IN THE MATTER OF Resource Management Act 1991

AND

IN THE MATTER OF **Kāpiti Coast District Council Proposed Plan Change 3**

RECOMMENDATION REPORT

INDEPENDENT HEARING PANEL PLAN CHANGE 3

31 August 2026

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1. INTRODUCTION

[1] The Kāpiti Coast District Council ("the Council") appointed Cindy Robinson (Chairperson), Carolyn Wratt and Liz Burge ("the Panel") to hear submissions and further submissions ("the submissions") and make recommendations on the Kāpiti Coast District Council Proposed Plan Change 3 ("PC3") pursuant to Section 34A(1) of the Resource Management Act 1991 ("RMA"). Our delegation includes all related procedural powers to conduct the hearing.

[2] PC3 is a Council initiated plan change that proposes to recognise and provide for Kārewarewa Urupā as a site of significance to Māori. Kārewarewa Urupā is in the area around Barrett Drive, Te Ropata Place, Marewa Place, and Tamati Place at Waikanae Beach. The total area of General Residential Zoned land proposed to be added to Schedule 9 measures approximately 7.1 hectares. This includes 3.2 hectares located in Wāhanga Tahi and 3.9 hectares located in Wāhanga Rua ("the site/proposed SASM").[1] The area of Natural Open Space Zone proposed to be included in Wāhanga Tahi is 9,365m^2.[2] PC3 proposes the following changes to the Operative District Plan:

- adding two listings for Kārewarewa Urupā[3] to Schedule 9 of the District Plan Sites and Areas of Significance to Māori ("SASM") identified as WTSx1 which is Wāhanga Tahi and WTSx2 which is Wāhanga Rua; and

- amending the District Plan maps to include two new SASM identified as WTSx1 (Wāhanga Tahi) and WTSx2 (Wāhanga Rua).

[3] The purpose of the plan change is described in the s32 Evaluation Report published by the Council as follows:[4]

> The purpose of PC3 is to recognise and provide for Kārewarewa Urupā as a site of significance to Māori.

[4] PC3 recognised the importance of Kārewarewa Urupā as a site of significance to Te Ātiawa ki Whakarongotai and provided for the urupā in Schedule 9 in two parts. Wāhanga

[1] S32 Evaluation Report, section 8.2, page 62
[2] The Panel requested the Council to provide an accurate measurement from the Planning Map GIS data
[3] Information about the plan change is available on the Council website https://www.kapiticoast.govt.nz/council/forms-documents/district-plan/council-plan-changes-underway/proposed-plan-change-3/
[4] S32 Evaluation Report Proposed Plan Change 3, Kārewarewa Urupā section 1.1 https://www.kapiticoast.govt.nz/media/x0narhql/pc3_k%C4%81rewarewaurup%C4%81_s32report.pdf

Tahi, being the highest level of protection in Schedule 9, for the part of the site that remains undeveloped or is part of a Council owned reserve, and Wāhanga Rua for that part of the site that has been fully developed as a residential subdivision since the 1990s. The zoning of the proposed SASM is to retain its current zoning of General Residential and Natural Open Space Zone, and the SASM overlay provides additional limitations on land use activities and subdivision. The rules that would then apply to the SASM are set out in Appendix 1.

[5] A map of the location with the proposed SASM overlay is shown in figure 1 below.



Figure 1 Proposed change to planning maps (s42A Report, para 12)[5]

[6] Part of the proposed SASM Wāhanga Tahi is owned by the Waikanae Land Development Company Limited ("WLDC"). WLDC also developed the proposed SASM Wāhanga Rua area which is now fully developed and comprises 45 residential allotments. The northern corner of the proposed SASM is part of a Council owned reserve managed as part of the Waimanu Lagoons Reserve. The lagoons to the north and west were developed as part of the original subdivision of the area by WLDC, created through the excavation, dredging and diversion of natural waterbodies.

[5] S42A Report – Recommendations on Decisions Requested by Submitters, paragraph 12 https://www.kapiticoast.govt.nz/media/rdgobk54/section-42a-report-for-proposed-plan-change-3-kārewarewa-urupā.pdf

[7] PC3 was publicly notified and had immediate legal effect from 18 September 2024 in accordance with RMA s86B(3)(d). This means that the District Plan rules for SASM applied to subdivision, use, and development at Kārewarewa Urupā on and from that date.

[8] The submission period closed on 1 November 2024, and public notice was given inviting further submissions on Monday 4 December 2024. Further submissions closed on 18 December 2024. A late submission was accepted by Council and publicly notified on 28 February 2025 and further submissions on the late submission closed on 14 March 2025.

[9] A total of 11 submissions and 6 further submissions were received on the notified plan change. A summary of the submissions is included in the s42A Report prepared by the Council for the hearing.[6] We address these in further detail below.

[10] The processing of the plan change was interrupted by the introduction of RMA s80Q as amended by the Resource Management (Consenting and Other System Changes) Amendment Act 2025, that required councils to withdraw proposed plan changes (and other planning instruments) that have not yet reached a hearing due to pending Resource Management legislative reform, unless they are covered by an automatic exemption under RMA s80U or have been granted an exemption by the Minister following an application under RMA s80V.

[11] The Council applied to the Minister for the Environment for an exemption under RMA s80W(2)(h) to allow Proposed Plan Change 3 to continue through the plan change process.

[12] The Minister granted that exemption. In his decision dated 28 January 2026, the Minister approved the Council's exemption request in full, allowing PC3 to proceed through the plan change process.

[13] The Minister's reasons for allowing the plan change to proceed were recorded as:[7]

> I am satisfied that PC3 meets the criteria under s80W(2)(h) of the Act and should proceed in full. This is because this plan change supports upholding the Crown/Māori relationship and directly addresses a Crown-acknowledged Treaty breach by protecting the Kārewarewa Urupā from further disruption.

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[6] Ibid

[7] Letter from Hon. Chris Bishop to Kāpiti Coast District Council, 28 January 2025 https://www.kapiticoast.govt.nz/media/3hspwqr1/letter-of-decision-exemption-application-for-k%C4%81piti-coast-district-council-plan-change-3.pdf

2. THE HEARING

[14] Notice of Hearing was given by the Council on 30 April 2026. The hearing took place over two days on 2 and 4 June 2026. The first hearing day was held at the Kāpiti Sports Turf Pavilion in Paraparaumu and the second day was held at Whakarongotai Marae in Waikanae.

[15] The Panel undertook a site visit to the location of the proposed SASM. We received karakia from Te Ātiawa kaumātua and followed tikanga practices when leaving the area.

[16] The first day of the hearing was opened by the Chair and karakia from representatives of Te Ātiawa ki Whakarongotai Charitable Trust ("Te Ātiawa"). On the second day we were welcomed onto the Whakarongotai Marae with pōwhiri in accordance with Te Ātiawa tikanga.

[17] The following submitters attended and spoke at the hearing (in order of appearance).

(a) Mr Laurence Petherick, a resident of Waikanae, on behalf of himself and a group of residents ("the collective").[8] Some of the collective were residents of the area proposed to be included in the SASM, some including Mr Petherick were not. Mr Petherick opposed the plan change.

(b) Te Ātiawa supported the plan change. Te Ātiawa were represented by Dr. Mahina-a-rangi Baker, Resource Management Advisor and Kāhuoterangi Ropata, Pou Tikanga Reo. Mr Tutere Parata, one of the WAI 1945 Claimants also attended in support.

(c) Te Rūnanga o Toa Rangatira supported the plan change. Ms Jaida Howard, Kaitohu Rawa Taiao, Resource Management Advisor and Mr Robert McLean, Principal Advisor Ahurea Taiao appeared for Te Rūnanga.

(d) Ngā Hapū o Ōtaki supported the plan change. Mr Caleb Royal, Pou Taiao and Mr Pat Hakaraia appeared for Ngā Hapū.

(e) Mana whenua also presented a joint submission, supported by Dr. Baker, Mr Hakaraia, Mr Royal and Mr McLean.

[8] Rachel Salive, Gary Collis, Steve Hollett, Elspeth Preddey, Clive Cameron, Michael Peryer, Craig Hardie, Vic Hewson, and Brian Kouvelis

(f) Mr Simon Leeming, a resident of the area proposed to be included in the SASM, supported the plan change. Mr Leeming was also supported by Mr Chris Turver, another resident, but not a submitter in his own right.

[18] Prior to the Hearing the Panel issued directions in Minute 1 setting out the procedures for the hearing including the pre-circulation of the s42A Report and expert evidence and legal submissions.

[19] The Panel received the Council's s42A Report, prepared by Council Principal Policy Planner, Ms Sandhira Naidoo.[9] The Council also filed legal submissions from Mr Matthew Conway.[10]

[20] On the first day of the hearing the Panel heard from Ms Naidoo and Mr Conway who set out an overview of the plan change, submissions received and the history of events leading to PC3. We set this out in further detail below when discussing the statutory and planning context. We then heard from Mr Petherick. On the second hearing day, we heard from Te Ātiawa, Te Rūnanga o Toa Rangatira, Ngā Hapū o Ōtaki, Mr Leeming and Mr Turver.

[21] Submitters did not file expert evidence or legal submissions.

[22] We received a presentation in writing from Mr Petherick at the hearing.[11] He set out his reasons for opposing the proposed plan change including the notification process, devaluation of the sites and responsibility for the ongoing maintenance of the Wāhanga Tahi area.

