inclusion of objectives, policies, rules and an Outline Development Plan within the District Plan to give effect to Policy 6.3.10.

(4) In relation to Māori Reserve 873, include objectives, policies and/or rules, within the District Plan, that place appropriate controls on the size and scale of Tuahiwi.

(5) Monitor and report on, at two yearly intervals, growth within Māori Reserve 873 to determine whether amendments to district plan objectives, policies and rules are required to either limit inappropriate growth and development or facilitate further growth and development.

Should

(6) Co-ordinate the sequencing, provision and funding of infrastructure in Long Term Plans, or other infrastructure plans, to enable the orderly and efficient development of Māori Reserves.

Principal reasons and explanation

The earthquakes and the subsequent damage and red zoning of properties in Waimakariri District and Christchurch City has led to a number of Māori seeking opportunities to return to ancestral lands, including land at Māori Reserve 873 (Tuahiwi)and Māori Reserve 875 (Rāpaki). This policy recognises the original intent of the land purchase deeds of the 19th century to provide for the present and future needs of local Ngāi Tahu landowners and their descendants.

It is important that any development of Māori Reserves is enabled in a way that meets the needs of Māori and other residents, whilst protecting natural and physical resources through maintaining and enhancing the environmental qualities and rural amenity of the area.

Māori Reserves in Greater Christchurch have not been identified as priority areas, nor as rural residential as development of this land is seen as something that will likely take a more dense form in certain areas and this could result in a more closely settled development pattern. However, it is considered important that any development is of a size and scale appropriate for the surroundings and that rural amenity and outlook is maintained. For these reasons it is considered important that an Outline Development Plan is prepared in consultation with the landowners within those reserves to guide and manage development.

Statement of Expectations

[33] In addition, we note the relevance of the Statement of Expectations, in Schedule 4, OIC, including that the CRDP "facilitates an increase in the supply of housing, including by … providing for a wide range of housing types and locations".

SECTION 32AA EVALUATION[40]

Issues raised by submissions

[34] We have considered all submissions and further submissions. Schedule 2 lists witnesses who gave evidence for various parties, and submitter representatives.[41] As we have noted, differences as between Ngāi Tahu, the Crown and the Council as expressed by submissions were fully resolved such that those parties jointly endorse and seek the confirmation of the PKN zone according to the Revised Version. We record that the Lyttelton Mt Herbert Community Board (2354) submitted in support of Ngāi Tahu's position on the PKN zone.

[40] We refer to the necessary principles set out in our earlier decisions (eg Strategic Directions at [63]–[70]). We have had regard to the Council's section 32 report ('Report'). Its analysis was overtaken to a significant extent by the Council's ultimate preference (together with Ngāi Tahu and the Crown) for the Revised Version. However, on matters where we have not departed from the Notified Version, we have relied on the Report and the evidence which we have discussed.

[41] Counsel appearances are recorded on page 2.

Board Chair Paula Smith attended the hearing and recorded the support was primarily because "it would enable our rūnanga to exercise kaitiakitanga over their land in a way which is consistent with the original purpose of Māori reserve".[42] We deal with the substance of other issues raised by other submitters in the context of our s 32AA evaluation below.

Differential treatment of Māori Land and Other Land within the PKN zone

[35] As we have explained the Notified Version treats all land within the PKN zone on broadly the same basis but the Revised Version treats Māori Land on a different basis from Other Land (the latter generally being subject to the usual rural zoning regime).

[36] The Crown's submission on the Notified Version sought that non-Māori Land be excluded from the proposed zone. The Crown's submission was opposed by the further submission of Wainui Bay Limited (FS2829) ('Wainui Bay'), which owns a 1.1 ha piece of non-Māori Land within the proposed PKN zone at Wainui Bay in rural Banks Peninsula. Wainui Bay did not call evidence but was represented by its owner, Richard Peebles. He explained that, under the Existing Plan, a resource consent was required to build a house on the Wainui Bay site. He supported the significantly more permissive approach of the Notified Version whereby building a house on the site would be permitted, subject only to recession plane requirements, and internal and road boundary setbacks. If we were to prefer the approach advocated by the Joint Parties (i.e. of differential treatment of Māori and non-Māori Land within the zone), he asked that we preserve (or, as he put it 'grandfather') the more permissive development regime that the Notified Version offered for the Wainui Bay site. [43]

[37] The Council opposed this requested relief, and submitted that the most appropriate activity status for building a dwelling on the Wainui Bay site is non-complying, as is the position under the Existing Plan. It relied on its s 32 report for the Rural chapter and the evidence of Ms Debbie Hogan for that position.[44]

[38] On the face of it, providing for differential treatment of Māori Land and Other Land in close proximity appears inequitable. However, it was well supported by the evidence called by the Joint Parties which, as we have noted, was uncontested.

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42 Transcript, page 67, lines 26–30.
43 Transcript, page 123.
44 Closing submissions for the Council, 13 January 2016, at 4.2.

[39] We start with the evidence of Ngāi Tahu's witnesses on historical and present-day economic, social and cultural considerations.

[40] Mr Matheson explained how the PKN zone is intended to respond to the historical context in terms of which Māori Reserve land was originally allocated to Ngāi Tahu as we have described.[45] He explained how the intention was to support Ngāi Tahu, as manawhenua of PKN areas, and in their exercise of kaitiakitanga over those areas.[46] He emphasised that this intention goes beyond assisting Ngāi Tahu to maintain ties with these areas. While that is a central element, the PKN zone is intended to assist Ngāi Tahu with its economic, social and cultural development of these areas.[47] To those ends, the Council has proposed and supports a wide range of permitted activities subject to minimal standards.

[41] We find those design intentions well supported by the evidence we have heard.

[42] Dr Tau explained this historical context, as an expert historian.[48] He explained how the PKN areas are remnants of 'Māori Reserve' land originally allocated to Ngāi Tahu whānui in the Christchurch District (including Banks Peninsula) as part of the Canterbury Deed of Purchase in 1848 (also known as 'Kemp's Deed', after the name of the Crown's surveyor and representative).[49]

[43] He explained that there are two fundamental concepts and values of importance within the Deed. Those are kāinga nohoanga (the right to dwell, and for descendants to remain in perpetuity) and mahinga kai (the right to hunt and gather food and to cultivate and produce food as technology allows). Whānau also understood there to be associated rights to develop (and subdivide) land, to set aside land for communal facilities or other activities to support the community, and to develop and maintain an economic base within the community to sustain future generations.[50] Hence, conceptually, Māori Reserves were for social, economic and

45 Evidence in chief of Alan Matheson at 4.1.
46 Evidence in chief of Alan Matheson at 4.5.
47 Evidence in chief of Alan Matheson, on behalf of the Council, at para 4.1
48 Dr Tau has a PhD in history from the University of Canterbury and is currently the Director of the Ngāi Tahu Research Centre at the University of Canterbury. He has particular expertise in issues concerning Ngāi Tahu history relating to oral traditions, the Treaty of Waitangi, the 1848 Canterbury Purchase (Kemp's Deed), mahinga kai and environmental matters. In 1991, he co-authored the first Maori environmental planning book, *Te Whakatau Kaupapa*, together with Anake Goodall and the late David Palmer, Maarie Goodall and his father.
49 Evidence in chief of Dr Tau, at paras 12 – 16.
50 Transcript, page 38, lines 37–45.

cultural wellbeing of Ngāi Tahu whānui, including through development, and on an enduring basis.

[44] Those intentions are expressed in the 1848 Canterbury Purchase deed:[51]

> Ko o matou kainga nohoanga ko a matou mahinga kai, me waiho marie mo matou, mo a matou tamariki, mo muri iho i a matou.
>
> Our places of residence and our food gathering places are to be left to us without impediment for our children, and for those after us.

[45] As we later discuss, elements of that description underpin the PKN zone, particularly in its provisions in relation to Māori Land. 'Kāinga nohoanga', included in the zone title, means "settlements and places of residence". "Mahinga kai" is an aspect of the PKN zone purpose.

[46] Dr Tau also explained how Māori Reserves did not realise their intended purpose. From the mid-19th century through much of the 20th century, the Reserves significantly diminished to be remnants, in both size and significance, and be considered more an economic liability than an asset for Ngāi Tahu whānui.[52] This was for a range of inter-related reasons.

[47] Reserves were owned collectively but on a basis that allowed property transactions to occur between individuals of that collective. As tensions arose between individuals, an initial response was the formation of rūnanga, as a council of land-owners or share-holders, to regulate agricultural activities within villages and reserves.[53] Reserves legislation enabled, and resulted in, significant alienation of Māori Reserve land into general title. Economic forces led to an increasing marginalisation of the Reserves. As the pattern of urban development in the greater Christchurch area took shape, the Reserves became increasingly remote and removed from centres of commerce. Associated with their remoteness, they were not well served by infrastructure or other Council services. The lack of productivity of the Reserves meant owners faced increasing difficulties with rating liabilities. Coupled with those difficulties, former district schemes and related planning laws as to the use, subdivision and development of land were designed according to constructs of property based on individual title. Those laws did not acknowledge or account for the fundamentally different legal and

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51 Evidence in chief of Dr Tau, at paras 21–26.

52 Evidence in chief of Rawiri Te Maire Tau on behalf of Ngāi Tahu at 62–70, and of Maire Parewaiterangi Kipa, also on behalf of Ngāi Tahu, at 25–55.

53 Evidence in chief of Rawiri Te Maire Tau on behalf of Ngāi Tahu at 40, referring to the Native Districts Regulations Act 1858.

cultural nature of Māori Reserves. Fires, other natural disasters also contributed to the demise of the Reserves.

[48] We accept the evidence of Dr Tau and other Ngāi Tahu witnesses on these matters and on the ongoing consequences this has for the wellbeing of Ngāi Tahu whānui, in social, economic and cultural terms.

[49] In particular, it has meant a loss of connection for those for whom various PKN areas are whenua or, more specifically, tūrangawaewae. We were told, and accept, that 'tūrangawaewae' is an individual birth right to stand and speak on any matter pertaining to a piece of land. As one witness put it, it is where one stands tall.

[50] Manaia Cunningham gave evidence for Ngāi Tahu on these matters concerning Koukourārata/Port Levy.[54] He told us that papakāinga is intrinsically linked to the concept of tūrangawaewae[55] and that tūrangawaewae and whakapapa "are the two things that distinguish us from the more generic identifier of simply being 'Māori'":[56]

> ... We can be 'Māori' anywhere. But we can see, touch and feel that we are Ngāi Tutehuarewa, when we stand on our land.
>
> … Tūrangawaewae is the one place in the world that you will always belong…
>
> Our tūrangawaewae makes us Ngāi Tahu…
>
> I find that it is an immensely powerful thing to be on unalienated family land — whenua that has never been owned by any one except my ancestors. It is profoundly significant to be able to stand in the places they stood, and do the things they did, in the same places they did them. For me it stirs a deep sense of belonging and connection, which I believe are components of a healthy and strong identity, which in turn are the building blocks for success as a people.

[51] He explained that Koukourārata, although depleted in size, had sustained generations before and had the potential to do so again.[57] Further, he considered that a systematic, pragmatic approach to papakāinga establishment and settlement would breathe new life and energy into Koukourārata, through more whānau bringing their skills and opportunities as they

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54 Manaia Frederick William Cunningham is a registered member of Te Rūnanga o Ngāi Tahu, is the current Secretary to Te Rūnanga o Koukourārata and is a member of the Koukourārata Mātaitai Committee. His whakapapa is to Ngāi Tūtehuarewa, Ngāti Huikai. Mr Cunningham is a teacher and his teaching qualifications include a post graduate qualification in bilingual education.

55 Evidence in chief of Manaia Cunningham on behalf of Ngāi Tahu at 6.

56 Evidence in chief of Manaia Cunningham at 6–9.

57 Evidence in chief of Manaia Cunningham at 10.

set up on their land.[58] He confirmed, in answers to the Panel, that living on the land is central to the purpose of the PKN zone and the connection with the land.[59] However, he said that in order to draw Māori back to the land there has to be employment, education and business opportunities.[60]

[52] Ms Maire Kipa gave similar evidence for Ngāi Tahu concerning Wairewa. She explained that her expertise was in her knowledge of whakapapa including as passed down to her by whānau and from her research.[61] She expressed her understanding that Māori Land was set aside to be a place of permanent and enduring occupation.[62] She explained the impacts arising from the loss of land that had occurred in relation to Wairewa and the associated loss of housing and economic sustainability. As with Dr Tau and Mr Cunningham, she confirmed to the Panel that provision for housing and the ability to gather food in traditional ways is at the heart of the proposal that we are considering.[63] She also confirmed that, if the zoning allowed for a range of activities to do with papakāinga housing and economic development, this would help enable a return to the land, notwithstanding separate financial or legislative impediments.[64]

[53] We accept that evidence. It satisfies us that there is an enduring currency in what the 1848 Canterbury Purchase deed expressed, namely 'ko o matou kainga nohoanga ko a matou mahinga kai, me waiho marie mo matou, mo a matou tamariki, mo muri iho i a matou'. It satisfies us that connectedness, as expressed in that quote, remains current and fundamentally important for the wellbeing of tangata whenua (including future generations), in social, cultural and economic terms.

[54] Ms Tuuta pointed out that the TTWMA and whānau processes (and related matters as to financing and design) meant that those seeking to occupy or develop Māori Land faced

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58 Evidence in chief of Manaia Cunningham at 13.

59 Transcript, page 44, lines 3 – 13.

60 Transcript, page 44, lines 41–44.

61 Maire Parewaiterangi Kipa is one of several owners of 2.4281 hectares referred to by the Maori Land Court New Zealand (the Court) as Wairewa 887 Block IV Section 14. The mountain is Te Upoko o Tahu Mataa, the river is Okana, the lake is Wairewa, the hapū is Ngāti Irakehu, Irakehu is the ancestress and Ngāi Tahu is the Iwi. Ms Kipa's great-great-grandfather was Pukukaiatea of Tuahiwi. He fled with his wife and two sons and their wives to Pūrākaunui in North Otago circa 1828. They were refugees of the ongoing skirmishes of Ngāti Toa led by Te Rauparaha on Kaiapoi Pa and Banks Peninsula 1827–1832. One of those sons was Kipa Tana Poukaha who, in a Christian ceremony conducted by Rev Watkins at Waikouaiti, married Hira Nukumaitore, whose ancestral connection is to Wairewa. Her great grandfather, Kerei Kipa, was the youngest of six children born to Hira Nukumaitore and Kipa Tana Poukaha at Pūrākaunui circa 1852. Ms Kipa is the granddaughter of Aperahama Te Aika Kipa (born at Wairewa 1889) and Ngareta Karaitiana. Aperahama (whose grandfather, Taituha Hape, was born at Lake Forsyth circa 1838).

62 Evidence in chief of Maire Parewaiterangi Kipa on behalf of Ngāi Tahu at 45.

63 Transcript, page 54, lines 27–36.

64 Transcript, page 55, lines 43 to page 56, line 9.

relatively greater process complexity and risk than typically arises for development of Other Land.[65] On the evidence, and in light of our consideration of the TTWMA, we accept the validity of her observations about that.

[55] Given that RMA requirements were only one matter whānau needed to address in order to go back to their whenua, Ms Tuuta reasoned that the simpler those RMA requirements were, the better.[66]

[56] Ms Bennett, an environmental adviser to Ngāi Tahu, informed us of findings from her research of five papakāinga developments within New Zealand.[67] Her focus was on elements of size and scale, housing type and layout and locational requirements.[68] While emphasising that each development is unique to the aspirations of the relevant whānau and the land it is situated on, she drew our attention to certain similarities revealed by her case studies. Those were that papakāinga tend to be small settlements with low dwelling densities and small populations, they largely compromise of new dwellings with communal facilities, and they are typically on land that the whānau grouping has a traditional relationship with. Ms Bennett emphasised that the desire for papakāinga developments to extend beyond housing and include employment or commercial opportunities depends on individual aspirations of the whānau.[69]

[57] The evidence of Ms Tuuta and Ms Bennett further reinforced to us the importance of ensuring that the PKN zone is properly enabling of Māori Land development. Of course, that does not mean untrammelled enablement. RMA Part 2 and the Higher Order Documents also oblige us to give due priority and consideration to other matters.

[58] The evidence satisfies us that, for Ngāi Tahu whānui, the presently experienced disconnection from the PKN areas is disenabling of wellbeing (economically, socially and culturally).

[59] The evidence also satisfies us that, in order to be able to effectively redress this, a targeted policy and regulatory response in the manner recommended in the Revised Version, and now

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65 Evidence in chief of Jamie-Lee Tuuta on behalf of Ngāi Tahu at 17.
66 Transcript, page 92.
67 Ms Courtney Bennett holds the qualification of Bachelor of Planning (with honours) from The University of Auckland. She has undertaken a research project on papakāinga housing.
68 Evidence in chief of Courtney Bennett on behalf of Ngāi Tahu.
69 Transcript, pages 87–88.

reflected in the Decision Version, is necessary. Specifically, we find it important that the zoning regime recognises the different challenge associated with the fact that the land is held in collective ownership but on a basis that needs to provide for both the collective, and individual whānau member, wellbeing (in social, economic and cultural terms). We find those characteristics of Māori Land present a different development paradigm to non-Māori Land where development is typically able to be pursued by individuals on individual titles.

[60] The evidence satisfies us that the enabling approach to the development of Māori Land that has been taken in the Revised Version recognises and provides for the matters in RMA s 6(e), has taken account of Treaty principles, and has had particular regard to the exercise of kaitiakitanga (ss 8, 7(e)). In those respects, we find the Revised Version gives effect to NZCPS Policy 6(d). We also find that the Revised Version's enabling regime is consistent with the broad definition of 'papakāinga development' given by the NZCPS, i.e. 'development of a communal nature on ancestral land owned development by Māori.'

[61] Likewise, we are satisfied that the approach of the Revised Version, in terms of Māori Land and Other Land, is supported by CRPS Objectives 5.2.1 and 6.2.1, and Policies 5.3.4 (as to papakāinga housing and marae) and 6.3.10 (as to Māori reserves).

[62] Conversely, we find that the approach of the Notified Version of treating both Māori Land and Other Land within the PKN zone on the same basis, would be inappropriate. In effect, it would be to confer benefits not available to other rural land in the locality, simply by fact of where the PKN zone boundaries would fall. We do not find any sound basis for such an approach, either in the evidence, any Higher Order Documents, any relevant CRDP objectives or the RMA purpose and principles.

[63] On that basis, we decline the relief sought by Wainui Bay's further submission. That includes its alternative request for a "grandfathering" regime such as would allow the Notified Version's approach to continue insofar as the Wainui Bay site is concerned. On the evidence, we cannot find any principled basis to ring-fence the Wainui Bay site in that way. We find the most appropriate approach is that it be treated on the same basis as other non-Māori Land in the vicinity.

[64] For completeness, we find the Revised Version more appropriate than the original approach preferred by the Crown's submission, namely of excluding non-Māori Land from the PKN zone. That approach was not ultimately supported by the Crown's evidence. In any case, we find it preferable to have a single zone with differentiating provisions, given the context that Māori Land and Other Land are often inter-dispersed in the various localities.

[65] However, part of the challenge we face in our s 32AA evaluation is to ensure that the PKN zone is also sound and properly responsive to other, potentially competing, resource management considerations. That is particularly so for those matters given priority under ss 6 or 7, RMA and/or the Higher Order Documents.

[66] We now address several matters of detail concerning the Revised Version, including as raised by submitters, which we now address.

Geographic extent of the PKN zone

[67] As we have noted, Mr Matheson explained how the geographic extent of the PKN zone relates to the extent of the five original Māori Reserves on Banks Peninsula. They encompass what s 6(e) of the RMA (and the NZCPS and the CRPS) refers to as 'ancestral land'.

[68] In regard to Wairewa, the Little River Issues Working Party ('Working Party') (2493) represented by Mick O'Donnell expressed concern that the PKN Zone was three or four times the current developed area at adjacent Little River.[70] The Working Party's concerns also pertained to the detail of proposed development controls, to which we return later in this decision.

[69] We undertook a site visit of Wairewa at the request of the parties. We spent some time familiarising ourselves with the township area of Little River. We viewed the Marae on the eastern side of Lake Wairewa, drove along Wairewa Pā Road and took in views from above the township across and towards the proposed PKN Zone and the surrounding area. We also drove along Wai Iti Road, and through the proposed PKN zone, approaching from the side road south of the township. We used the various planning and other maps supplied in evidence to

[70] Transcript, page 112, lines 41–47.

orientate ourselves to various features of interest, including the proportion of Māori Land and private land within the proposed PKN zone land.

[70] Our viewing satisfied us as to the soundness of the Council's recommendations concerning the physical extent of the PKN zone in this vicinity, and its proximity to the Little River settlement.

[71] We are overwhelmingly satisfied on the evidence that the Revised Version takes the most appropriate approach, in aligning the geographic boundaries of the PKN zone to the former Māori Reserves. In doing so, it best enables the PKN zone to properly respond to RMA ss 6(e) and 7(a), and to give effect to the NZCPS and CRPS in relation to Ngāi Tahu whānau ancestral lands. We confirm the zone boundaries accordingly.

Objective 4.1.1

[72] The Revised Version proposed a signal overarching objective:

> 4.1.1 Objective — Rangatiratanga and kaitiakitanga
>
> a. Papakāinga/Kāinga Nohoanga zones facilitate and enable:
>
> i. Ngāi Tahu whānau to develop and use ancestral land to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and
>
> ii. All landholders to use or develop land for activities appropriate in a rural area

[73] In the planning experts' hot-tubbing session, the Panel questioned Ms Murchison as to the appropriateness of using the term 'rangatiratanga' in the title. She agreed that "self-determination" (in the sense of being able to control one's own land without Council regulation) was an aspiration of various Ngāi Tahu witnesses, but commented that she did not consider this achievable through the CRDP process.[71] As to kaitiakitanga and rangatiratanga, she observed these would be viewed as related concepts, ie "you cannot have one without the other". She acknowledged that it may not be correct to include reference to 'rangatiratanga' in the title, but also agreed that 'kaitiakitanga' on its own is not quite right either.[72]

71 Transcript, page 144, lines 25–31.
72 Transcript, page 145, lines 4–32.

[74] Ngāi Tahu's closing submissions were that the objective provides for more than 'kaitiakitanga' alone. It submitted that it would be consistent with the intended purpose of the zone (as explained by Mr Matheson) to retain reference to rangatiratanga in the title. It also submitted that s 8 of the RMA supports this approach, as in essence it "embodies the overarching Treaty principle of the acquisition of sovereignty in exchange for the protection of rangatiratanga".[73] The Council supported this approach in its closing submissions. Although the Crown's closing submissions did not specifically address this matter, it expressed support for the Revised Version (including this aspect).

[75] While we acknowledge Ngāi Tahu's preference in this matter, supported by the Council (and the Crown), our overriding responsibility is to ensure the most appropriate objective for achieving the RMA's purpose. The title given to the objective is not insignificant in this regard. At the very least, it informs a reader's expectation of intended outcomes. We find that, in terms of how the PKN zone and wider CRDP regulate the use, development and protection of land, it would be inappropriate to use the term 'rangatiratanga'. While we accept that the exercise of kaitiakitanga is related to the exercise of rangatiratanga, it does not logically follow that the CRDP (and the PKN zone) espouses exercise of rangatiratanga (or 'chieftainship', as is used in the CRPS glossary). Use of the term would imply a degree of self-management at odds with what is provided for under the CRDP (including the PKN zone). For example, not even listed permitted activities allow for the exercise of rangatiratanga. Rather, they function to authorise listed activities subject to specified standards. Use of the term would also be inconsistent with the fact that the RMA specifies environmental duties (for example, those in ss 16 and 17) and allows for enforcement action to be taken by the Council (and others) for breach of CRDP rules and those duties.

[76] We acknowledge Ms Murchison's reservations about simply using the term kaitiakitanga in the heading. Given the substance of the objective, the RMA's definition of that term is overly narrow, i.e.:

> The exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

[73] Closing legal submissions for Ngāi Tahu, at 9-11.

[77] A further difficulty with the heading wording proposed in the Revised Version is it does not capture anything in regard to the use and development of non-Māori Land within the PKN zone.