[23] Dr. Baker, a qualified planner and academic, gave evidence of the cultural significance of the Kārewarewa Urupā and the reasons for Te Ātiawa support for the plan change on behalf of Te Ātiawa. Although a qualified and experienced planner, Dr. Baker did not give evidence as an expert witness, however the Panel acknowledged the considered and consistent account of events as documented by Dr. Baker, which accorded with the record of events as documented in the Waitangi Tribunal Kārewarewa Urupā Report Pre-Publication Version WAI 2200.[12]

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9 S42A Report

10 Legal Submissions on behalf of the Council, 26 May 2026 https://www.kapiticoast.govt.nz/media/adinm2nu/kcdc-opening-legal-submissions-pc3-22-may-2026.pdf

11 S5, FS2, FS5 Laurence Petherick Written Statement www.kapiticoast.govt.nz/media/iezn5rew/s5-fs2-fs5-laurence-petherick-written-statement.pdf

12 Waitangi Tribunal Kārewarewa Urupā Interim Report Pre-Publication Version WAI 2200 https://www.kapiticoast.govt.nz/media/ykwdncoq/appendix-3-k%C4%81rewarewa-urup%C4%81-report-waitangi-tribunal-2020.pdf

[24] Ms Howard gave evidence setting out the position of Te Rūnanga o Toa Rangatira and during the joint presentation of mana whenua, Dr. Baker, Mr Royal and Mr McLean answered questions from the Panel regarding mana whenua engagement in the development of the plan change.

[25] Mr Leeming and Mr Turver made oral presentations at the hearing and outlined their reasons for supporting the plan change. Mr Leeming and Mr Turver also showed the Panel a cannonball that they had found on the Wāhanga Tahi portion of the site, that they believed could have originated during the historic battles in the area. Their account was also reported in the local newspaper.[13] Mr Leeming provided copies of their speaking notes following the hearing.

[26] We then adjourned the hearing and issued a Minute[14] setting out a number of questions for Council arising from the hearing, including requests for additional information regarding the Operative District Plan planning framework for SASM, resource consent processes and mapping of the area over time. Council filed the additional material on 26 June 2026. Te Ātiawa and Mr Petherick provided comment on the Council response.[15]

[27] The Council's final Reply was filed on 17 July 2026.[16]

[28] The Panel formally closed the hearing on 4 August 2026.[17]

Procedural Matters

[29] Mr Petherick, members of the collective, and the WLDC raised concerns about the adequacy of notice given of the Plan Change by the Council. Mr Petherick suggested that the Council had not advised all residents of the Wāhanga Rua area or provided proper public notice of the plan change. He suggested this was a reason for the low submission numbers. Mr Petherick reiterated this in his response to Minute 3 further suggesting that the residents

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13 https://www.nzherald.co.nz/kapiti-news/news/cannonball-discovery-a-riddle-inside-a-mystery/J4JMAQQEVZF5TBF2A3KVD6Y7NI/

14 Minute 3 https://www.kapiticoast.govt.nz/media/idlbrqom/minute-3-post-hearing-11-june-2026.pdf and Minute 4 (extension of time) https://www.kapiticoast.govt.nz/media/h1kjxlcy/minute-4-timeframe-extensions-23-june-2026.pdf

15 L Petherick, Response to Minute 3, 1 July 2026 https://www.kapiticoast.govt.nz/media/ebhg42mx/s5-fs2-fs5-laurence-petherick-karewerawera-urupa-30-june-26.pdf. Te Ātiawa, Response to Minute 3, 1 July 2026 https://www.kapiticoast.govt.nz/media/mh4laxzc/s3-ātiawa-ki-whakarongotai-comment-on-further-information.pdf

16 Section 42A Report Writer's Reply, 17 July 2026 https://www.kapiticoast.govt.nz/media/irznkil1/pc3-officers-right-of-reply-17-july-2026.pdf

17 Minute 5 https://www.kapiticoast.govt.nz/media/00zemzyt/minute-5-post-hearing-correspondence-and-closure-of-hearing-4-august-2026.pdf

named as part of the 'collective' had never received communication about PC3 from the Council.[18] Following the hearing Mr Petherick sent an email further criticising the Council for notification in a local free community newspaper. WLDC also submitted that the Council had failed to consult with them regarding the plan change. We did not hear directly from the members of the collective referenced by Mr Petherick regarding this matter, or from WLDC.

[30] The Council responded that it had publicly notified the plan change in accordance with the requirements of RMA Schedule 1 and had extended the time frame for submissions. It had published the public notice in the Kāpiti News on 18 September 2024 and undertaken a mail drop (a letter and a copy of the public notice was hand delivered by staff) to the residential properties in Wāhanga Rua and emailed WLDC to its address for service.[19]

[31] RMA clause 5 of Schedule 1 requires the Council to publicly notify the plan change. Public notification[20] requires notice to be given in accordance with RMA s2AB which requires notice on a free internet site and in one or more local newspapers circulating in the areas of the plan change. Following that, clause 5(1A) requires that the Council either send a copy of the public notice and any further information related to the plan change the Council thinks fit to every ratepayer for the area of the territorial authority where that person is likely to be directly affected by the change or, include the public notice (and further information related to the plan the Council thinks fit) in 'any publication or circular that is issued or sent to all residential properties and Post Office box addresses located in the affected area, and shall send a copy of the public notice to any other person, in the territorial authority's opinion, is directly affected by the plan'.

[32] Mr Petherick suggested in his email on 26 July 2026 that the newspaper was only available in local dairies. We do not know if that is the case. However, as part of the requirements for notification under RMA s2AB the Council says the notice was included in a local community newspaper. A community newspaper appears to be an appropriate publication. The Council Reply included a copy of the public notice in the 'Kapiti News' community paper and set out that the 46 landowners directly affected were personally sent a copy of the public notice and information regarding where to access further information by hand delivery. In the case of WLDC they were notified by email, which was a method available to meet the requirements of clause 5(1A) of Schedule 1.

[18] L Petherick, Reponse to Minute 3, 1 July 2026
[19] Section 42A Report Writer's Reply at paragraph 6.3 and 6.4 and Appendix A-C.
[20] RMA, s2

[33] We have no reason to conclude that notification was not carried out in accordance with the RMA.

3. APPROACH TO PANEL RECOMMENDATIONS

[34] In the following sections of the Report the Panel addresses the following:

(a) Statutory, cultural and historical, and planning and development context.

(b) Issues raised in submissions and findings.

(c) Overall evaluation of PC3.

(d) Panel recommendation on PC3.

[35] We note that there is already an extensive amount written on the planning history of the Kārewarewa Urupā as a consequence of earlier Waitangi Tribunal, Environment Court, High Court and Council decisions. We have considered all these materials in reaching our recommendations. When discussing the above matters the Panel does not repeat detailed parts of earlier findings but references relevant aspects in the body of the Report and to matters we have found material to our findings.

[36] We do not replicate the summaries of submission points as detailed in the Council s42A Report; we adopt the summaries as accurate reflections of the submissions made on PC3. We have read the submissions as lodged but refer only to matters we consider are helpful to explain our findings.

[37] Our Report focuses on the issues raised by submissions in relation to PC3.

4. STATUTORY, CULTURAL AND HISTORICAL, PLANNING AND DEVELOPMENT CONTEXT

Statutory Context

[38] Mr Conway summarised the relevant statutory tests for decisions on plan changes under the RMA. We have adopted his summary of the relevant tests in RMA Part 2, ss31, 32, and

74 in Section 4 of his submissions. We received no contrary legal submissions.[21] We apply those requirements to our evaluation of PC3 later in this Report.

[39] In making our recommendations we are also required to do so in accordance with (and give effect to[22]) any relevant National Policy Statement and Regional Policy Statement, have regard to any relevant management plans (in this case the Waimanu Lagoons Management Plan) and take into account any relevant iwi management plans.

[40] The Council's s32 Evaluation Report sets out the relevant higher order planning documents, with one of the key documents being the Wellington Regional Policy Statement ("RPS").[23] We accept that the s32 Evaluation Report accurately records the relevant statutory documents for our consideration. Ms Naidoo, in her s42A Report identified that since the s32 Evaluation Report was published, changes to the New Zealand Coastal Policy Statement have been gazetted, but they have no bearing on this plan change.[24] We accept her opinion and received no contrary planning evidence.

[41] If the Panel were to make any recommendations to amend the provisions of PC3 as notified as a consequence of submissions made on the plan change, we are required to evaluate the amendment in accordance with RMA s32AA. We have not found it necessary to make any changes to the plan change as a consequence of submissions and therefore a s32AA evaluation is not required.

Scope issues

[42] Our recommendations are limited to the scope of submissions on the plan change. Initially Ms Naidoo expressed the view that, to the extent that some submissions requested changes to the objectives, policies and rules of the SASM chapter of the District Plan, those submissions were not 'on' the plan change and out of scope. That was because PC3 did not seek to alter objectives, policies and rules, rather it simply added a new SASM to Schedule 9 and the planning maps.

[43] Mr Conway's legal submission was more nuanced than that. He recognised that if a submission sought changes to relevant objectives, policies and rules that related only to the proposed SASM, then such changes may be within scope.[25] On that basis we considered that

[21] Legal Submissions on behalf of the Council, Matthew Conway, 22 May 2026, paragraphs 4.1-4.15.
[22] RMA, s75(3)
[23] S32 Evaluation Report, section 2.3-2.7
[24] S42A Report, paragraphs 25-27
[25] Legal Submissions on behalf of Council, Matthew Conway, 22 May 2026, section 9.

if we found it appropriate to make changes to the objectives, policies and rules and we confined those to the proposed SASM, then those provisions would be within scope and fall somewhere between the plan change as notified and submissions that opposed the plan change in its entirety.

[44] One submission from Mr Brett Osborne[26] requested changes to the rules in the plan, as a consequence of the submitter's primary submission point, to remove Wāhanga Rua from the SASM Schedule. He also requested some changes to provisions where he considered there to be some uncertainty in interpretation. We requested Ms Naidoo to reconsider the scope issue in light of Mr Conway's submissions,[27] and the submission of Mr Osborne. We consider her response when discussing issues arising from submissions below.