[78] In the final analysis, we consider the most appropriate heading is one that honestly and accurately reflects the content of the objective, albeit with consequence that it is plainer. Therefore, the heading we have included in the Decision Version as the most appropriate for this objective is simply:

> Use and development of Ngāi Tahu whānau ancestral land and other land.

[79] Panel members questioned the planning experts about the wording of subparagraph (i) of the Objective. Specifically, we questioned whether the wording accurately reflected the evidence of witnesses for Ngāi Tahu as to the relative priorities of enabling opportunity for people to return to the land (occupation) and use of the land for social and economic advancement.[74] The findings we make on this evidence, and set out earlier in this decision, demonstrate that we have reflected further on this matter. In particular, we are now satisfied that the evidence demonstrates an inextricable link between the two themes expressed in the subclause. We also find that to be supported by the CRPS. For those reasons, we find the wording of the subclause the most appropriate and have included it in the Decision Version.

[80] Finally, we have tidied up some drafting infelicity in the wording of proposed Objective 4.1.1 of the Revised Version. Subclause (i) used the phrase 'to develop and use … land' (inconsistent with subclause (ii), which used the phrase 'to use or develop land'). Subclause (ii) clumsily referred to "all landholders" whereas activities may be undertaken by those who are not landholders per se. We have rectified this by recasting the clause to refer to "use or development of land for activities appropriate in a rural area".

[81] Hence, the objective in the Decision Version reads:

> 4.1.1 Objective — Use and development of Ngāi Tahu whānau ancestral land and other land
>
> a. Papakāinga/kāinga nohoanga zones facilitate and enable:

[74] Transcript, pages 138–143.

i. Ngāi Tahu whānau use and development of ancestral land to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and

ii. use and development of land for activities appropriate in a rural area

[82] In all other respects, we are satisfied that Objective 4.1.1 (in conjunction with related policies) will achieve the RMA's purpose and give proper effect to the NZCPS and the CRPS.

Policies

[83] We have considered the submissions (and representations) of Ms Cook and Mr Brailsford as to the importance of accounting for significant effects on immediately adjacent neighbours.[75] While the thrust of their concerns was about consent application notification matters (which we address later in this decision), how policies and related rules address amenity values is also important.

[84] On those matters, we find that the proposed policies effectively and appropriately respond to section 7(c) and (f) RMA (as to amenity values and the quality of the environment) and to CRPS Policies 5.3.4(5)(b) and 6.3.10(b) (the text of which we have earlier set out). Primarily, that is because proposed policy 4.1.1.2 includes reference to "… ensure … Maintenance of the privacy and amenity values of adjoining landowners". In addition, we are satisfied that the overall design of policies will ensure this matter is duly recognised in consent application processes (in tandem with related rules).

[85] We have also considered the submission and representations of Janet Reeves (2145) and Mr O'Donnell, chair of the Working Party, concerning Wairewa. We observe that the matters they raised were not addressed in any of the closing submissions of Ngāi Tahu, the Crown or the Council. That is an omission, bearing in mind that those parties concurred on material changes to provisions of concern to those submitters.

[86] One of the concerns expressed by Ms Reeves and the Working Party was as to the potential size of development that could occur and how large scale development would integrate with the existing Little River township. Ms Reeves sought outline development plan

[75] Transcript, pages 60–65 and 95–102.

('ODP') requirements. We return to these submissions later, as they pertain to associated rules. However, the policy regime is also relevant to this topic.

[87] Proposed Policy 4.1.1.5 of the Revised Version provides as follows (with ~~strike through~~ and underlining showing how it has changed from what the Council had earlier proposed):

> ~~"Comprehensive~~ Coordinated approach to development
>
> On Māori land, encourage an ~~comprehensive and~~ integrated approach to the development of land for papakāinga/kāinga nohoanga for larger scale developments or where there are multiple resource consents ~~are required~~, including through the use of a ~~comprehensive~~ coordinated development plan".

[88] The dropping of the word "comprehensive" and the use of the word "encourage", rather than more mandatory language adds significant flexibility. Those changes do not accord with the approach sought by Ms Reeves and the Working Party, in regard to Wairewa (and its close proximity to Little River). However, on the basis of the findings we make on their submissions and related rules (below), we are satisfied that this added flexibility is both necessary and appropriate. In particular, as we have noted, the evidence has demonstrated that enablement of development of the PNK areas presents a significant challenge, given their history and present economic stagnancy. That makes it important to provide flexibility such that development is not subject to constraint unless warranted in the circumstances. We find that is also reflected in CRPS Policy 6.3.10. In addition, it is only in the context of a consent application process that the nature and extent of development can be effectively assessed for whether arrangements for coordination would serve a relevant resource management purpose.

[89] We have addressed some drafting infelicity in the wording of Policy 4.1.1.2 and Policy 4.1.1.5 of the Revised Version:

(a) In relation to Policy 4.1.1.2, we have broadened the expression of paragraph (a)(v) from what was proposed in the Revised Version. That too narrowly focussed on the values in relation to Outstanding Natural Landscape ('ONL') and At Least High Natural Character ('HNC') overlays. It also confused this with enabling use and development in those overlay areas. On the evidence, we find it should be more broadly framed for management of effects.

(b) In Policy 4.1.1.5, the reference to "coordinated approach" in the heading does not properly align with the thrust of the policy itself, namely as to an "integrated approach" (including through a coordinated development plan). Therefore, we have revised the heading. To clarify the intention of the policy, we bring forward the reference to a coordinated development plan. It is a method of coordinated development, and hence should be placed immediately following reference to that concept. We have also made explicit reference to multiple consent developments (in a manner more closely similar to earlier proposed drafting).

[90] We are satisfied that, in the following restructured form, Policy 4.1.1.5 is most appropriate for achieving Objective 4.1.1 (and relevant Strategic Directions objectives) and have, therefore, included it in the Decision Version:

> **Integrated approach to development**
>
> On Māori land, encourage an integrated approach to the development of land, including through the use of a coordinated development plan, if required, for papakāinga/kāinga nohoanga developments that are larger scale or require multiple resource consents.

[91] Subject to those refinements, we are satisfied that the policies of the Revised Version will properly give effect to the NZCPS and the CRPS, and are the most appropriate for achieving Objective 4.1.1 (and relevant Strategic Directions objectives).

Proposed rules — overview of activity classes and related standards and notification

[92] Before dealing with particular issues, including those raised by submitters, we summarise the PKN zone rules' regime proposed in the Revised Version:

(a) As noted, there are separate rules applying depending on whether the land is Māori Land (as defined) or Other Land (with the relevant Rural zone rules applying to the latter);

(b) For Māori Land, several permitted activities are specified, some of these being challenged by submitters,[76] but none being opposed in evidence on behalf of any submitter. Several permitted activities are specified to be free from any activity

[76] Frederick Zwies (2467), Eleanor Dickie (2469), Craig Roberts (2503).

specific standards (but subject to specified built form standards).[77] Others are listed as subject to specified activity standards (in addition to relevant built form standards).[78] Again, that was not a matter challenged by any submitter.

(c) No controlled activities are proposed (and this was not opposed).

(d) Restricted discretionary activity classification is specified for activities not complying with activity specific and/or built form standards. We address some related submitter issues below. This activity class is also specified for the boarding of domestic animals, equestrian facility, intensive farming and plantation forestry.

(e) Where non-compliance with built form standards is the only matter, consent applications would not be publicly notified, and limited notification would be required only to directly abutting land owners and occupiers who have not given written approval (and to the New Zealand Fire Service Commission, if in relation to water supply for fire fighting). This matter was opposed by submitters Jan Cook and David Brailsford (and we address this later in this decision)

(f) Non-complying activity classification is specified for any activity listed in 6.8.3.4 NC1 and NC2. Discretionary activity classification is specified as a default activity class.

(g) Built form standards for Māori Land are proposed to be confined to a minimum internal boundary setback, a minimum road boundary setback, a maximum building height, a maximum building coverage and water supply for firefighting. Related matters of discretion are proposed (as well as matters as to traffic

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77 Marae Complexes, including wharenui, wharekai, manuhiri noho (guest accommodation with or without tariff) and associated accessory buildings (P1); Residential Activity including minor residential units and kaumātua units (P2); Home occupations (P3); Relocation of residential units (P4); Community activities and associated facilities, including Whare Hauroa (Health care facilities) (P5); Kōhanga Reo (Pre-School activity and facilities) and Kura Kaupapa (Education activity and facilities) (P6); Hākinakina (Recreation activities and facilities) (P7); Ahuwhenua (Farming) including Huawhenua (Horticulture), and Existing forestry, Plantation forestry, and Intensive farming, Rural produce manufacturing and Existing forestry (P8); Urupa (P9); Farm building (P13); Conservation activities (P14); Farm Stay (P15); Emergency services facilities (P16), Flood protection activities undertaken by the CCC or Regional Council; Mahinga kai (P20).

78 Whare hoko (Convenience Activities), including Rural produce retail and Arumoni (Commercial Services), including Veterinary care facilities and Rural tourism activity (maximum of 100m² GLFA per business); Offices (maximum of 100m² GLFA per business); Mākete (Markets) (not exceeding one event per week); Heli-landing area (shall be located on a minimum nominated land area of 3000m²); Public amenities (maximum of 100m² GLFA per building).

generation and access and scale of non-residential business activity, for relevant activities).

[93] Subject to the specific matters we address shortly, we find this regime is supported by the evidence and properly responds to the Higher Order Documents (including, giving effect to the CRPS and achieving Objective 4.1.1 and relevant Strategic Directions objectives). Therefore, subject to various changes we explain, we have carried it into the Decision Version.

[94] As an overall observation, we found less than ideal the design of approach in the Revised Version involving cross-referencing to other chapters. To the extent we have been able to, within the limits of what the Joint Parties have proposed, we are satisfied the Decision Version is the most appropriate.

[95] We deal with the various issues below, broadly in the order of relevant provisions of the Revised Version.

4.2.1 How to use the rules

[96] We have changed the heading to read "How to interpret and apply the rules". This is a better reflection of the fact that this section operates to that effect.[79]

[97] The fact that the Revised Version proposes to exclude the application of some of these general chapter provisions was the subject of Panel enquiries through Minutes.[80] The exclusions proposed by the Revised Version are as follows:

Chapter	**Exclusions of activity status tables and standards**
5 — Natural Hazards	No exclusions
6 — General Rules	Excluded other than 6.1 Noise, 6.3 Outdoor Lighting and Glare, 6.6 Waterbody Setbacks, 6.8 Signs
7 — Transport	Excluded other than P7 Access design, P8 Vehicle crossings, P9 Location of buildings and access in relation to road/rail crossings and P10 High trip generators
8 — Subdivision, Earthworks and Development	'TBC through to Stage 2'

[79] The Panel intends to make consequential changes to similar headings in other chapters.
[80] Minutes dated 29 June 2016 and 13 July 2016.

9 — Natural and Cultural Heritage	Excluded other than 9.2.3.2.1 and 9.2.3.4.1
11 — Utilities, Energy and Infrastructure	No exclusions
12 — Hazardous Substances	No exclusions

[98] The Decision Version does not provide for any exclusion from Chapters 8 (Subdivision, Earthworks and Development) and 9 (Natural and Cultural Heritage), for the following reasons:

(a) For Chapter 8, Decision 39 has determined that there should be no minimum lot size for the subdivision of Māori Land in the PKN zone and that the minimum lot size applicable to Rural land is to apply to Other Land in the PKN zone. Related provision is made in the Chapter 8 activity status tables and standards. By this decision, we have also made changes to Chapter 8 for earthworks in the PKN zone (also reflected in the relevant activity status tables and standards). No other matters arise for consideration in relation to Chapter 8. Hence, the position expressed in the Revised Version ('TBC through to Stage 2') is not appropriate.

(b) For Chapter 9, as we shortly discuss, we make significant changes to what the Revised Version proposed in relation to activities occurring in an ONL or an area of HNC. As a consequence, we find it is no longer appropriate to express any exclusion from Chapter 9.

[99] We find the exclusions that the Revised Version proposed in regard to Chapters 6 and 7 (on General Rules and Transport) are generally appropriate in that they will assist to achieve Objective 4.1.1. That is primarily in the sense that they will assist to facilitate and enable Ngāi Tahu whānau use and development of ancestral land for that objective's described purposes, without materially impeding achievement of other objectives.

[100] In reaching that view, we have had particular regard to the maintenance (and enhancement) of amenity values of those in the vicinity of potential activities, including in terms of Policy 4.1.1.2. We are satisfied that the exclusions provided do not go too far in those respects. Specifically, that is because General Rules 6.1 Noise, 6.3 Outdoor Lighting and Glare, 6.6 Waterbody Setbacks, 6.8 Signs are not excluded.

[101] We have made some other changes for clarity and consistency.

[102] For those reasons, we are satisfied that the revised 'How to interpret and apply the Rules' provision is the most appropriate for achieving Objective 4.1.1 and related Strategic Directions objectives.

Rule 4.2.2.1 Permitted activities

[103] Submitters Frederick Zwies, Eleanor Dickie and Craig Roberts raised concerns about the broad range of permitted activities in the Notified Version.[81] In particular, they noted that they included activities (such as convenience stores) that did not support the commercial centre of Little River and others (eg healthcare, educational and recreational facilities) that could give rise to significant effects. However, none called evidence or attended the hearing.

[104] The listed activities include several commercial and other activities not specified as permitted activities in the Banks Peninsula Rural zone. On this, we apply to our findings at [35]–[62].

[105] We set out our findings shortly on related activity specific and built form standards. In light of those and our above findings, we are generally satisfied that Rule 4.2.2.1 is the most appropriate for achieving related objectives (and responding to the Higher Order Documents and the related RMA purpose and principles.

[106] Our only qualification to that concerns activities that occur within specified ONL or HNC overlays proposed under Chapter 9. For the reasons we explain at [112]–[142], we find that controlled activity is the most appropriate classification for activities listed as P1–P7, P10–P13, P15–P17, and P19 in Rule 4.2.2.1 that meet activity and built form standards.

Rule 4.2.4.4 — activity specific and built form standards

[107] Proposed Rule 4.2.4.4 specifies a maximum site coverage of 35 per cent. Mr Matheson considered that was appropriate, on the basis that it was reasonably enabling and reflected that the Zone was somewhat urban in nature.[82]

81 Above, n 76.
82 Transcript, page 151, lines 26–40.

[108] Ms Reeves sought that this be reduced to 25 per cent. She considered this would make development at Wairewa consistent with that proposed for the Little River township under its Residential Small Settlement zoning.[83]

[109] Ms Reeves expressed that view as a submitter, rather than as an expert witness. Mr Matheson's expert opinion was informed by his experience as a Council manager and we accept it. We have, therefore, included a maximum site coverage of 35 per cent in the Decision Version.

[110] No other issues were raised as to the appropriateness of the built form and activity specific standards proposed in the Notified Version.

[111] Subject to the drafting refinements we have made in the Decision Version, we are satisfied these standards appropriately respond to the Higher Order Documents and are the most appropriate for achieving Objective 4.1.1 (and the Strategic Directions objectives). Therefore, we have confirmed them in the Decision Version.

Controlled activities 4.2.2.2 including C1 and C2

[112] As noted, this proposed rule deals with activities within the following ONL and HNC overlays in Chapter 9:

(a) ONL 2.0 (Rāpaki – Ōhinetahi/Governors Bay Summits – Ōtaranui ki Omawete);

(b) ONL 6.4 (Koukourārata/Port Levy - Eastern Summits – Kākānui ki Ngārara);

(c) HNC 2.0 (Rāpaki – Ōhinetahi/Governors Bay Coastline – Taukahara and Ōtūherekio); and

(d) HNC 22.0 (Wainui Coastline).

[113] Those Chapter 9 overlays encompass reasonably sizeable proportions of some of the PKN areas. In particular:

83 Statement of Janet Reeves, 5 November 2015.

(a) at Rāpaki, Planning Map R1 shows that significantly more than half of the PKN area is ONL (predominantly the top half of the map), and most of the lower part adjacent Lyttelton Harbour (either side of the settlement) is HNC;

(b) at Koukourāta, Planning Map 64 shows the upper third is ONL;

(c) At Ōpukutahi, Planning Maps 74 and 75 show the lower third adjacent Tikao Bay is HNC.[84]

[114] On 26 July 2016, the Panel issued a Minute ('26 July Minute') raising concerns about the Joint Parties' then proposed rule[85] and inviting parties (including the Joint Parties) to make supplementary submissions (including on some redrafting of the rule offered by Secretariat planning staff ('Secretariat Draft')).

[115] Part of our concern was that the Joint Parties' then proposed rule was unduly complex and gave rise to perverse outcomes. Central to our concern was that the proposed rule operated to re-classify as controlled activities what the Chapter 9 Rules 9.2.3.2.1 and 9.2.3.4.1 classified as restricted discretionary, discretionary or non-complying activities. In essence, this would have involved two levels of reclassification. This is firstly under the Chapter 9 rules themselves. They operate to put activities into more stringent activity classes because of their location within sensitive ONL or HNC localities. The Joint Parties' proposed rule went further than reversing this. For example, it would have re-classified production forestry and quarrying as a controlled activity (with consent assured and the only matters for control confined to building reflectivity and landscape and planting).

[116] Our related concern was that the Joint Parties had not, at that stage, offered any closing submissions to assist the Panel on how their proposed rule satisfied relevant legal requirements, on the evidence.

[117] The Secretariat Draft was essentially to the following effect:

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84 There are no ONL or HNC impacting the PKN areas at Wairewa or Ōnuku.

85 It also dealt with aspects of the Joint Parties' proposed restricted discretionary activity rule 4.2.2.3 as we discuss shortly.

(a) The proposed controlled activity rule would no longer operate to reclassify activities in the Chapter 9 rules. Instead, it would re-classify as controlled activities most of the proposed permitted activities in proposed Rule 4.2.2.1, where those activities where would occur within the specified ONLs or HNCs. The only exceptions would be P8 (ahuwhenua (farming) including huawhenua (horticulture), rural produce manufacturing and existing forestry), P9 (urupā), P14 (conservation activities, including new access tracks), P18 (flood protection activities undertaken by the CCC or Canterbury Regional Council) and P20 (mahinga kai).

(b) Controlled activities would be required to meet the activity specific standards in proposed rule 4.2.2.1 and built form standards in proposed rule 4.2.4. In addition, any building would be subject to a 100m² GFA limit. In other respects, including as to non-notification of consent applications and the specified matters of control, the Secretariat Draft retained the approach of the Joint Parties' proposed rule.

(c) Restricted discretionary activities would also include those activities listed in the revised 4.2.2.2 C1 and C2 that did not meet the activity specific standards. Further matters of discretion would apply to buildings that exceeded the 100m² GFA limit. These would allow for assessment of effects on the qualities of the ONL or HNC and related reflectivity and landscape and planting mitigation and of the extent to which the building was culturally fundamental (e.g. a wharenui).

[118] As we have noted, the Joint Parties responded to the Secretariat Draft with their 2 August submissions, which offered some significant changes to their previous position, provided a supporting s 32 evaluation, and the Revised Version. No other party responded.

[119] The following table broadly compares the position offered in the Secretariat Draft with the Revised Version in key respects:

Topic	Secretariat Draft	Revised Version
Controlled Activity ('CA') within the specified ONLs or HNCs	Rule 4.2.2.2 C1 and C2 re-classifies permitted activities in proposed rule 4.2.2.1, except P8, P9, P14, P18 and P20	Rule 4.2.2.2 C1 and C2 continues to re-classify specified restricted discretionary, discretionary and non-complying activities listed in Chapter 9 rules, but confined now to building, residential unit, new road, access track
CA standards	As per proposed rule 4.2.2.1 and built form standards in proposed rule 4.2.4. In addition, any building would be subject to a 100m^2 GFA limit.	No GFA limit for buildings.
Restricted discretionary activities ('RDA')	Rule 4.2.2.2 C1 and C2 activities that do not meet activity specific standards; further matters of discretion for buildings >100m^2 GFA.	Rule 4.2.2.2 C1 and C2 activities (i.e. being reclassified Chapter 9 activities), that do not meet activity specific standards Plantation forestry, if a non-complying activity in Chapter 9 within specified ONLs or HNCs; with matters of discretion including specified Chapter 9 provisions
Discretionary activities ('DA')	Any not a permitted activity ('PA'), CA, RDA or non-complying activity ('NCA')	Any not a PA, CA, RDA or NCA Quarrying if NCA in Chapter 9 within specified ONLs and HNCs
NCA	Any activity listed in 6.8.3.4 NC1 and NC2 In effect, leaving quarrying as per Chapter 9 within specified ONLs and HNCs	Any activity listed in 6.8.3.4 NC1 and NC2

[120] We are satisfied that the drafting in the Secretariat Draft is, in all respects, appropriately supported by the evidence. In those respects in which the 2 August submissions modify the Joint Parties' earlier position, we are satisfied on the evidence that the Revised Version is relatively more appropriate and supersede those earlier preferences. In those respects in which the Revised Version is materially the same as the Secretariat Draft, on the evidence, we find both versions appropriate.

[121] In terms of our obligation to determine the most appropriate provisions, the key overall question concerns what is the most appropriate regulatory regime for activity on Māori Land within the identified ONLs and HNCs, and specifically:

(a) Whether Rule 4.2.2.2 C1 and C2 should follow the Secretariat Draft or the Revised Version approach, or a variation of those different approaches;

(b) Whether there should be a 100m² GFA limit built form standard imposed for buildings to be classified as controlled activities (or some other limit, or no limit);

(c) How production forestry is most appropriately classified (i.e. whether as RDA, DA or NCA); and

(d) How quarrying is most appropriately classified (i.e. whether as RDA, DA or NCA).

[122] Our evaluation of those matters is by reference to relevant Part 2 RMA principles and Higher Order Documents and related evidence.

[123] The Joint Parties agree that the most relevant provisions of RMA Part 2, are those in ss 6(a), (b) and (e). In terms of the Higher Order Documents, they identify CRPS Policy 5.3.4 (on papakāinga housing and marae), and NZCPS Policies 6(d) (on recognising tangata whenua needs for papakāinga, marae and associated developments) and 13 (on preservation of the natural character of the coastal environment and protection of it from inappropriate development).

[124] They submit that the Revised Version represents an appropriate balancing of the matters in s 6, and properly gives effect to related objectives and policies of the CRPS and NZCPS. That is in the sense that they submit the Revised Version gives due recognition to the landscape and natural character values of the specified ONLs and HNCs and, according to s 6(e), adjusting the level of protection accorded in an appropriate way.

[125] The geographic extent of the relevant ONLs and HNCs, including their coverage of Māori Land, is as proposed by the Council and not challenged by the evidence of the other Joint Parties. As to the values associated with those identified ONLs and HNCs, the Chapter 9 Panel heard essentially uncontested landscape evidence, including on behalf of the Council and the Crown. The Council's landscape expert, Yvonne Pflüger, explained the detailed landscape studies underpinning the Chapter 9 proposal, including the methodology for determining the ONL and HNC overlays.[86] She explained how the methodology for

[86] Ms Pflüger is a Senior Landscape Planner for Boffa Miskell Limited. She holds a Masters degree in Landscape Planning from BOKU University, Vienna (Austria, 2001) and a Masters degree in Natural Resources Management and Ecological Engineering from Lincoln University (NZ, 2005). She is a Certified Environmental Practitioner under the Environment Institute of Australia and New Zealand and a Full Member of the Austrian Institute of Landscape

determining the overlays took account of RMA ss 6(a) and (b) and 7(c) and the New Zealand Coastal Policy Statement 2010 ('NZCPS'). She also noted that matters in s 6(e), to which we return, were considered. Her evidence demonstrates that a sound methodology was applied and the related studies were thorough and extensive. That is backed by the endorsements expressed in an expert conferencing statement filed for the Chapter 9 proposal, and signed by Ms Pflüger and the Crown's landscape expert of considerable experience, Peter Rough.[87] Ngāi Tahu did not call landscape expert evidence, either to the Chapter 9 proposal hearing or in relation to the Revised Version for this Chapter 4.

[126] Ms Pflüger's evidence that the determination of the ONL and HNC overlays was also by reference to s 6(e) is not evidence that weighs against the direct unchallenged evidence on those matters in this Chapter 4 hearing, and on which we have expressed our findings.

[127] The Joint Parties submit that it is "unlikely" that development that would compromise the ONL and HNC values would proceed within the specified areas.[88] They do not reference evidence for that submission, but assert that most of the land is harsh cliff or otherwise difficult terrain and subject to the rock fall hazards (hence the related Chapter 5 Natural Hazards provisions) and other health and safety constraints.