[45] We accept Mr Conway's summary of the case law that applies to scope issues and have applied this in our findings below.

[46] In the following sections of the Report, we set out the cultural, historical, development and planning context for the proposed plan change.

Cultural and Historical Context

[47] We outline below the cultural and historical context of the urupā, including the issues over time that have affected the relationship that Te Ātiawa has with Kārewarewa Urupā, that led to the Council decision to notify PC3 to recognise and provide for the relationship of mana whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu,[28] and other taonga, and to protect historic heritage from inappropriate subdivision, use and development.

[48] In outlining this context, we have considered relevant evidence related to PC2, and all evidence and submissions submitted for PC3.[29]

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[26] S9 Brett Osborne https://www.kapiticoast.govt.nz/media/cofd1vfr/s9-brett-osborne-pc3-submission-3112024.pdf

[27] Minute 3

[28] RMA s6(e) uses the drafting convention of 'waahi tapu'. In some evidence and documents a macron is applied and the convention is 'wāhi tapu'. The submission from Te Ātiawa uses 'waahi tapu'. The Panel has used 'waahi tapu' throughout the Report for that reason.

[29] S32 evaluation, s42A report and Appendices including the Waitangi Tribunal Report for Karewarewa Urupā, legal submissions, other submissions and further submissions including hearing submissions.

[49] The Council's identification of the site as a waahi tapu, and its conclusion that the site required recognition and protection, was reached following consideration of the Waitangi Tribunal's 2020 Kārewarewa Urupā Report and following engagement on draft PC2.[30] Council relied on this report as part of the evidence of the significance of cultural values. The report was released in 2020, ahead of the Tribunal's main iwi report, and was described as a "pre-publication" report. However, the Tribunal noted that its findings and recommendations would not change in the final publication.

[50] The Council's s32 Evaluation Report[31] explained the historical context of the proposed plan change:

> Kārewarewa urupā is located to the east of the confluence of the Waikanae River and the Waimeha Stream to the south-west of the suburb of Waikanae Beach (see Figure 3)[32]. It is set within a residential setting generally comprising single storey (or in some cases two-storey) detached residential buildings on moderately sized sites. The underlying landscape is characterised by gently undulating topography typical of the dune landscape of which Waikanae Beach is a part.
>
> Kārewarewa urupā is a place of significant spiritual and cultural value to tangata whenua. In 1839, the historically important battle of Kuititanga occurred in the Waikanae district, and many of those who died in this battle were buried at the urupā. Te Ātiawa have described Kārewarewa urupā in the following terms:
>
> The area was then no longer appropriate for occupation or food cultivation and was thus abandoned and deemed waahi tapu. From the mid 19th century the site has been used as an urupā. Several very significant tūpuna of Te Ātiawa are recorded as being buried there, as well as Pākehā that had some connection to Te Ātiawa. Te Kārewarewa is still regarded as an urupā and waahi tapu.[33]
>
> In 1919, the block of land containing the urupā was partitioned off from a larger block of Māori freehold land. The block of land was sold to the Waikanae Land Company in 1969, who successfully applied to the then Horowhenua County Council to have the Māori cemetery designation that covered the urupā removed from the District Scheme (see Figure 5)[34]. Since this time approximately half of the land has been subject to residential urban development, around Te Ropata Place, Barrett Drive and Marewa Place. 45 residential properties have been subdivided and developed in this area, alongside the road network comprising Barrett Drive, Marewa Place, Te Ropata Place, and Tamati Place. The remainder of the land (a large block of land located on Tamati Drive, a portion of the reserve accessed from the corner of

[30] S42A Report paragraph 36. PC2 was the Councils proposed Intensification Planning Instrument. We discuss this below at [96]-[102].
[31] S32 Evaluation Report, section 3.1.1
[32] See Figure 1 above.
[33] WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version page 5. https://www.kapiticoast.govt.nz/media/mf2i5nzf/section-32-evaluation-report-appendix-a-k%C4%81rewarewa-urup%C4%81-report-waitangi-tribunal-2020.pdf
[34] Reproduced below.

Barret Drive and Marewa Place, and a smaller block of land at 6 Barrett Drive) has remained largely undeveloped.

There is a history of kōiwi/human remains being discovered during prior development works at the urupā. The history of the urupā and its significance are described in detail in a report by the Waitangi Tribunal.

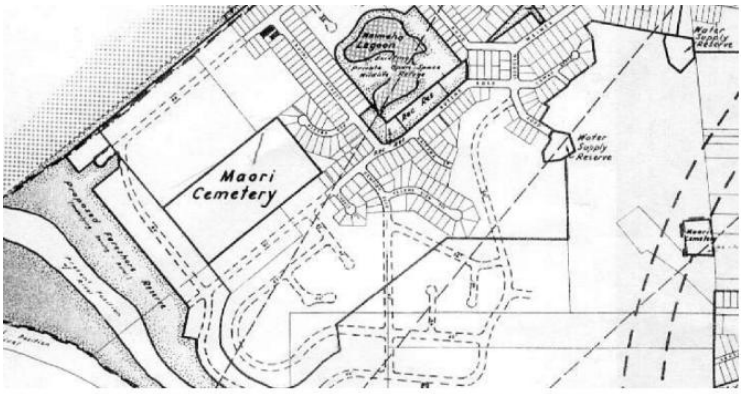


Figure 5: Horowhenua County District Scheme map. Source: Waitangi Tribunal (2020), p.26.

[51] The submission from Te Ātiawa, together with the evidence of Dr Baker, who also appeared before the Tribunal, summarised the Tribunal's findings. The submissions of Ngāti Toa Rangatira and Ngā Hapū o Ōtaki echoed those concerns and connections to the Kārewarewa Urupā.

Early settlement and significance of the site

[52] Te Ātiawa submitted[35] that in the early 1800s Te Ātiawa settled the wider Waikanae area, which had previously been occupied by its original inhabitants, as part of the wider migrations of Ngāti Raukawa and Ngāti Toa Rangatira in the Kāpiti district.

[53] The submission stated that the settlement at the eastern confluence of the Waikanae and Waimeha rivers was known by several names: Te Kuititanga, Waimeha, and Te Kārewarewa. This may indicate either one settlement with several names, or a cluster of three pā, kāinga, or other cultural features, including mahinga kai and urupā. Warfare shaped the lifespan of pā and mahinga kai sites in the area; battle sites were often abandoned, particularly where casualties were high.

[54] The battle of Te Kuititanga in October 1839 is described by experts as a "war of national significance." It was pivotal for Te Ātiawa, establishing the enduring boundary with Ngāti

[35] S3 Te Ātiawa ki Whakarongotai Charitable Trust https://www.kapiticoast.govt.nz/media/3wiiyiuv/s3-%C4%81tiawa-ki-whakarongotai-pc3-submission-29102024.pdf

Raukawa at Kūkūtauāki. Te Ātiawa's submission noted Carkeek's account that Waimeha pā bore the brunt of the attack, with many of the dead buried where they fell. The site was deemed unsuitable for settlement or food cultivation. Since then, Kārewarewa has been regarded as a waahi tapu, where important tūpuna are buried, including prominent figures such as chieftainess Metāpere Te Waipunahau and the famed Kahe Te Rauoterangi.[36]

[55] Dr. Baker also described the site as the location of Kūititanga Battle – a nationally significant battle in 1839 between Ngāti Raukawa to the north, and her Ātiawa tūpuna. Its impact was so profound that elders who lived closer to those with living memory of it would not speak its name in any sort of casual dialogue. She said many who died were buried where they fell, and the pā and cultivation grounds were immediately abandoned as the site became waahi tapu. It was then used as a traditional urupā.

Land status and alienation

[56] The Waitangi Tribunal Report sets out a timeline of events related to the Ngārara Block and its later partitioning. In summary:

a. The original Ngārara Block in the Waikanae district comprised approximately 45,000 acres.

b. Partitioning began in the late 1880s and early 1890s.

c. Ngārara West A14 block was partitioned out in 1891, awarded to 13 individual owners, and comprised of 260 acres.

d. The surveyor's field book in 1891 recorded "graves" on this block.[37]

e. According to Dr. Baker, kaumātua had identified the owners of A14 as "descendants of those that were buried at Te Kārewarewa".[38]

[57] According to the Waitangi Tribunal Report, Ngārara West A14 block, was then subject to contradictory and overlapping partitions between 1896 and 1919. Throughout that period, there was a continuing focus on setting aside part of the block as a "cemetery", "grave yard",

[36] WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version page ix.
[37] WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version page 13
[38] Ibid page 14

or “urupā”. At the same time, the law governing Māori land, cemeteries, and burial grounds changed repeatedly, including legislation intended to protect such places.[39]

1896 Partition Application

[58] In November 1896, Raniera Erihana and others applied to partition Ngārara A14 to “set apart a portion of it for a Cemetery to include the part to the westward of [Ngārara West A15] between that boundary and the River Waimea”.[40] Judge Alexander Mackay made orders in 1896 to cut out an area of approximately 10 acres, but that area was never surveyed. The Waitangi Tribunal[41] had no evidence explaining why the partition had not been surveyed between 1896 and 1905.

[59] In 1894, the Court imposed a restriction under the Native Land Court Act 1894 that the land should be “absolutely inalienable”. Although the 1894 legislation allowed judges to vary or remove such restrictions, no attempt was made to do so before the enactment of new legislation in 1909.[42] The restrictions on alienation were cancelled by the Native Land Act 1909.

1919 Partition and Legal Consequences

[60] In June 1919, the Court ordered partition of 20 acres as Ngārara West A14B1. The land became native freehold land owned by 34 individuals, but it was not reserved as a Native Reservation, a status that would have made the land inalienable where there were more than 10 owners.