[128] We agree that Chapter 5 provisions must apply and that our consideration of the most appropriate provisions is subject to that qualifier. Beyond that, however, we do not consider it sound to make an assumption that development is 'unlikely' in order to support a position in favour of development that would enable such development to occur. The Joint Parties' submission on this point is misdirected in that the question we must decide is what is the most appropriate set of provisions to give effect to related CRDP objectives, for the development of Māori Land within the identified ONLs and HNCs.

[129] In light of the findings we have made on the evidence, including the Chapter 9 evidence, we find that the most appropriate outcome is one that recognises and provides for the protection of the identified ONL and HNC values of the specified overlays in enabling papakāinga/ kāinga nohoanga development within those overlays. We find that approach, which is more

Architects and the New Zealand Resource Management Law Association, and is a Registered Member of the New Zealand Institute of Landscape Architects. She has approximately 14 years' experience as a landscape planner.

87 It was also signed by landscape expert, Andrew Craig, as an observer for the Utilities Group.

88 2 August submissions at para 3.13.

encouraging of development than would be the case for general land within the overlays, properly reflects s 6 and the related CRPS and NZCPS objectives and policies to which we have referred.

[130] On this basis, we are satisfied on the evidence that production forestry is most appropriately classified as restricted discretionary activity and quarrying as a discretionary activity within the overlays (rather than as non-complying). That is on the basis that the related assessment matters reference relevant Chapter 9 considerations pertaining to the identified ONL and HNC values of the land in issue. A material difference between those classifications and non-complying activity classification is they do not signal incompatibility with the intentions of the ONL and HNC overlays. To that extent, we agree with the Joint Parties' submission as to the intended balance in s 6 and the related CRPS and NZCPS provisions. The balance is not one that compromises protection of the identified values because those matters will be considered in the process of determining whether or not consent would be granted and, if so, on what conditions.

[131] Therefore, we accept the substance of the Joint Parties position on those activities.

[132] For the same reasons, we also agree with the Joint Parties that we do not need to incorporate the 100m² GFA limit built form standard that the Secretariat Draft offered for buildings. We consider the built form and other standards already specified for certain controlled activities are sufficient.

[133] We acknowledge that this could allow for buildings of marae complexes or other forms of papakāinga development to occur within the identified ONLs and HNCs at significantly greater scale than could be expected for buildings on Other Land. We are satisfied that this greater extent of enablement accords with s 6(a), (b) and (e) and related NZCPS and CRPS objectives and policies, and is the most appropriate given our evidential findings.

[134] That leaves the question of which activities should be classed as controlled activities under Rule 4.2.2.2 C1 and C2 and whether this is best to be by way of re-classifying permitted activities in proposed Rule 4.2.2.1 (i.e. the Secretariat Draft approach) or by re-classifying of specified restricted discretionary, discretionary and non-complying activities listed in Chapter 9.

[135] As to the range of activities in issue, the Joint Parties have acknowledged this should be more confined than they originally put forward. The Revised Version narrows this to "Any building, residential unit, new road or access track" in the relevant activity class of Rule 9.2.3.2.1. These correspond to the activities in proposed Rule 4.2.2.1, as follows:

Revised Version	**Corresponding proposed Rule 4.2.2.1 activity**
building, residential unit	P1 marae complexes, P2 residential activity, P3 home occupation, P4, relocation of, or repairs to, replacement and/or additions to residential units, P5 community activities and associated facilities, P6 kōhanga reo, P7 hākinakina, P10 whare hoko (convenience activities), P13 farm building, P16 emergency service facilities, P19 public amenities
new road	No equivalent
access track	P14 conservation activities, including new access tracks

[136] It can be recognised from this table that the Joint Parties' narrower list of activities generally corresponds to activity classes in proposed Rule 4.2.2.1, with the exception of 'new road'.

[137] The CRDP intends 'road' to mean a public road. In the ONLs and HNCs in issue, it would be one vested in the Council. In that regard, it is not itself a form of papakāinga development, as that term is intended by the Higher Order Documents. Nor is it a type of activity readily fitting what s 6(e) of the RMA addresses. Allowing a 'new road' as a controlled activity could have significant impacts on the identified ONL and HNC values. Therefore, on the evidence, we find it would be inappropriate to have it listed as a controlled activity. It is more appropriately governed in the same way as would be a new road on Other Land.

[138] As for the remaining provisions, we find greater drafting clarity is achieved by the approach of the Secretariat Draft. Consistent with the drafting of other chapters, it relates controlled activities to the permitted activities in the same chapter. That assists readability, by contrast to the Revised Version and its reclassification of activities that Chapter 9 itself re-classifies. A further complexity with the Revised Version is it does not use the same activity class names as are used in the last iteration of the Council's proposed Chapter 9 provisions. It leaves the reader to make a translation for those purposes.

[139] For those reasons, we find the approach of the Secretariat Draft more appropriate on these matters.

[140] The 2 August submissions include (in Appendix C), a s 32 evaluation. This is not evidence. On all matters of difference from the Revised Version, we prefer and rely on the evidence we have earlier accepted.

[141] On the evidence, we find the approach of the Secretariat Draft to activity reclassification gives proper effect to the NZCPS and CRPS, and properly responds to the relevant RMA principles (including ss 6(a), (b) and (e) and 7(a), (c) and (f)). That is by reason of our earlier related findings on the evidence, and in view of the scope of control provided for, and how related standards are set such as to allow for decline of consent in appropriate circumstances.

[142] With the changes including in the Decision Version, we are satisfied that these provisions properly respond to RMA Part 2, give effect to the NZCPS and CRPS, and are the most appropriate for achieving related Objective 4.1.1 and related Strategic Directions Objectives (including 3.3.1 and 3.3.9).

Restricted discretionary activities 4.2.2.3

[143] We have already given our reasons for changes we have made to this proposed rule in regard to the specified ONLs and HNCs.

[144] A further overall issue is whether the proposed rule properly implements or achieves related policies, and specifically Policy 4.1.1.5 as to 'coordinated approach to development'. Related to that issue, some submitters at Little River sought that we require an ODP for development of Māori Land at Wairewa.

[145] As noted, Policy 4.1.1.5 concerns large-scale (or multi-consent) papakāinga/kāinga nohoanga developments and is to encourage an integrated approach to them "including through the use of a coordinated development plan". It is comparatively less restrictive than the approach of the Notified Version earlier recommended by Mr Matheson, whereby development of Māori Land required an ODP. Even so, it recognises the importance of an integrated and coordinated approach to larger developments.

[146] In her representations during the hearing, Ms Reeves raised concerns that development within the PKN zone at Little River was likely to take place in a piecemeal and scattered fashion

unless it was carefully co-ordinated and planned.[89] As such, she sought that we require an ODP. This was particularly so as to ensure connections and coordination and provision for cycle ways and footpaths, and the ability for the wider Little River area to be considered as a whole by the entire community.[90]

[147] In their representations (by Mr O'Donnell), the Working Party also sought that an ODP be required for development of Māori Land at Wairewa.[91] At the hearing Mr O'Donnell explained that Ms Reeves was also a member of the Working Party, along with Pam Richardson, Bryan Morgan, Maria Bartlett (each of the Akaroa Wairewa Community Board) John Boyles, Victoria Peden and Suzanne Vallance (who, with Ms Reeves, were "representatives of the community").[92] He said the formation of the Working Party was prompted by a report by Ms Vallance that identified the need for coordinated planning of the Little River settlement "particularly in relation to flood management, water and wastewater management, roading and traffic issues, including cycleways and walkways".[93] He explained that the Working Party sought an approach whereby the broader community and the rūnanga would work together to ensure that the development is appropriate to the area and integrated and co-ordinated with the existing settlement.[94]

[148] An initial issue concerns the scale of development warranting a coordinated approach. As noted at [90], we find our revised Policy 4.1.1.5 the most appropriate, and that includes its focus on large scale or multi-consent developments. In those respects, we find the Joint Parties' proposed Rule 4.2.2.3 more appropriate than the more restrictive ODP regime of the Notified Version (and the Matheson EIC Version).

[149] To that extent, therefore, we do not accept the noted submitter requests that we impose an ODP requirement.

[150] Related to our finding on that point, we find no call for any form of development coordination, as envisaged by Policy 4.1.1.5, for what is specified in the proposed rule as RD2

89 Transcript, page 104, lines 39–43.
90 Transcript, pages 104–105.
91 Transcript, page 114.
92 Transcript, page 115, lines 13–45; page 116, lines 1–25. He qualified this by clarifying that his authority to speak for Mr Boyles was confined to his capacity as a member of the Working Party, i.e. not in Mr Boyles' capacity as the Chair of the Wairewa Rūnanga nor for and on behalf of the Rūnanga.
93 Mr O'Donnell explained that the report was undertaken by Suzanne Vallance and funded jointly by the Community Board and the Little River Wairewa Community Trust
94 Transcript, page 114.

(activities not complying with built form standards). The Secretariat Draft clarifies the relevant matters of discretion. We consider these activities are not of sufficient scale to warrant anything more in order to properly implement Policy 4.1.1.5.

[151] By their nature, neither of the activities specified as RD5 (boarding of domestic animals, equestrian facilities or intensive farming) or RD6 (plantation forestry) call for coordinated development in the manner envisaged by Policy 4.1.1.5.

[152] The remaining activity classes of interest are RD1 (activities not meeting activity specific standards and two activities listed RD3 in the Secretariat Draft. The first 'RD3' is the new restricted activity which we have determined we should include for activities in ONL or HNC overlay areas, namely "Any building for an activity listed in Rule 4.2.2.2 C1 or C2 that exceeds a GFA of 100m²". The second RD3 is any activity:

(a) specified in any of the various resource consent classes under Chapter 6 (i.e. 6.1 (noise), 6.3 (outdoor lighting and glare), 6.6 (water body setbacks)); or

(b) unable to meet specified permitted activity rules in Chapter 7 (i.e. P7 (access design), P8 (vehicle crossings), P9 (location of buildings and access in relation to road/rail), or P10 (high trip generators)).

[153] Having rejected the requests of Ms Reeves and the Working Party for ODP requirements, we do not consider any assessment matters would be appropriately added concerning public transport, cycleways, and walkways. On the evidence, we are not satisfied that there is sufficient resource management value in prescribing this. Nor do we consider it would be appropriate to do so, having regard to the purposes intended to be served by the PKN zone for the wellbeing of Ngāi Tahu whānui. Specifically, those matters pertain to restoring whenua connection, not integration of development of Māori Land with Other Land in the manner Ms Reeves and the Working Party have envisaged. Therefore, no such matters are warranted for the implementation of Policy 4.1.1.5 and their inclusion is inappropriate for achieving Objective 4.1.1.

[154] Similarly, we find it unnecessary and inappropriate to include any assessment matters concerning flood management or natural hazard mitigation. Those topics are more appropriately addressed through the relevant natural hazard management controls of the CRDP.

[155] An important further consideration, in regard to these restricted discretionary activities is the communal nature of the development of Māori Land. That was explained in the uncontested evidence called by Ngāi Tahu, on which we have set out our findings. It distinguishes Māori Land from Other Land in the sense that it provides an associated element of coordination that we find to obviate any need for related regulation for those purposes. This characteristic has informed the Revised Version and is also supported by the evidence of the Council's planning expert, Mr Matheson (whose evidence on these matters we also accept).

[156] Given that, we find that the proper focus for consideration, in relation to whether the assessment matters for RD1 and the two RD3 activities of the Revised Version properly implement Policy 4.1.1.5, is whether they properly address relevant externalities beyond the development, where those developments could be large scale or involve multiple consents.

[157] In their representations at the hearing, Ms Reeves referred to a need to "look at the area as a whole" and Mr O'Donnell to "water and wastewater management, roading and traffic issues". These representations have force when considering activities that are of a scale that could impact at a community level.

[158] Some of these matters would be the subject of regulation by regional resource consent (e.g. wastewater discharges involving discharge to land). Others could be effectively managed without a need for RMA regulation (e.g. arrangements for connection to council infrastructure, or upgrading of local roads or State highway intersections as may be the subject of separate road controlling authority arrangements). However, that does not remove the need for appropriate assessment matters.

[159] To some extent, the assessment matters proposed by the Joint Parties invite consideration of the matters raised by the Working Party and Ms Reeves. That is, the second RD3 references the matters of control in related other chapters and related objectives and policies (including Policy 4.1.1.5). However, considering the representations of the Working Party and Ms Reeves (which we consider applicable also to other PKN areas), we find that uncertain and insufficient.

[160] Therefore, we have added to RD3 of our Decision Version the following additional assessment matter:

> In those cases where no subdivision consent has been sought, whether a co-ordinated development plan, including any staging, is required in order to address matters that would otherwise have been addressed in a subdivision consent.

[161] In the case of RD1, we have made drafting changes for clarity purposes, for the same reasons we have made changes to RD2.

[162] We recognise that, for these restricted discretionary activities, submissions particularly from those potentially affected in the vicinity could be important for the proper implementation of Policy 4.1.1.5. The question of whether or not there should be limited notification (or, perhaps, public notification) is most appropriately left to the Council, subject to the relevant RMA considerations. For that reason, we agree with the lack of any related non-notification rule in the Revised Version (and in the Secretariat Draft).

[163] For all of those reasons, we find that the Secretariat Draft (with the further modifications we have made) is the most appropriate for implementing Policy 4.1.1.5 and achieving Objective 4.1.1. That is particularly in the sense that it provides properly targeted implementation of that policy, without unduly impeding the ability of Ngāi Tahu to develop ancestral land. It also better achieves related Strategic Directions Objectives 3.3.1, 3.3.3 and 3.3.9.

[164] For those reasons, we have included the revised rule in the Decision Version. In the final analysis, we have accepted in part the relief sought by Ms Reeves and the Working Party.

Consent application notification provisions

[165] We have already addressed this matter in relation to controlled activity Rules 4.2.2.2 C1 and C2 and restricted discretionary activity Rule 4.2.2.3 RD1, RD3 and RD4.

[166] Under the Notified Version, two different regimes for notification and restricted discretionary activity resource consent applications are proposed. Where the application is a restricted discretionary activity by reason of non-compliance with activity-specific standards (under Rule 4.2.2.3 RD1), the application would be notified.

[167] Where the application is a restricted discretionary activity by reason of non-compliance with any built form standard (under Rule 4.2.2.3 RD2), the application would not be publicly notified, but would be given limited notification to "directly abutting land owners and occupiers…".

[168] For restricted discretionary activities for Other Land (i.e. not Māori Land) (in Rules RD3 and RD4), the choice of whether the application would be non-notified, limited notified and/or fully publicly notified would be made according to the notification provisions of the related CRDP chapters.

[169] In her closing representations, Ms Cook sought modification to this approach. In particular, she was concerned that entirely precluding public notification of restricted discretionary activities, regardless of the scale of a proposal or the extent of the breach of a standard could allow for significant effects on immediately adjacent neighbours. She drew our attention to the potential for these to be aggravated where land parcels adjoining the PKN zone were small or narrow.[95] She also submitted that the non-notification regime of the Revised Version did not account for the effects of a proposed activity whereby the public interest could be in the potential effects of the activity. She emphasised that the PKN Zone built form standards were already permissive in comparison to the surrounding zones.[96]

[170] Related to this matter, Ms Cook sought that Rule 4.3.3 should be amended to include "affects landscape values of surrounding areas" as a matter of discretion, on the basis that the effects of buildings are not limited to adjoining properties alone.[97] The Council's position is that the relationship between development in the PKN Zone and the landscape values of surrounding areas would best be addressed through cross-referencing to the provisions in Chapter 9.2.[98]

[171] Under questioning from the Panel, Mr Matheson agreed that there might be some merit in smaller breaches being non-notified but greater breaches (for example in relation to height) being able to be notified.[99] Ms Murchison's concerns with allowing for the potential for notification was that it would essentially open up the matters of discretion, with submitters

95 Transcript, page 96, lines 26–35.
96 Closing statement of Jan Cook and David Brailsford at 6.
97 Closing statement of Jan Cook and David Brailsford at 12.
98 Closing submissions for the Council at 5.3.
99 Transcript, pages 155–156.

wanting to comment on matters such as effects on amenity values, compatibility with the surrounding area and so on.[100]

[172] Ngāi Tahu and the Council consider that the Revised Proposal strikes the correct balance between public participation and the ability of Ngāi Tahu to exercise kaitiakitanga over their ancestral lands.[101] Further, Ngāi Tahu consider that the approach is consistent with the Strategic Direction objectives and the OIC Statement of Expectations concerning reduction in reliance on notification procedures.[102]

[173] On this matter, we agree with Ngāi Tahu and the Council. That is partly on the basis of our earlier findings on the Ngāi Tahu evidence, particularly in regard to the significant challenges presented in enabling development of Māori Land of the identified PKN areas. It is also on the basis that the Revised Version has the consensus support of all the planning witnesses. Further, we are satisfied that the Revised Version best responds to the Higher Order Documents. Finally, we are satisfied that the targeted approach to notification provided for in the Revised Version is sufficient to address the matters raised by Ms Cook (also bearing in mind the residual capacity for public notification conferred by s 95A(4) of the RMA).

Evidence of Ms Heppelthwaite on behalf of VJ & SC Mitchell

[174] We received a written statement of evidence from a planning consultant, Catherine Heppelthwaite, on behalf of VJ & SC Mitchell (2159), submitters with a property at 4374 Christchurch Akaroa Highway near Little River. Ms Heppelthwaite's statement recorded that, as the Mitchells were her sister and brother-in-law, she did not provide evidence in her capacity as an expert planning witness. Prior to the scheduled hearing, Ms Heppelthwaite communicated to the Secretariat that she sought to be excused attendance at the hearing in view of issues as to other commitments and the costs of travelling from Auckland. However, both the Council and Ngāi Tahu sought leave to cross-examine her. By Minute, the submitters were informed that a consequence of Ms Heppelthwaite not attending would be that her evidence would be accorded little weight, were it entered on the record.[103]

100 Transcript, page 156.
101 Closing submissions for Ngāi Tahu at 30; closing submissions for the Council at 5.2.
102 Closing submissions for Ngāi Tahu at 30; closing submissions for the Council at 2.10.
103 Minute, 20 November 2015.

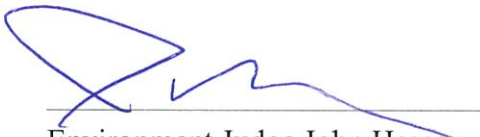
[175] Ms Heppelthwaite did not attend the hearing, and the Mitchells did not speak to their submission (or to Ms Heppelthwaite's statement). Ultimately, neither the Council nor Ngāi Tahu sought that we strike out Ms Heppelthwaite's statement. Having considered it, we find that it is substantively framed in response to the now outdated Notified Version rather than the Revised Version ultimately recommended by Mr Matheson. The statement is substantively an expression of planning opinion but is explicitly on the basis that Ms Heppelthwaite is not in a position to give expert opinion evidence. It is unsworn/unaffirmed. As noted, the Council and Ngāi Tahu were not given opportunity to cross-examine her (and the Panel to question her) on matters that are in contention. For all those reasons, we accord the written statement little weight. On all matters of difference, we prefer the opinion of Mr Matheson. Having said that, we note that we are satisfied that our findings pertaining to the Revised Version (particularly as pertaining to Little River and Wairewa) deal with the substance of the various opinions she has expressed, albeit not on a basis that concurs with those opinions.

OVERALL EVALUATION AND CONCLUSIONS

[176] For the reasons stated, we are satisfied that the Decision Version is the most appropriate overall and in its individual provisions. We direct the Council to incorporate into it the zoning maps of the Revised Version.

[177] Any party seeking that we make any minor corrections to any aspect of the Decision Version must file a memorandum making such request within **five working days** of the date of this decision.

For the Hearings Panel:



Environment Judge John Hassan
Chair

Ms Jane Huria
Panel Member

Dr Phil Mitchell
Panel Member

Mr Stephen Daysh
Panel Member

SCHEDULE 1

Changes that our decision makes to the following proposals:

Chapter 4 — Pāpakainga/Kāinga Nohoanga Zone

Chapter 21 — Specific Purpose Zone

Chapter 2 — Definitions

Chapter 4 Pāpakainga/Kāinga Nohoanga Zone

4.0 Introduction

This introduction is to assist the lay reader to understand how this chapter works and what it applies to. It is not an aid to interpretation in a legal sense.

The provisions in this chapter give effect to the Chapter 3 Strategic Directions Objectives.

This chapter relates to the Papakāinga/Kāinga Nohoanga Zone. Papakāinga can be used to describe traditional forms of Māori communal living on ancestral or tribal lands. Papakāinga development usually involves housing and marae facilities, but in its true sense includes a raft of facilities and activities associated with whānau or hapū providing for their social, cultural and economic well-being on tribal land. Ngāi Tahu use the term kāinga nohoanga to describe their traditional areas of communal living on tribal lands.

The Papakāinga/Kāinga Nohoanga Zone is provided within this Plan in some of the areas of traditional settlement of the Papatipu Rūnanga who represent those who hold mana whenua over land in the district. The zones incorporate a variety of land types, but only land which has the status of Māori customary or freehold land, or Māori land reserved for communal purposes, under Te Ture Whenua Māori Act 1993, is able to be used or developed as papakāinga/kāinga nohoanga. For other land in this zone, the Rural Banks Peninsula Zone provisions apply.

4.1 Objectives and policies

4.1.1 Objective - Use and development of Ngāi Tahu whānau ancestral land and other land

a. Papakāinga/kāinga nohoanga zones facilitate and enable:

   i. Ngāi Tahu whānau use and development of ancestral land to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and

   ii. use and development of land for activities appropriate in a rural area.

4.1.1.1 Policy — Provision for a range of residential and non-residential activities on Maori land

Enable the use and development of Māori land for a range of residential and non-residential activities in accordance with tikanga Māori, including kāinga nohoanga and mahinga kai, to support the social, cultural and economic aspirations of mana whenua.

4.1.1.2 Policy — Sustainable management

a. Land use and development is undertaken in a way which ensures:

i. integration of land use with infrastructure in a manner appropriate to the site and development;

ii. for papakāinga/kāinga nohoanga, the exercise of kaitiakitanga and tikanga Māori, including in the design and layout of buildings, facilities and activities;

iii. effects of natural hazards, including land instability and flooding, and potential liquefaction are avoided or mitigated to an acceptable level of risk;

iv. maintenance of the privacy and amenity values of adjoining landowners; and

v. adverse effects on the environment are remedied or mitigated.

4.1.1.3 Policy — Future development

Support the application of the Papakāinga / Kāinga Nohoanga Zone in other locations where it enables the use and development of Ngāi Tahu ancestral land for a range of residential and non-residential activities in accordance with tikanga Māori, to support the social, cultural and economic well-being of Ngāi Tahu whānui.

4.1.1.4 Policy — Rural activities

Enable rural activities on any land in a manner that is consistent with the Rural Banks Peninsula Zone provisions.

4.1.1.5 Policy — Integrated approach to development

On Māori land, encourage an integrated approach to the development of land, including through the use of a co-ordinated development plan, if required, for papakāinga/kāinga nohoanga developments that are larger scale or require multiple land use consents.

4.2 Rules

4.2.1 How interpret and apply the rules

a. The rules that apply to activities in the Papakāinga / Kāinga Nohoanga Zone are contained in the tables (including activity specific standards) within:

   i. Rule 4.2.2 – Māori land

   ii. Rule 4.2.3 – Other land; and

   iii. Rule 4.2.4 - Built form standards.

b. The activity status tables and standards in the following chapters as specified also apply to activities on Māori land within the Papakāinga / Kāinga Nohoanga Zone:

   5 Natural Hazards;

   6 Only the following provisions (except as modified by the rules in this chapter) in the General Rules and Procedures Chapter apply:
   6.1 Noise;
   6.3 Outdoor Lighting and Glare;
   6.6 Water Body Setbacks; and
   6.8 Signs.

   7 Only the following provisions (except as modified by the rules in this chapter) in the Transport Chapter apply,:
   Rule 7.2.2.1 P7 Access design;
   Rule 7.2.2.1 P8 Vehicle crossings;
   Rule 7.2.2.1 P9 Location of buildings and access in relation to road/rail crossings; and
   Rule 7.2.2.1 P10 High trip generators.