[61] The Waitangi Tribunal considered this important for two reasons:

(a) Reservation status would have protected the block from sale and provided trustees to care for the urupā; and

(b) The failure to reserve the land was later treated as evidence that the block had been set aside for a *future* cemetery, rather than an existing one. That interpretation later supported the removal of the official cemetery designation from the district plan (see paragraphs [69]-[74] below).

[39] Ibid page 17
[40] Ibid page 14
[41] Ibid page 15
[42] Ibid page 14

[62] In giving evidence before the Tribunal, Dr. Baker observed that the survey for this partition had been completed by 1920, and that Ngārara West A14B1 was located in the original site described in 1896 as "between the Western boundary for block [Ngārara West A] 15 and the Waimeha".[43]

Sale of 20-Acre Block

[63] The Waitangi Tribunal Report[44] stated that after the introduction of the native land laws, the people repeatedly tried between 1896 and 1919 to set aside about 20-acres as an urupā. The Kārewarewa urupā block was finally granted separate title as Ngārara West A14B1 in 1919, but it was not formally set apart as a native (later Māori) reservation.

[64] Dr. Baker stated that, in 1968, the urupā lands were vested in the Māori Trustee without most of the iwi knowing, apparently on the signatures of a small minority of owners and on advice that this was not the urupā block.

[65] The sale of the 20-acre block was considered solely on the merits of the price offered. A key feature of the meeting of assembled owners was that those present did not appear to understand that "A14B1" was the urupā block. One proxy was recorded as initially thinking it was the cemetery block but later learning that it was not.[45] The basis for that conclusion is unknown; nevertheless, it was accepted, and the land sold with only 11.5% of the total shares voting in favour.[46]

[66] The Tribunal Report found that the statutory regime then in force allowed small minorities of owners, as occurred here, to sell majority-owned land without the majority's knowledge or consent. The system lacked checks and balances because the Māori Land Court's confirmation of sale was limited by statute to price.

[67] The Māori Trustee then sold the land to the WLDC in 1969.

[68] The Waitangi Tribunal[47] found that this statutory regime deprived owner groups of their tino rangatiratanga over their land and breached the Treaty principles of partnership and active

[43] Ibid page 16
[44] Ibid
[45] Ibid page 21
[46] Ibid page 22
[47] Ibid

protection. In this case, the prejudice was the loss of ownership and control of a significant urupā, which was left protected only by its cemetery designation in the district plan.

Removal of the cemetery designation

[69] After purchasing the land, the WLDC applied to the Horowhenua County Council in 1970 to remove the Māori Cemetery designation. It argued that there were no proven burials on the site and that the court had set the land aside for a future cemetery in 1919, a position which the Native Land Court had confirmed.

[70] Te Ātiawa opposed the removal of the designation:

> "Te Aputa Kauri told the Council that 'it was the resting place of many persons connected with the early history of Waikanae,' Sylvia Tamati objected stating that this land was the 'burial place of my tribal ancestors.' Johnson Te Puni Tamati Thomas filed an objection stating: 'My ancestors fought, died and are buried in this cemetery and tapu ground.' 'Jillian Simmonds also objected, stating that the land was tapu and she had 'ancestors and relatives buried in this Māori Cemetery'*[48]*

[71] Due to the hearing processes of the day, the Council disregarded all but one submission (Mrs Kauri) on the basis that they were lodged out of time.

[72] WLDC submitted[49] to the Horowhenua County Council that an urupā is not an appropriate use for the land. The Horowhenua County Council decided to lift the cemetery designation. The Council Notice of Decision noted at the time the possibility of human remains:[50]

> THAT Objection 3/1 be DISALLOWED, the Council being of the opinion that the designation "Maori Cemetery' shall be lifted, the land having been sold by the Maori Owners to a Development Company, and there being no certain evidence that it is an historical Maori Burial Ground, or that interments have taken place since it was set apart for a future cemetery in 1919:
>
> But nevertheless, as there is a possibility that human remains may be uncovered as development of the land proceeds, the Waikanae County Town Committee's attention be drawn to this possibility, so that in recommending the approval of any scheme of subdivision of the land, the Committee may recommend as a condition of such approval that the Company shall arrange for the re-interment of any such remains, on a site to be

[48] Dr. Mahina-a-rangi Baker hearing submission para 23
[49] Written by Maurice Rowe as evidenced in the slides attached to Dr Bakers hearing submission
[50] Horowhenua County Council 10 August, 1970

determined by the Waikanae County Town Committee, and, if the Committee sees fit, the erection of a commemorative plaque with a suitable inscription thereon.

[73] Dr. Baker noted that the Council made the decision to lift the designation based on incorrect information.[51]

[74] The Waitangi Tribunal noted the Town and Country Planning Act 1953 was inconsistent with Treaty principles. It was a monocultural legislation that took no account of Māori values or interests and gave iwi and hapū no statutory role in consultation or decision-making in district plan processes. It also found that the Burial and Cremation Act 1964 gave little or no protection to Māori burial grounds and did not protect Kārewarewa in this case.

Desecration, disturbance, and cultural effects

[75] The Waitangi Tribunal Report noted that the WLDC owned about 100 acres on the northern side of the river, where it bulldozed the sandhills for residential sections and also began dredging the Waimeha wetlands (the old stream bed). By the end of 1971, a special dredge had 'moved 350,000 cubic metres of sand and created the new Waimanu Lagoon'. This dredged material was compacted and re-deposited on top of the urupā.[52]

[76] During the Waitangi Tribunal Hearing the Tribunal received evidence that former owners and the wider iwi were adversely affected by the desecration of the urupā in the early 1970s, when dredged material from the adjacent wetland was dumped on it and the land was developed for housing. Dr. Baker described kaumātua seeing earth from the urupā, containing visible kōiwi, mixed with dredge material, ground up, and sprayed back over the land.[53]

[77] In 2000, when the WLDC were undertaking preparatory works for the subdivision of the proposed Wāhanga Tahi area (known as Stage 6 of the development) the graves of 11 individuals were exposed. Dr. Baker stated that WLDC did not contact officials, despite its legal obligation to do so. Instead, a young Māori man operating the digger called his grandfather for help, which led to the iwi and, eventually the authorities, being contacted.[54]

[78] Dr. Baker referred to a map from O'Keeffe's 2012 Archaeological Assessment, which was based on a 2003 geophysical survey. The red anomalies on the map indicated possible

[51] Ibid paras 24-25
[52] WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version page 41
[53] Ibid page x
[54] Dr Mahina-a-rangi Baker hearing submission para 33

burial sites, objects, or grave-related voids. However, the 1970s earthworks reduced solid material in the soil to a size that geophysical survey could not detect. To Te Ātiawa, these maps, treating their ancestors as anomalies, or unexpected presences in the land, are detached from the land's broader history. [55]

[79] Further geomagnetic surveys were undertaken by the WLDC to demonstrate that kōiwi were limited to a particular part of the site (which we discuss in further detail at [91-93]. In the Waitangi Tribunal hearing Dr. Baker described the claimants' perspective of the work:[56]

> The analogy I've used to describe the offence that this rationale presents, is if someone was to propose entering into an old battle ground where people have fallen, such as Gallipoli, or to enter into any of the cemeteries in Aotearoa, and dig around in an attempt to find a 0.5 metre squared area that doesn't appear to contain human remains, as a basis for proceeding to develop houses on those sites.

[80] Dr. Baker stated:

> The destruction of the urupā, and the disturbance and treatment of those buried at the urupā has set in train intergenerational trauma, as our people grapple with the reality that we and our ancestors have not been afforded the respect and reverence for our dead that others in this country are. The cultural effects of this are of the highest order of severity. We feel diminished and dehumanised as a people.
>
> We stand with all those of previous generations to say that our relationship to our urupā and our ancestors warrants protection and the development of Kārewarewa urupā must stop. [57]

[81] Ngāti Toa Rangatira[58] stated that Kārewarewa urupā is the burial place of tūpuna of Te Ātiawa ki Whakarongotai, Ngāti Raukawa and Ngāti Toa Rangatira. Ngā Hapū o Ōtaki[59] also reiterated the immense cultural and historical significance for wider iwi and hapū of the region.

[82] Ngāti Toa Rangatira acknowledged the history of Kārewarewa urupā and the multiple injustices associated with it including:

a. alienation of the land;

b. removal of the cemetery designation;

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55 Ibid paras 31-32
56 WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version page 3
57 Dr Mahina-a-rangi Baker hearing submission paras 36-37
58 S4 Ngāti Toa Rangatira https://www.kapiticoast.govt.nz/media/stwcujlh/s4-te-r%C5%ABnanga-o-toa-rangatira-pc3-submission-1112024.pdf
59 S10 Ngā Hapū o Ōtaki submission https://www.kapiticoast.govt.nz/media/lp2bfbwq/s10-ng%C4%81-hap%C4%81-o-%C5%8Dtaki-pc3-submission-4112024.pdf

c. desecration and dumping of dredged materials;

d. inappropriate development of streets and houses;

e. disturbance of the whenua and exposure of kōiwi;

f. lack of protection and inappropriate consultation; and

g. continued efforts being made to further develop on the urupā.

[83] They also acknowledged the grievances these injustices have caused for Te Ātiawa, who have held ahi kā, and the mamae endured over a long period through the disturbance and disrespect of tapu, tino rangatiratanga, kaitiakitanga and tikanga.

[84] The Waitangi Tribunal concluded that there was no question about the validity of the urupā status or the presence of human remains, and the great significance in cultural and spiritual terms to Te Ātiawa.[60]

Planning and Development Context

[85] Overlaying the cultural and historical context of the proposed SASM is a complex land development and planning history that spans many decades.

Land development

[86] Following the removal of the 'Māori Cemetery' designation from the Horowhenua District Plan in 1970, the development of land within the proposed SASM Wāhanga Rua commenced around 1973 with the development of a lagoon along the north and northwest boundary, followed by subdivision works and housing construction. The development of the proposed SASM Wāhanga Tahi area commenced in 1991 with earthworks. In 1999 works for roading and trenching for services appears to have taken place and in 2000 the works ceased when kōiwi were disturbed.

[87] The sequence of development is illustrated in the aerial photographs that were provided to us in response to Minute 3. We received three sources of photographs in response to Minute 3:

[60] WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version page 7

(a) Those contained in the Archaeological Assessment of Effects undertaken for WLDC as part of an application for Archaeological approval to undertake earthworks for the development of 6 allotments (stage 4B of the development) on a smaller area of Wāhanga Tahi on the south western corner of Wāhanga Rua.[61]

(b) The second source of photos was provided by Council.[62]

(c) A third source was provided by Mr Petherick.[63]

[88] The photos align and we are satisfied these provide us with a good understanding of the changes to the area between 1940 and the present day. The topography of the proposed SASM altered significantly over the period 1973 to 2001 as a consequence of the land development works undertaken by WLDC.

[89] The images provided by Mr Petherick and the Council are consistent with those included in the WLDC Archaeological Assessment of Effects.[64] We have included the clearest images of the full site from Mr Petherick and the Council in Appendix 2.

[90] We note that Mr Petherick also made reference at the hearing to different stages of subdivision work that he had observed over the years. His description was consistent with the evidence of Mr Maurice Rowe, a solicitor and for a period a director of WLDC, given during hearings on PC2.[65]

[91] Mr Rowe's PC2 evidence had explained in more detail that extensive earthworks for road formation and underground services were installed and ready for final curbing, channelling and sealing, and water pipes ready for pressure testing in accordance with resource consent for subdivision and development.[66] In July 2000 contractors for WLDC uncovered human remains (kōiwi) near Wi Kingi Place and works ceased and Heritage New

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61 Archaeological Assessment of Effects – Waikanae Land Company Limited – Stage 4B Subdivision Part Lot 1 DP 71625, 29 June 2021. The Report was provided to the Panel by the Council in response to Minute 3.

62 Section 42A Report Writer's Reply, 17 July 2026, Appendix C

63 Response to Minute 3, L Petherick, 1 July 2026. Mr Petherick is a retired Professional Civil Engineer and Urban Public Valuer but appeared in his personal capacity as a resident/ratepayer.

64 Archaeological Assessment of Effects – Waikanae Land Company Limited – Stage 4B Subdivision Part Lot 1 DP 71625, 29 June 2021, section 4.7, prepared on behalf of WLDC for an Archaeological Approval. The Panel has not reproduced the images and commentary from the Report noting the disclaimer on the Report, and that the author was not before us.

65 Statement of Evidence of Maurice Bathurst Rowe, 10 March 2023, paragraphs 12-35 (PC2) https://www.kapiticoast.govt.nz/media/hgvodtp0/s104-waikanae-land-company-maurice-rowe-statement-of-evidence-10-03-2023.pdf

66 Ibid at 15

Zealand Pouhere Taonga ("HNZPT") were advised.[67] Following archaeological examination, discussions with iwi and approval of HNZPT, the remains were reinterred in 2001 on Wi Kingi Place in the location they were found.

[92] The WLDC commissioned a series of geomagnetic survey and test pits. These were carried out with the purpose of determining the possible location of kōiwi and evidence of past dredging activities.[68] The geomagnetic surveys showed areas referred to as 'anomalies' a technical term indicating the presence of materials other than soils. It was concluded that the anomalies were likely kōiwi/human remains. A number of anomalies were recorded in the 2018 report, but it was difficult to identify the reasons for those with any certainty. The report recorded that multiple events of earthworks and since removed buildings add complexity and ambiguity to the data. The report also opined that burials could have possibly been much wider spread over the property than the previous work and the accidental discovery locations suggest. The report considered that the only way to provide certainty is intrusive ground testing.[69]

[93] The more recent geophysical site investigations undertaken in 2019 initially identified fifty discrete anomalous locations warranting more detailed investigations which is similar to the 2018 assessment. Further detailed radargrams indicated five locations that show characteristics which could be indicative of possible burial plots. The remaining forty-five discrete anomalies did not appear to show characteristics indicative of burial plots.[70]

[94] No further development of the land has occurred.[71] At the time of our site visit, although we did not access Wāhanga Tahi, we could see it is defined but overgrown with scrubby growth including blackberry. Mounds of soil, sand and remnants of the sand dunes are evident. There is also some evidence of tracks formed by walkers. Mr Leeming confirmed at the hearing that local residents often access the area and walk their dogs.

Planning Context

[95] In its 2020 Report on Kārewarewa Urupā the Waitangi Tribunal concluded that on the basis of traditional, historical and archaeological evidence it was clear that the block of land

[67] Ibid at 16
[68] Ibid at 21-28
[69] Report on Geomagnetic Survey, Tamati Place, Waikanae, Archaeology Solutions Ltd, April 2018, pages 18-21
[70] Geophysical Site Investigations: Magnetic Gradiometer and Ground Penetrating Radar Tamati Place, Waikanae Beach, Waikanae. Southern Geophysical, June 2019, page 4
[71] Ibid at 18-20

was an urupā,[72] therefore the Council determined that it must recognise and provide for the urupā under RMA s6(e) and 6(f).

[96] During 2022 the Council resolved to include the Kārewarewa Urupā in Schedule 9 to the District Plan as part of the Council's Intensification Planning Instrument ("IPI") known as PC2. In doing so the Council identified the Urupā as a qualifying matter under RMA s77I(a).

[97] PC2 as notified was for a smaller area to be included in the proposed SASM than the area before us in PC3. That is because during the hearing of submissions on PC2, the Commissioners accepted a submission from Te Ātiawa to extend the southwestern boundary to the end of Te Ropata Place to match the earlier surveyed boundaries of the Māori Cemetery designation.[73] This resulted in the number of already developed sections increasing from 39 to 45 included in the PC3 proposed SASM Wāhanga Rua.

[98] When the Council notified its IPI in August 2022 there were two related proceedings before the Environment Court:

(a) an appeal by WLDC against the decision of Heritage New Zealand Pouhere Taonga to decline its application for an archaeological authority[74]; and

(b) a direct referral of the WLDC's application for a subdivision and land use consent for stage 4B of the development.[75]

[99] The proceedings related to stage 4B of the subdivision on Barrett Drive. The area was proposed as SASM Wāhanga Tahi by PC2. The SASM proposed in PC2 would, if successful, not only have disapplied the Medium Density Residential Standards, but it would also have made some previously permitted activities restricted discretionary and others non-complying.

[100] The Environment Court considered by way of a preliminary hearing on the direct referral matter whether the Council could schedule the proposed SASM as part of its IPI and found that it could not.[76] The Council appealed the Environment Court decision to the High Court. The High Court upheld the Environment Court decision and further determined that the provisions could be included in a proposed plan change under the standard RMA Schedule 1,

[72] WAI 2200 Waitangi Tribunal Report 2020 The Kārewarewa Urupā Report – Pre-publication Version, page 7
[73] Commissioner Recommendation Report PC2 at [139] and [203]. https://www.kapiticoast.govt.nz/media/jrmofuz1/ihp-report-to-kapiti-coast-district-council-on-pc2.pdf
[74] ENV-2021-WLG-000034
[75] ENV-2022-WLG-000014
[76] *Waikanae Land Company Ltd v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 56

Part 1 process.[77] The Court proceedings were about the process undertaken to schedule the proposed SASM in the District Plan and did not make findings one way or the other on the merits of scheduling the SASM in the District Plan.

[101] Before the High Court decision, the Council had already decided to include the SASM in its decision on PC2 on the basis of the Commissioner recommendations that the Environment Court had wrongly decided the matter. As a consequence, the High Court made a declaration that the listing of the SASM was beyond the Council's powers for an IPI and quashed the listing.[78]

[102] The Council removed the Kārewarewa Urupā from the ODP and renotified the SASM as PC3 pursuant to the RMA Schedule 1 plan change process. The spatial extent of the proposed SASM in PC3 matches the spatial extent of the SASM recommended by Commissioners on PC2.

[103] Both Environment Court proceedings were later withdrawn.[79]

[104] We will return in more detail to the evidence of the cultural, historical, development and planning matters in our consideration of the issues raised in submissions on PC3 in the next section of our Report.

5. ISSUES RAISED IN SUBMISSIONS AND FINDINGS

[105] Having considered the submissions and evidence we received from submitters on PC3 and the s42A Report, we have identified the following issues relevant to our recommendations:

(a) Is the land area proposed to be included as a SASM correctly identified as Kārewarewa Urupā and Battle Ground?[80]

(b) Is the scheduling of Kārewarewa Urupā as Wāhanga Tahi and Wāhanga Rua the most appropriate way to achieve the purpose of the plan change?[81]

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77 *Waikanae Land Company Ltd v Kāpiti Coast District Council and Ātiawa ki Whakarongotai Charitable Trust* CIV-2023-485-333 at [64]
78 Ibid at [68]
79 *Waikanae Land Company Limited v Heritage New Zealand* [2025] NZ EnvC329 (regarding a costs application but reference is made to the withdrawal of both the archaeological approval appeal and the direct referral proceedings).
80 Arising from submissions S2, S3, S4, S5, S6, S8 and S10 and associated further submissions.
81 Arising from submissions S1-S10 and associated further submissions.

(i) Is the spatial extent of the SASM appropriate?[82]

(ii) Are the categories of Wāhanga Tahi and Wāhanga Rua appropriate?[83]

(iii) Are there any alternatives (regulatory and non-regulatory) that better meet the purpose of the plan change?[84]

(c) Does the proposed scheduling and mapping of Kārewarewa Urupā render affected land incapable of reasonable use?[85]

[106] We address each of these questions in turn.