   8 Subdivision, Development and Earthworks

   9 Natural and Cultural Heritage, (except as modified by the rules in this chapter);

   11 Utilities, Energy and Infrastructure; and

   12 Hazardous Substances and Contaminated Land.

c. The activity status tables and standards in the following chapters also apply to activities on other land within the Papakāinga / Kāinga Nohoanga Zone:

   5 Natural Hazards;

   6 General Rules and Procedures;

   7 Transport;

   8 Subdivision, Development and Earthworks;

   9 Natural and Cultural Heritage;

11 Utilities, Energy and Infrastructure; and

12 Hazardous Substances and Contaminated Land.

d. Where the word 'facilities' is used in the rules, e.g. emergency service facilities, it shall also include the use of a site/building for the activity that the facilities provide for, unless expressly stated otherwise.

Similarly, where the word/ phrase defined includes the word 'activity' or 'activities', the definition includes the land and/or buildings for that activity unless expressly stated otherwise.

4.2.2 Activity status tables — Māori land

4.2.2.1 Permitted activities

On land which is held as Māori land, the activities listed below are permitted activities in the Papakāinga / Kāinga Nohoanga Zone if they meet any activity specific standards set out in the following table and the built form standards in Rule 4.2.4.

Activities may also be controlled, restricted discretionary, or discretionary as specified in Rules 4.2.2.2, 4.2.2.3, and 4.2.2.4.

Activity		**Activity specific standards**
P1	Marae complexes, including wharenui, wharekai, manuhiri noho (guest accommodation with or without tariff) and associated accessory buildings	Nil
P2	Residential activity, including minor residential units, and kaumātua units	Nil
P3	Home occupation	Nil
P4	Relocation of, or repairs, replacement and/or additions to residential units	Nil
P5	Community activities and associated facilities, including whare hauora (health care facilities)	Nil
P6	Kōhanga reo (preschool) and kura kaupapa (education activity and facilities)	Nil
P7	Hākinakina (recreation activities and facilities)	Nil
P8	Ahuwhenua (farming) including huawhenua (horticulture), rural produce manufacturing and existing forestry	Nil
P9	Urupā	Nil
P10	Whare hoko (convenience activities), including rural produce retail and arumoni (commercial services), including veterinary care facilities and rural tourism activity	a. Maximum of 100 m^2 GLFA per business.
P11	Office activity	a. Maximum of 100 m^2 GLFA per business.

Activity		Activity specific standards
P12	Mākete (markets)	a. Not exceeding one event per week.
P13	Farm building	Nil
P14	Conservation activities, including new access tracks	Nil
P15	Farm stay	Nil
P16	Emergency service facilities	Nil
P17	Heli-landing area	a. Shall be located on a minimum nominated land area of 3,000 m^2.
P18	Flood protection activities, including planting of exotic trees, earthworks and structures, undertaken by Christchurch City Council or Canterbury Regional Council	Nil
P19	Public amenities	a. Maximum of 100 m^2 GLFA per building.
P20	Mahinga kai	Nil

4.2.2.2 Controlled activities

On land which is held as Māori land, the activities listed below are controlled activities.

Discretion to impose conditions is restricted to the matters over which control is reserved, as set out in the following table.

Activity		The Council's control shall be limited to the following matters
C1	Any activity listed in Rule 4.2.2.1 P1 – P7, P10 – P13, P15 – P17 or P19, including associated access tracks, within either of the following Banks Peninsula Outstanding Natural Landscapes: i. ONL 2.0 (Rāpaki Ōhinetahi / Governors Bay Summits - Ōtaranui ki Ōmawete); or ii. ONL 6.4 (Port Levy / Koukourārata - Eastern Summits - Kākānui ki Ngārara). that: a. meets the activity specific standards for that activity in Rule 4.2.2.1 and the built form standards in Rule 4.2.4. For the avoidance of doubt, the provisions in Rule 9.2.4 do not apply to this activity. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	a. Mitigation of adverse effects on the qualities of the Outstanding Natural Landscape with respect to: i. the reflectivity and colour of building materials; and ii. landscaping and planting to integrate with indigenous vegetation where present. No mitigation is to be applied to aspects of buildings or activities that are culturally fundamental (e.g. wharenui).
C2	Any activity listed in Rule 4.2.2.1 P1 – P7, P10 – P13, P15 – P17 and P19, including associated access tracks, within either of the following Areas of At Least High Natural Character:	a. Mitigation of adverse effects on the qualities of the Area of At Least High Natural Character in

Activity		The Council's control shall be limited to the following matters
	i. HNC 2.0 (Rāpaki - Ōhinetahi / Governors Bay Coastline - Taukahara and Ōtūherekio); or ii. HNC 22.0 (Wainui Coastline). that: a. meets the activity specific standards for that activity and the built form standards in Rule 4.2.4. For the avoidance of doubt, the provisions in 9.2.6 do not apply to this activity. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	the Coastal Environment with respect to: i. the reflectivity and colour of building materials; and ii. landscaping and planting to integrate with indigenous vegetation where present. No mitigation is to be applied to aspects of buildings or activities that are culturally fundamental (e.g. wharenui).

4.2.2.3 Restricted discretionary activities

On land which is held as Māori land, the activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in in the following table.

Activity		The Council's discretion shall be limited to the following matters
RD1	Any activity listed in Rule 4.2.2.1 P1 – P20 or Rule 4.2.2.2 C1 or C2 that does not meet one or more of the activity specific standards. Any application arising from this rule will not require written approvals and shall not be limited or publicly notified.	a. Traffic generation and access – Rule 4.3.6. b. Scale of non-residential business activity – Rule 4.3.7. c. The relevant matters of control for C1 and C2 for that activity.
RD2	Any activity listed in Rule 4.2.2.1 P1 – P20 or Rule 4.2.2.2 C1 or C2 that does not meet one or more of the built form standards in Rule 4.2.4. Refer to relevant built form standard for provision regarding notification and written approval.	As relevant to the built form standard that is not met: a. Internal boundary setback – Rule 4.3.1 b. Road boundary setback – Rule 4.3.2 c. Building height – Rule 4.3.3 d. Coverage – Rule 4.3.4 e. Water supply for firefighting – Rule 4.3.5 f. The relevant matters of control for C1 and C2 for that activity
RD3	Any activity that is otherwise specified as a controlled, restricted discretionary, discretionary or non-complying activity in any of: Sub-chapter 6.1, 6.3 and 6.6;	a. Relevant matters of control or discretion in Chapters 6 and 7 for that activity. b. Relevant objectives and policies in Chapters 6 and 7 for that activity.

Activity		The Council's discretion shall be limited to the following matters
	Chapter 7 in relation to activities that require resource consent due to inability to comply with permitted activity Rule 7.2.2.1 P7, P8, P9 or P10; For the avoidance of doubt, the activity classifications in the specified chapters as set out above do not apply to an activity under this rule. For any application arising from sub-chapter 6.1, 6.3 and 6.6 and Chapter 7, the related rules concerning public or limited notification of applications apply. In all other cases, the application will not require written approvals and shall not be limited or publicly notified.	c. In those cases where no subdivision consent has been sought, whether a co-ordinated development plan, including any staging, is required in order to address matters that would otherwise have been addressed in a subdivision consent.
RD4	Any activity that is otherwise listed as a controlled, restricted discretionary or discretionary activity in sub-chapter 6.8. For the avoidance of doubt, the activity classifications in sub-chapter 6.8 do not apply to an activity under this rule. Any application arising from this rule shall require written approvals and/or be publicly notified as set out in relevant rule.	a. Relevant matters of control or discretion in Chapter 6 for that activity. b. Relevant objectives and policies in Chapter 6 for that activity.
RD5	Boarding of domestic animals, equestrian facilities or intensive farming.	a. Relevant matters of discretion in 4.3 for that activity. b. Intensive farming, equestrian facilities and boarding of domestic animals - Rule 17.8.2.3.
RD6	Plantation forestry	a. Plantation forestry - Rule 17.8.2.4.
RD7	Any plantation forestry that is otherwise specified as a non-complying activity in Rule 9.2.4.1 within either of the following Banks Peninsula Outstanding Natural Landscapes: i. ONL 2.0 (Rāpaki Ōhinetahi / Governors Bay Summits - Ōtaranui ki Ōmawete); or ii. ONL 6.4 (Port Levy / Koukourārata - Eastern Summits - Kākānui ki Ngārara). For the avoidance of doubt, the activity classifications in Rule 9.2.4.1 do not apply to an activity under this rule.	a. Plantation forestry - Rule 17.8.2.4. b. Outstanding natural features and landscapes – Rule 9.2.8.1.
RD8	Any plantation forestry that is otherwise specified as a non-complying activity in Rule 9.2.6.1 within either of the following Areas of At Least High Natural Character: i. HNC 2.0 (Rāpaki - Ōhinetahi / Governors Bay Coastline - Taukahara and Ōtūherekio); or ii. HNC 22.0 (Wainui Coastline). For the avoidance of doubt, the activity classifications in Rule 9.2.6.1 do not apply to an activity under this rule.	a. Plantation forestry - Rule 17.8.2.4. b. Natural character in the coastal environment – Rule 9.2.8.3.

4.2.2.4 Discretionary activities

On land which is held as Māori land, the activities listed below are discretionary activities.

	Activity
D1	Any other activity not provided for as a permitted, controlled or restricted discretionary activity.
D2	Any quarry specified as a non-complying activity in Rule 9.2.4.1 within either of the following Banks Peninsula Outstanding Natural Landscapes: i. ONL 2.0 (Rāpaki Ōhinetahi / Governors Bay Summits - Ōtaranui ki Ōmawete); or ii. ONL 6.4 (Port Levy / Koukourārata - Eastern Summits - Kākānui ki Ngārara). For the avoidance of doubt, the activity classification in the specified rule set out above does not apply to an activity under this rule.
D3	Any quarry specified as a non-complying activity in Rule 9.2.6.1 within either of the following Areas of At Least High Natural Character: i. HNC 2.0 (Rāpaki - Ōhinetahi / Governors Bay Coastline - Taukahara and Ōtūherekio); or ii. HNC 22.0 (Wainui Coastline). For the avoidance of doubt, the activity classification in the specified rule set out above does not apply to an activity under this rule.

4.2.3 Activity status — other land

In the Papakāinga /Kāinga Nohoanga Zone, on land which is not held as Māori Land, the rules applicable to the Rural Banks Peninsula Zone apply.

Note: The built form standards in Rule 4.2.4 do not apply to Rule 4.2.3.

4.2.4 Built form standards — Māori land

4.2.4.1 Internal boundary setback

The minimum setback from internal boundaries for buildings and structures shall be 10m and shall apply at the legal boundary of any property where it adjoins another property which is not held in the same ownership or used for the same development.

Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

4.2.4.2 Road boundary setback

a. The minimum setback distance for any building from the road boundary shall be 15 metres.

Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

4.2.4.3 Building height

a. The maximum height of any building shall be 9 metres. This standard shall not apply to art, carvings or other cultural symbols fixed to Māori land or to buildings on Māori land.

Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

4.2.4.4 Maximum coverage

a. The maximum percentage of net site area covered by buildings shall be 35%.

Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

4.2.4.5 Water supply for firefighting

a. Provision for sufficient water supply and access to water supplies for firefighting shall be made available to all buildings (excluding accessory buildings that are not habitable buildings) via Council's urban reticulated system (where available) in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008).

b. Where a reticulated water supply compliant with SNZ PAS:4509:2008 is not available, or the only supply available is the controlled restricted rural type water supply which is not compliant with SNZ PAS:4509:2008, water supply and access to water supplies for firefighting shall be in accordance with the alternative firefighting water sources provisions of SNZ PAS 4509:2008.

Any application arising from this rule shall not be publicly notified and shall, absent written approval, be limited notified only to the New Zealand Fire Service Commission.

4.3 Matters of discretion – Māori Land

4.3.1 Internal boundary setback

a. The extent to which the site layout and use of spaces maintains adequate levels of privacy and outlook for adjoining sites, taking into account:

   i. the need to enable an efficient, practical and/or pleasant use of the remainder of the site;

   ii. the need to provide future occupants with adequate levels of daylight and outlook from internal living spaces;

   iii. the need to provide future occupants with adequate levels of privacy from neighbouring residential units or sites;

   iv. adequate separation distance from any existing direct facing windows or balconies (within the site or on adjoining sites) or to ensure appropriate levels of privacy are maintained; and

   v. any adverse effects of the proximity or bulk of the building in terms of loss of access to daylight on and outlook from adjoining sites.