Is the land proposed to be included as a SASM correctly identified as Kārewarewa Urupā and Battle Ground?

[107] We have addressed the events that led the Council to propose the inclusion of Kārewarewa Urupā as a SASM in the District Plan at [47]-[94] above. In terms of this issue, we examine the evidence as to whether the area of land proposed to be identified as a SASM in the District Plan has been correctly identified as Kārewarewa Urupā and Battle Ground. In doing so, we have considered the Waitangi Tribunal Report, the Environment Court and High Court decisions, and the Independent Hearings Panel recommendations on PC2. We then consider the submissions of Mr Petherick and the WLDC, together with the evidence of Dr. Baker, Ngā Hapū o Ōtaki and Ngāti Toa Rangatira.

PC2 Process and Panel Findings

[108] The Independent Hearings Panel for PC2 considered whether Kārewarewa Urupā should be included in Schedule 9 of the PDP as part of the Council's IPI process. Leaving aside the merits of that process, the Panel's recommendation report recorded that Te Ātiawa also sought adjustments to the boundaries of Kārewarewa Urupā as it was to be shown in the District Plan. Council officers adopted those changes in their Reply which the Panel accepted and recommended it be included in the District Plan; we discuss this further in paragraphs [97] to [102]. The IPI Recommendation for PC2 scheduling is illustrated below:

[82] In particular arising from the submissions S3, S5, S6 and S9 in so far as it seeks removal of Wāhanga Rua.
[83] Ibid
[84] Arising from all submissions.
[85] Arising from submission opposed to PC3



PC 2 - Kārewarewa Urupā scheduling as recommended following PC2 hearings

[109] The Hearings Panel for PC2[86] acknowledged that the Waitangi Tribunal reports on breaches of Te Tiriti o Waitangi. From that perspective, the Tribunal process does not involve existing landowners, nor does it purport to affect landowners' interests. The Tribunal also does not report for the purpose of resolving planning issues affecting private landowners. The Panel noted the Crown principle that Crown breaches do not create obligations for private landowners to remedy those breaches.

[110] The PC2 Hearings Panel considered the Waitangi Tribunal report, evidence from Te Ātiawa and evidence from the WLDC concerning Kārewarewa Urupā. As noted above, the submission of Te Ātiawa also sought to amend the boundary of the urupā.

[111] The WLDC submission[87] on PC2 contested the values attributed to the land, on the basis that human remains are located in only a small part of Kārewarewa Urupā Block.

[112] The PC2 Recommendation Report stated:

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86 PC2 Independent Hearings Recommendation Report page 56: Office of Treaty Settlements "*Ka tika* ā muri, *ka tika* ā mua, Healing the past, building a future", March 2015.

87 PC2 Independent Hearings Recommendation Report pages 58-59 set out the executive summary of Mr Gibbs (heritage management consultant on behalf of WLC) who contended that the area of the urupā is markedly smaller because human remains were only found in discrete locations.

> Of course, the Kārewarewa Urupā Block's cultural and spiritual values are not confined to burial grounds or archaeological values. The area signifies a sacred space with the cultural memory of many events. For example, Te Ātiawa considers the Kārewarewa Urupā Block is a defined area marked by esteemed forebears and also to memorialise the historically important battle of Kūititangā.[88]

[113] The Hearings Panel for PC2[89] found that the values of the Kārewarewa Urupā Block are historical, spiritual and cultural. Those values are associated with Te Ātiawa occupation and with events connected to the land. These are not limited to burial values, although those values are an important component. They include the remains of esteemed ancestors and therefore engage the highest obligations for protection and care following the tikanga of Te Ātiawa.

[114] The Independent Hearings Panel for PC2 supported the provisions as recommended by Council in their Reply evidence.[90]

Appeals to the Environment Court and High Court

[115] As discussed above, the Council's decision on PC2 was appealed to the Environment Court and the High Court. In both processes, the extent or area of Kārewarewa Urupā Block was not contested and remained the original 20 acres.

Submissions on PC3

[116] In its submission on PC3, the WLDC further contended that the Council had wrongly concluded that the subject land is the Kārewarewa Urupā. They submitted that when all the relevant material is taken into account,[91] there is a lack of cogent evidence that the subject land is Kārewarewa Urupā.

[117] Mr Petherick[92] submitted that the subject land was not legally an urupā. He also questioned the extent of the Kārewarewa Urupā Block relying on the low number of human remains found. His submission acknowledged significant evidence of some former burial use in the general area, including within the subject 20-acre block. However, apart from two

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88 Ibid page 59 at [152]
89 Ibid page 62 at [159]
90 Ibid page 80 at [203]
91 Said to include: extensive below ground works and installation of underground service lines throughout the Tamati Drive and Wi Kingi Place areas undertaken in the 1990's as part of the subdivision of this land, plus the results of three different ground penetrating radar tests and historical and archaeological research commissioned by WLDC.
92 S5 Laurence Petherick page 2

relocated tombstones and reinterred remains to outside of the area, he considered that only minor evidence of buried remains has been found.

[118] Mr Petherick[93] nevertheless considered that development should proceed. He proposed that, if any human remains were discovered, the 7,500sq.m.[94] of reserve land at the northern end of the block, formally the WLDC Reserve Contribution land, should be rezoned Urupā and transferred to Māori interests for future use or for reburial of any further remains discovered within the Wāhanga Tahi area of the subject block.

[119] Dr. Baker[95] highlighted that whilst some archaeological values may be identified in association to waahi tapu and sites of significance, they do not in any way define or determine waahi tapu and sites of significance. Archaeological values are distinct values that have no actual bearing on the cultural value of a waahi tapu or site of significance. Waahi tapu and sites of significance exist completely distinct as cultural values, regardless of whatever the archaeological values may or may not be.

[120] Dr. Baker's[96] evidence was that there are practical reasons why archaeological assessments and records may offer limited evidence of waahi tapu and sites of significance, including that:

a. Archaeological records do not provide a complete landscape assessment. They identify sites found ad hoc, often through development. The absence of a record does not mean a site lacks archaeological value; it may simply not have been discovered. In Waikanae, developed areas tend to have more recorded sites because development is more likely to uncover them.

b. Archaeological site identification depends on land users reporting discoveries. Given prior local prosecutions for unauthorised modification of archaeological sites, it is well known that some discoveries are never recorded.

c. Where development is not occurring, archaeological assessments require landowner consent, even for areas known to have values. At Kārewarewa, the landowner declined

[93] S5 Hearing Submission Notes of Mr L Petherick page 8 https://www.kapiticoast.govt.nz/media/iezn5rew/s5-fs2-fs5-laurence-petherick-written-statement.pdf

[94] The area of Natural Open Space Zone proposed to have Wāhanga Tahi applied is slightly more than the figure Mr Petherick used at 9,365m^2.

[95] In Te Ātiawa comments on further information from Kāpiti Coast District Council in response to the Panels Minute 3 dated 1 July 2026 para [4] https://www.kapiticoast.govt.nz/media/mh4laxzc/s3-%C4%81tiawa-ki-whakarongotai-comment-on-further-information.pdf

[96] Ibid at para [5]

the Wellington Archaeological Society's requests to assess the urupā before development.

[121] At the hearing, Ngā Hapū o Ōtaki and Ngāti Toa Rangatira supported this view. They considered that the values attributed to Kārewarewa Urupā were varied and together make up a complex and layered system that warrants protection.

Findings

[122] We agree with the Waitangi Tribunal, the Independent Commissioner Panel for PC2 and Dr. Baker that the site has a range of waahi tapu, cultural, historical and metaphysical values relevant to identifying sites and areas of significance to Māori. Archaeology is not determinative. The wording of s6(e) is the *relationship* of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. Similarly, the definition of historic heritage (in the context of s6(f) of the RMA) includes sites of significance to Māori, including wāhi tapu.

[123] We have applied the findings of the High Court in *Tauranga Environmental Protection Society v Tauranga District Council*[97] in that we are required to assess the credibility and reliability of the evidence before us, and when the considered, consistent, and genuine view of Te Ātiawa, Ngāti Toa Rangatira and Ngā Hapū o Ōtaki is that the proposed SASM correctly identified the area as Kārewarewa Urupā as being a site of considerable cultural significance to them, it is not open to us to decide that it is not.

[124] We find that the evidence we received from Dr. Baker, and representatives of Ngāti Toa Rangatira and Ngā Hapu o Ōtaki and the findings of the Waitangi Tribunal provide the basis for a considered, consistent and genuine view of the cultural values of the site.

[125] Based on the evidence before us, we are satisfied that the land proposed to be included as a SASM is Kārewarewa Urupā and the probable location of Kuititanga Battle Ground. We are satisfied from the evidence that there is a clear relationship of Te Ātiawa in particular, but also Ngā Hapū o Ōtaki and Ngāti Toa Rangatira to this site and Kārewarewa Urupā.

[97] *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] 3 NZLR 882

Is the scheduling of Kārewarewa Urupā as Wāhanga Tahi and Wāhanga Rua the most appropriate way to achieve the purpose of the plan change?

- *Is the spatial extent of the SASM appropriate?*
- *Are the categories of Wāhanga Tahi and Wāhanga Rua appropriate?*
- *Are there any alternatives (regulatory and non-regulatory) that better meet the purpose of the plan change?*

Spatial Extent of the Proposed SASM

[126] The spatial extent of the proposed SASM is intended to reflect the original surveyed boundary of the original boundary of Ngārara West A14B126. There was some confusion at the hearing by Mr Petherick as he had misunderstood the boundaries. He was concerned that the Council had extended the boundary in a way that differed from public notification. The issue was addressed by us in Minute 5. We record here that in the Hearing Panel's recommendation on PC2, the southwestern boundary was extended to include additional properties in response to submissions from Te Ātiawa to align the boundary with Ngārara West A14B126. For the purposes of PC3, Council carried forward the adjusted boundary. We are satisfied that on the evidence before the Panel that the boundaries are appropriate in light of the cultural and historical context and our findings at paragraphs [122] – [125] above.

[127] We are satisfied that the extent of the area identified as Kārewarewa Urupā reflects what was intended in the early Native Land Court proceedings and was secured by partition in 1919.

[128] We also acknowledge the minor boundary adjustment made through PC2 to more correctly align the SASM with the 1919 partition.

Are the categories of Wāhanga Tahi and Wāhanga Rua appropriate

[129] The Panel sought further information from the Council regarding the Wāhanga categories in Schedule 9. In particular we wanted to test whether the categories, and the consequential District Pan provisions that accompany each category, for Kārewarewa Urupā were appropriate. We had noted that categories Wāhanga Toru and Rima also apply to urupā elsewhere in the district. Ms Naidoo provided further details of each category in response to

Minute 3.[98] The explanations helped us understand the rationale. We also heard from Dr. Baker at the hearing that Te Ātiawa had actively contributed to the identification of Wāhanga Tahi and Rua, and had supported the lesser classification for the developed portion of Kārewarewa Urupā as a pragmatic and realistic response to the fact the land was developed and occupied.

[130] Having considered the additional material and the structure of the District Plan we did not find it necessary to recommend an alternative classification for the proposed SASM.

[131] The Council's s32 Evaluation Report considered three options to respond to the identification of the Kārewarewa Urupā as a site or area of significance to Māori pursuant to s6(e) and (f) of the RMA. The options were:[99]

(a) Option 1: Proposed approach. Recognise and provide for Kārewarewa Urupā as a waahi tapu site by adding the site to Schedule 9 of the District Plan, as outlined in section 5.0 of the s32 Evaluation Report.

(b) Option 2: Status quo. Do not recognise or provide for Kārewarewa Urupā as a waahi tapu site. Subdivision, use, and development would continue to be enabled based on the application of the General Residential Zone provisions (which incorporate the Medium Density Residential Standards).

(c) Option 3: Provide for lower density development provisions in the area (but do not identify Kārewarewa urupā as a waahi tapu site). Take Kārewarewa Urupā into account through providing for lower density development provisions at the site, rather than recognising it as a waahi tapu site in Schedule 9. This could include:

    (i) Limiting the density of development within the area, including by reducing the number of permitted residential units per site, and reducing building coverage;

    (ii) Limiting subdivision within the area by introducing minimum allotment size and shape requirements.

[98] Council Response to Minute 3, Attachment D, E and F
[99] S32 Evaluation Report, section 7

[132] The Council resolved that Option 1 was the most appropriate having considered the costs and benefits (economic and environmental) and the risks of acting or not acting. We note the Council did not provide an economic assessment of the 'costs and benefits'. This was on the basis that although RMA s32(2)(b) requires that, where practicable, the benefits and costs of a proposal are to be quantified, due to the nature of the resource management issue being addressed by PC3, which includes both tangible and intangible values and effects, it is not practicable to quantify all benefits or costs associated with the plan change.

[133] As such, the identification of benefits and costs associated with the plan change were principally qualitative. Notwithstanding this, some potential non-monetary costs associated with the plan change were estimated as part of providing the additional information required under the RMA to justify qualifying matters. We note that "qualifying matters" is a description unique to an IPI and appears in the s32 Evaluation Report due to the application of the Medium Density Residential Standards to the General Residential Zone arising from PC2. This information is set out in section 8.0 of the s32 Evaluation Report.

[134] The Council calculated the impact of the proposed provisions on development capacity to be some 318 residential units forgone as a result of accommodating the proposed SASM.[100]

[135] The Council summarised the costs of Option 1 to be:

(a) Reduction in housing development capacity (although this will not have a material impact on the ability for the District Plan to provide for sufficient residential development capacity).

(b) Opportunity costs associated with lost (in the case of Wāhanga Tahi) and reduced (in the case of Wāhanga Rua) development potential on the sites subject to the provisions (noting that further development within the area is already subject to obtaining an archaeological authority under the Heritage New Zealand Pouhere Taonga Act).

(c) Opportunity costs associated with reduced ability to undertake amenity or other environmental improvements on undeveloped land.

[100] S32 Evaluation Report, page 46.

(d) Likely economic growth and employment related costs as a result of lost housing development opportunities.

(e) Land disturbance risks within Wāhanga Rua of disturbing tangible and intangible heritage and cultural values, including potential disturbance of kōiwi and the adverse effect that may have on the relationship between Te Ātiawa and the site.

(f) Consenting, compliance, and enforcement costs.

[136] The Council concluded that the broader benefits of the qualifying matter include:

(a) Reduced risk of inappropriate disturbance of kōiwi/human remains.

(b) Increased transparency, certainty and reduced risk of unexpected costs.

(c) Reduced cost to Te Ātiawa in providing for adhoc advice on cultural values of the site.

(d) Protection of cultural values and heritage values.

(e) Recognising the relationship between Te Ātiawa and their ancestral land, sites, and waahi tapu.

(f) Protection of tangible and intangible cultural, spiritual, and heritage values for past, present and future generations.

(g) Providing certainty for present and future generations of landowners and occupiers about the status of the land as a waahi tapu, and a site of significance to Te Ātiawa.

(h) Supporting stewardship of cultural and historic resources.

[137] The Council considered the effectiveness and efficiency of Option 1 and concluded the costs of including the SASM were reasonable when considered in the context of the broader impacts (or benefits). The s32 Evaluation Report concluded that the proposed provisions are

the most appropriate method of achieving the objectives of the plan and the purpose of the RMA.[101]

[138] The Council's Option 2 was not to schedule the urupā, but they dismissed this option as not achieving the objective of the Plan Change or requirements of RMA s6(e) and (f).

[139] The Council's Option 3 was to enable a lower density of development across the site, however they dismissed this alternative also as not providing an appropriate level of protection for the waahi tapu values of the urupā.

Alternatives requested by submitters

[140] Some submitters[102] requested the rejection or withdrawal of the plan change, (essentially the Council's Option 2) and not providing for the SASM at all and retaining the General Residential framework with Medium Density Residential Standards. Mr Petherick[103] was the only submitter who appeared at the hearing and spoke to his reasons for that approach. He challenged the evidential basis of identification of the urupā, which we address above, but also submitted by his estimation, without having undertaken a detailed valuation of the 'cost' of the proposed SASM on the market value, to be in the order of $10-15 million. Although Mr Petherick has a professional background in engineering and land valuation, we did not have any independent valuation evidence to support his estimate.

[141] No submitters requested the lower density option. We accept the Council's reasoning for rejecting this option in the s32 Evaluation Report.

[142] Mr Brett Osborne (S9) supported the listing of SASM Wāhanga Tahi in principle within the District Plan. He specifically supported the addition of Wāhanga Tahi because the undeveloped area has experienced far less disturbance and would assist Council in achieving the objective of PC3. Mr Osborne was opposed to that part of the plan change that related to Wāhanga Rua and instead sought to rely on the operative accidental discovery protocol ("ADP") under HH-Table 1 of the District Plan. In addition, he requested that in relation to the Wāhanga Rua overlay rule SASM-R3 be amended to clarify whether minor buildings (which are permitted under the underlying residential zone) are affected by the SASM overlay. He

[101] S32 Evaluation Report, page 48.
[102] Hewson (S1), Birkenshaw (S2 and FS1) Petherick (S5 and FS2) and the collective of submitters Rachel Salive, Gary Collis, Steve Hollett, Elspeth Preddey, Clive Cameron, Michael Peryer, Craig Hardie, Vic Hewson, and Brian Kouvelis and WLDC (S6), Che Ray and Vanessa Blackmore (S8)
[103] For himself and the collective of submitters, Rachel Salive, Gary Collis, Steve Hollett, Elspeth Preddey, Clive Cameron, Michael Peryer, Craig Hardie, Vic Hewson, and Brian Kouvelis

was concerned about underground disturbance such as water tanks and the effect of additions and alterations. He also requested a number of consequential changes to rules SASM-R9, SASM-R11, SASM-R16, SASM-R19.

[143] Starting with reliance on the ADP, Ms Naidoo did not recommend accepting the submission points that sought the removal of Wāhanga Rua overlay and its replacement with an ADP. Her evidence was that although the Wāhanga Rua area has been modified by housing development, the purpose of PC3 is to prevent further significant earthworks as a permitted activity, thereby managing any potential adverse effects. In her opinion, relying solely upon an ADP to manage a known archaeological site or waahi tapu, in the absence of prior Council consent and consultation with mana whenua would not provide adequate protection for the urupā.[104]

[144] Ms Naidoo provided a s32AA evaluation of this method in the event that the Panel determined to remove the Wāhanga Rua overlay.[105] She concluded it was not appropriate because such an approach would be 'reactive rather than preventative', relying on the discovery of cultural or archaeological material after disturbance has occurred. In her view, this carries a high level of risk and potential cultural costs and would not achieve the relevant District Plan objective or effectively implement sections 6(e) and 6(f) of the RMA.

[145] Ms Naidoo further articulated her reasoning having heard from Te Ātiawa whose views she agrees with.[106] Dr. Baker on behalf of Te Ātiawa had said:[107]

> We….respectfully do not agree on the option to utilise ADP to manage the effects to our relationship with Kārewarewa. Having had vast experience of many use in the use and drafting of standard ADPs in this district, the policy intent behind that mechanism is in the title. It's purpose is where a discovery is by accident, and in a context where there is a level of acceptance that there will be some modification or destruction to waahi tapu or archaeological sites. They are a tool to be applied, after that modification or destruction has happened. It is our submission that both in terms of our values, and the need to protect the well-being of the community, the most effective tool, is one which as much as possible avoids these effects from occurring, in a proactive manner. In this context, once a coffin is exposed, the damage has been done.