4.3.2 Road boundary setback

a. Any loss of privacy for adjoining properties through overlooking.

b. Alternative practical locations for the building on the site.

4.3.3 Building height

a. The extent to which an increase in building height and any associated increase in the scale and bulk of the building:

   i. reflects the cultural and functional requirements of the building and purposes of the zone; and

   ii. affects amenity values of adjoining properties, resulting from visual dominance, loss of daylight and sunlight admission, and loss of privacy from overlooking.

4.3.4 Coverage

a. Whether the additional coverage of the zone with buildings is appropriate to its context taking into account:

   i. the function of the building to support Ngai Tāhu whānau to deliver economic, social and cultural development;

ii. the extent to which the topography and the location, scale, design and appearance of the building, landscaping, natural features or existing buildings mitigate the visual effects of additional buildings; and

iii. any loss of privacy or other amenity values to adjoining residents and the effectiveness of any mitigation measures.

4.3.5 Water supply for firefighting

a. Whether sufficient firefighting water supply is available to ensure the health and safety of the community, including neighbouring properties.

4.3.6 Traffic generation and access

a. The extent to which the traffic generated is appropriate to the character, amenity, safety and efficient functioning of the access and road network in the area.

b. The ability to mitigate any adverse effects of the additional traffic generation.

c. The location of the proposed access points in terms of road and intersection efficiency and safety, including availability or otherwise of space on the road for safe right hand turning into the site.

d. Any significant increase in glare from headlights.

4.3.7 Scale of non-residential business activity

a. The extent to which increased scale is appropriate in the context of the surrounding environment taking into account:

i. hours of operation;

ii. traffic or pedestrian movements generated;

iii. any adverse effects, in terms of unreasonable noise, and loss of privacy, which would be inconsistent with the respective environments; and

iv. the extent to which the business contributes to the local employment and the economic base of Ngāi Tahu whānau and/or the needs of residents in the surrounding area.

21.13 Specific Purpose (Ngā Hau e Whā) Zone

21.13.1 Objectives and policies

21.13.1.1 Objective — Kaitiakitanga

Ngā Hau e Whā National Marae continues as a major focal point for all people as a place to enhance the understanding of tikanga Māori, and to support social, cultural, and economic development for Māori.

21.13.1.1.1 Policy — Provision for a range of residential and non-residential activities

Provide for a range of residential and non-residential activities to support the social, cultural and economic aspirations of Te Rūnanga o Ngā Maata Waka.

21.13.1.1.2 Policy — Minimise adverse effects on neighbouring zones

Ensure that buildings and activities undertaken do not detract from the amenity values of neighbouring zones.

21.13.2 Rules — Specific Purpose (Ngā Hau e Whā) Zone

21.13.2.1 How to interpret and apply the rules

a. The rules that apply to activities in the Specific Purpose (Ngā Hau e Whā) Zone are contained in:

   i. the activity status tables below in Rules 21.13.2.2.1, 21.13.2.2.2, and 21.13.2.2.3; and

   ii. built form standards in 21.13.2.3

b. The activity status tables and standards in the following chapters also apply to activities in all areas of the Specific Purpose (Ngā Hau e Whā) Zone (where relevant):

   5 Natural Hazards;

   6 General Rules and Procedures;

   7 Transport;

   8 Subdivision, Development and Earthworks;

   9 Natural and Cultural Heritage;

   11 Utilities, Energy and Infrastructure; and

12 Hazardous Substances and Contaminated Land

c. Where the word 'facility' or ‘facilities’ is used in the rules e.g. community facilities, it shall also include the use of a site/building for the activity that the facility provides for, unless expressly stated otherwise.

Similarly, where the word/phrase defined includes the word 'activity' or 'activities', the definition includes the land and/or buildings for that activity unless expressly stated otherwise in the activity status tables.

21.13.2.2 Activity status tables

21.13.2.2.1 Permitted activities

In the Specific Purpose (Ngā Hau e Whā) Zone, the activities listed below are permitted activities if they comply with activity specific standards set out in this table and built form standards in Rule 21.13.2.3.

Activities may also be restricted discretionary or non-complying as specified in Rules 21.13.2.2.2 and 21.13.2.2.3.

Activity		**Activity Specific Standards**
P1	Marae complexes, including wharenui, wharekai, manuhiri noho (guest accommodation with or without tariff) and associated accessory buildings.	Nil
P2	Residential activity, including minor residential units, and kaumātua units.	Nil
P3	Home occupations	Nil
P4	Relocation of residential units	Nil
P5	Community activities and associated facilities, including whare hauora (health care facilities)	Nil
P6	Kohanga reo (preschool) and kura kaupapa (education activity and facilities)	Nil
P7	Hākinakina (recreation activities and facilities)	Nil
P8	Urupā	Nil
P9	Whare hoko (convenience activities) and arumoni (commercial services)	c. Maximum of 100 m² GLFA per business.
P10	Offices (including justice facilities)	Nil
P11	Mākete (markets)	d. Not exceeding one event per week

21.13.2.2.2 Restricted discretionary activities

The activities listed in the table below are restricted discretionary activities

Activity		The Council's discretion shall be limited to the following matters
RD1	Any permitted activity which does not meet one or more of the activity specific standards in 21.13.2.2.1. Any application arising from this rule will not require written approvals and shall not be publicly or limited notified.	e. Traffic generation and access – Rule 21.13.3.4 f. Scale of non-residential business activity – Rule 21.13.3.5
RD2	Any permitted activity which does not meet one or more of the built form standards in 21.13.2.3. Any application arising from Rule 21.13.2.3.5 shall not be publicly notified and shall, absent written approval, be limited notified only to the New Zealand Fire Service Commission. Any application arising from Rules 21.13.2.3.1 to 21.13.2.3.4 shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).	As relevant to the built form standard that is not met: g. Daylight recession planes – Rule 21.13.3.1 h. Internal boundary setback – Rule 21.13.3.2 i. Road boundary setback – Rule 21.13.3.3 j. Building height – Rule 21.13.3.7 k. Water supply for firefighting – Rule 21.13.3.6

21.13.2.2.3 Non-complying activities

Activity	
NC1	Any other activity not listed as permitted or restricted discretionary.
NC2	a. Sensitive activities and buildings (excluding accessory buildings associated with an existing activity) within 10 metres of the centre line of a 66kV electricity distribution line or within 10 metres of a foundation of an associated support structure. b. Fences within 5 metres of a 66kV electricity distribution line support structure foundation. Notes: 1. Any application made in relation to this rule shall not be publicly notified or limited notified other than to Orion New Zealand Limited or other electricity distribution network operator. 2. Vegetation to be planted around the electricity distribution lines should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003. 3. The New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001) contains restrictions on the location of structures and activities in the vicinity of electricity distribution lines, which must be complied with.

21.13.2.3 Built form standards

21.13.2.3.1 Daylight recession planes

Buildings and structures shall not project beyond a building envelope contained by recession planes, as shown in Appendix 14.14.2 Diagram A, from points 2.3 metres above the internal boundaries.

21.13.2.3.2 Internal boundary setback

The minimum setback from zone boundaries for buildings and structures shall be 1.8 metres.

21.13.2.3.3 Road boundary setback

The minimum setback distance from the road boundary shall be 4.5 metres.

21.13.2.3.4 Building height

The maximum height of any building shall be 9 metres.

21.13.2.3.5 Water supply for firefighting

a. Provision for sufficient water supply and access to water supplies for firefighting shall be made available to all buildings (excluding accessory buildings that are not habitable buildings) via Council's urban reticulated system (where available) in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008).

b. Where a reticulated water supply compliant with SNZ PAS:4509:2008 is not available, or the only supply available is the controlled restricted rural type water supply which is not compliant with SNZ PAS:4509:2008, water supply and access to water supplies for firefighting shall be in accordance with the alternative firefighting water sources provisions of SNZ PAS 4509:2008.

21.13.3 Matters of discretion

21.13.3.1 Daylight recession planes

a. Any effect on amenity of adjoining properties, including visual dominance, daylight and sunlight admission, and loss of privacy from overlooking.

b. Opportunities for landscaping and tree planting, as well as screening of buildings.

21.13.3.2 Internal boundary setback

a. The extent to which the site layout and use of spaces maintains adequate levels of privacy and outlook, taking into account:

   i. the need to enable an efficient, practical and/or pleasant use of the remainder of the site;

ii. the need to provide future occupants with adequate levels of daylight and outlook from internal living spaces, and privacy from neighbouring residential units or sites (particularly in relation to existing direct facing windows or balconies); and

iii. any adverse effects of the proximity or bulk of the building in terms of loss of access to daylight on and outlook from adjoining sites.

21.13.3.3 Road boundary setback

a. Any loss of privacy for adjoining properties through overlooking.

b. Alternative practical locations for the building on the site.

c. The compatibility of the building in terms of appearance, layout and scale of other buildings and sites in the surrounding area.

d. Any detraction from the openness of the site to the street, or any visual dominance over the street.

21.13.3.4 Traffic generation and access

a. The extent to which the traffic generated is appropriate to the character, amenity, safety and efficient functioning of the access and road network in the area.

b. The ability to mitigate any adverse effects of the additional traffic generation.

c. The location of the proposed access points in terms of road and intersection efficiency and safety, including availability or otherwise of space on the road for safe right hand turning into the site.

d. Any significant increase in glare from headlights.

e. Any marked reduction in the availability of on-street parking.

21.13.3.5 Scale of non-residential business activity

a. The extent to which increased scale is appropriate in the context of the surrounding environment taking into account:

i. hours of operation;

ii. traffic or pedestrian movements generated;

iii. any adverse effects, in terms of unreasonable noise, and loss of privacy, which would be inconsistent with the respective environments;

iv. the compatibility of the scale of the activity and the proposed use of the buildings with the scale of other buildings and activities in the surrounding area;

v. extent to which the activity serves the needs of residents in the surrounding area; and

vi. the extent to which the business contributes to local employment and economic development.

21.13.3.6 Water supply for firefighting

Whether sufficient firefighting water supply is available to ensure the health and safety of the community, including neighbouring properties.

21.13.3.7 Building height

a. The extent to which an increase in building height and the potential resultant scale and bulk of the building:

   i. affects amenity values of adjoining properties, resulting from visual dominance, loss of daylight and sunlight admission, and loss of privacy from overlooking;

   ii. is visually mitigated through the topography, location, design and appearance of the building;

   iii. enables more efficient use of the site or meets the functional needs of the building; and

   iv. is compatible with the scale, proportion and context of buildings and activities in the surrounding area.

Chapter 2 Definitions

Māori Land

in relation to the Papakāinga/Kāinga Nohoanga Zone Chapter means land with the following status:

a. Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993; and

b. Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993.

SCHEDULE 2

Table of submitters heard

This list has been prepared from the index of appearances recorded in the Transcript, and from the evidence and submitter statements shown on the Independent Hearing Panel's website.

Submitter Name	№	Person	Expertise or Role if Witness	Filed/ Appeared
Christchurch City Council	2123	B Norton	Engineer	Filed
		B O'Brien	Engineer	Filed
		A Matheson	Planning	Filed/Appeared
Janet Reeves	2145	J Reeves		Filed/Appeared
VJ and VS Mitchell	2159	C Heppelthwaite	Planning	Filed
Cook and Brailsford	2241	J Cook		Filed/Appeared
Lyttelton/Mt Herbert Community Board	2354	P Smith		Appeared
Crown	2387 FS2810	A Willis	Planning	Filed/Appeared
Te Rūnanga o Ngāi Tahu and ngā rūnanga	2458 FS2821	TM Tau	Historian	Filed/Appeared
		M Cunningham	Whakapapa (Koukourārata)	Filed/Appeared
		M Kipa	Whakapapa (Wairewa)	Filed/Appeared
		C Bennett	Environmental Advisor	Filed/Appeared
		J Tuuta	Environmental Advisor	Filed/Appeared
		L Murchison	Planning	Filed/Appeared
Michael O'Donnell (Little River Issues Working Party)	2493	M O'Donnell		Filed/Appeared
Wainui Bay Limited	FS2829	R Peebles		Appeared