[146] Te Ātiawa also made similar comments in their response to Minute 3.[108]

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104 S42A Report, at para 202
105 Response to Minute 3, Appendix G, page 19-22
106 S42A Report Writer's Reply, 17 July 2026, paragraphs 5.12-5.15
107 Speaking Notes Dr. Mahina-a-rangi Baker on behalf of Te Ātiawa, 4 June 2026 at 49.
108 Ātiawa ki Whakarongotai comment on further information from Kāpiti Coast District Council, 1 July 2026, paragraphs 18-20.

[147] We find this position is consistent with, and reinforced by, the internal assessment undertaken by HNZPT for the Barrett Drive archaeological authority application in the proposed Wāhanga Rua area. HNZPT determined that while an ADP may be sufficient to mitigate effects on archaeological evidence, archaeological information recovery is not necessarily mitigation for effects on broader cultural values, especially if kōiwi tangata are disturbed.[109] Ms Naidoo said that the Council's position, the agreement of Te Ātiawa, and HNZPT's independent assessment are that ADPs are not an adequate substitute for SASM protection at Kārewarewa Urupā.

[148] We agree that reliance on an ADP alone is not an appropriate method to achieve the objective of recognising and providing for the waahi tapu values of the area proposed as SASM Wāhanga Rua category.

[149] Turning to the application of Wāhanga Rua, in Ms Naidoo's s32AA analysis of not scheduling the developed part of the proposed SASM Wāhanga Rua in her response to Minute 3[110] she concluded that the removal of Wāhanga Rua would carry a disproportionately high level of cultural and potential economic costs and has a high risk when compared to the notified provisions. She considered it would not be the most efficient or effective method to achieve the Objective of the Operative District Plan to implement RMA s6(e) and (f). She further concluded the Wāhanga Rua classification is appropriate for Kārewarewa urupā because the classification was specifically developed for urupā, pā and papakāīnga sites where the land is modified and occupied by residents and/or businesses. Its purpose is to recognise that, while such sites may have undergone historical development and modification, they continue to possess significant cultural, historical, and spiritual values that warrant protection. She explained that the intent of the classification is therefore to provide an appropriate level of planning protection to prevent further degradation, damage, or loss of those values as a result of additional land disturbance or development activities.

[150] In response to Mr Osborne's requests to amend rules in the District Plan as a consequence of the request to remove Wāhanga Rua, Ms Naidoo's initial view was that such changes would be out of scope because the Council had not proposed changes to the rules as part of the plan change. Her concern was the effect of those changes on affected areas outside of the plan change. We have already referred to the legal requirements relating to scope in paragraphs [42] to [45] above. We asked Ms Naidoo to reconsider Mr Osborne's submission points on the basis that they would only apply to Wāhanga Rua at Kārewarewa

[109] HNZTP Internal Assessement of Application for Archealogical Approval, 14 September 2021 at 9.
[110] Response to Minute 3, Attachment H s32AA evaluation Submission S9 of Brett Osborne, page 5-8

Urupā. In her response to Minute 3 Ms Naidoo undertook that analysis if the Panel were minded to amend the rules applying to Kārewarewa Urupā (which was not her recommendation). She noted that for the most part her conclusions were the same as for the removal of Wāhanga Rua, however she made additional comments regarding the rules.

[151] For the permitted and restricted discretionary activity rules SASM-R3 and SASM-R11 her view was that an appropriate balance has been struck by recognising the need for ongoing use and maintenance of the land while ensuring the activities do not result in any unnecessary adverse effects on cultural, historical, spiritual and heritage values of the urupā. She considered the threshold established by the rules was an appropriate trigger to enable the Council to assess actual and potential effects.[111]

[152] In terms of SASM-R16 (non-complying activity rule) she considered this to be appropriate in relation to activities that do not comply with the restricted discretionary activity standards in SASM-R11 as there is a greater potential to adversely affect the cultural, historical, spiritual and heritage values of the urupā justifying a higher level of scrutiny.

[153] In terms of SASM-R19 Ms Naidoo was of the view that deleting the rule is unnecessary and of little benefit for the activities in the residential zone as it relates to intensive farming activities.

[154] We accept and agree with Ms Naidoo's evaluation and conclusions regarding the merit of the changes requested by Mr Osborne. Mr Osborne did not attend the hearing to further elaborate on his request. We are mindful that if we were to develop alternative provisions, they would need to be ringfenced to just this SASM to be within the scope of what was notified for PC3 and not have unintended impacts on other SASMs. In any case, we accept the evidence of Ms Naidoo in her s42A Report and response to Minute 3 and have not recommended any further rule changes in response to submissions. We have not found merit in amending the rules as requested by Mr Osborne.

[155] Some submitters requested alternative methods for recognising and providing for the cultural values, including the setting aside of land for reinterment of kōiwi / human remains or the establishment of a monument acknowledging historical events and those who had lost their lives.[112] While the prospect of a monument was supported by Te Ātiawa, it was not a substitution for the appropriate planning recognition of the Urupā. We do not consider the

[111] Ibid para 13-15
[112] Birkinshaw (S2), Petherick and the collective (S5)

reliance on non-regulatory methods alone to be appropriate in the context of the requirement to recognise and provide for the matters in s6(e) or (f) of the RMA or when having particular regard to s7(a), (aa) or (g). Nor does it achieve the purpose of the Act, in this context.

[156] Mr Petherick and Mr Ray's submissions suggested that the undeveloped Wāhanga Tahi could be set aside for use as a school. That is not a matter that we can consider under this plan change. Mr Hewson suggested that the council provide an ongoing management plan 'to ensure owners are compensated and the land is managed in a manner that is respectful to the Urupā status'. This is not a matter within our jurisdiction to consider further.

Findings

[157] The Panel, having considered the alternatives assessed by Council in the s32 Evaluation Report, submitter requested alternatives (both regulatory and non regulatory) along with alternatives considered by the Panel, find that the Council's Option 1 which adds Kārewarewa Urupā to Schedule 9 SASM, as Wāhanga Tahi and Wāhanga Rua and to the Planning Maps as notified in PC3, is the most appropriate option for recognising and providing for Kārewarewa Urupā. We have not found it necessary to modify the rules or other provisions in the District Plan to limit the extent of protection. We are satisfied on the basis of the Council's further s32AA evaluation that modifications to the rules, or the removal of Wāhanga Rua are not appropriate given the significance of cultural values associated with Kārewarewa Urupā.

[158] We recommend that the submissions seeking the deletion of the SASM as notified, or in part are rejected. We recommend that submissions seeking changes to rules, or the provision of alternative methods outside the District Plan are also rejected for the reasons set out above.

Does the proposed scheduling and mapping of Kārewarewa Urupā render affected land incapable of reasonable use?

[159] A number of submissions, including the submission of WLDC and Mr Birkenshaw asserted that the proposed SASM would render the land incapable of reasonable use. They suggested that the SASM would prevent meaningful development involving land disturbance, interfere with existing property rights and result in land of limited or negligible value, without compensation from the Council.

[160] We will address this argument as it applied to Wāhanga Tahi and Wāhanga Rua separately. Before doing so we consider the legal submissions from Mr Conway on what constitutes reasonable use in this context.[113]

[161] Mr Conway identified that the way submitters characterised the effect of the SASM on their land was akin to an argument under RMA s85.

[162] Mr Conway submitted that:

> 10.6 Under section 85(1) of the RMA, an interest in land is deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in the RMA.
>
> 10.7 Subsections (2)-(4) provide an exception to this starting position. If the grounds for the exception are satisfied, the Environment Court can make an order directing the local authority to either modify the provision in question or to acquire the land from the person, whichever of those options the local authority considers is appropriate. Before exercising that power, the Court must be satisfied that both limbs of section 85(3B) are met, namely that the plan provisions:
>
> (a) make the land incapable of reasonable use; and
>
> (b) place an unfair and unreasonable burden on any person who has an interest in the land.
>
> 10.8 Both limbs must be met before such an order can be made. They are to be measured objectively, and the threshold the applicant must meet is high.[114]

[163] Although s85 is a power exercisable by the Environment Court Mr Conway submitted that reasonable use arguments are often raised in submissions on Plans and that the Panel could consider them in assessing the merits of the plan change and deciding on the most appropriate provisions in terms of s32.

[164] We note that the language of s85 and s32 is quite different. The s32 evaluation precedes the notification of planning provisions by the Council whereas s85 is focused on what a landowner can do with their land in light of those provisions. However, elements of the tests for considering the effectiveness and efficiency (including costs and benefits) of proposed provisions overlap with issues about the reasonable use and fairness or proportionality of the relevant provisions. While we may conclude a provision is appropriate in a s32 context, this

[113] Legal Submissions Matthew Conway, 22 May 2026 section 10.
[114] *Redmond Retail Limited v Ashburton District Council* [2021] NZHC 2287 (Redmond) at [28] and *Steven v Christchurch City Council* [1998] NZRMA 289 (EnvC) (Steven) at [14].

does not mean that that an application under s85 is likely to fail or succeed. They are separate tests.

[165] To assist the Panel to understand what might be 'reasonable use' Mr Conway referred to the definition of reasonable use in s85(6):

> reasonable use, in relation to land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person (other than the applicant) would not be significant

[166] Mr Conway submitted that the effect of this definition is that activities that would cause significant effects on the environment or any person are not considered to be a reasonable use for the purposes of section 85(3B)(a).[115] He referred the Panel to principles established by case law as follows:[116]

(a) The meaning of reasonable use must be discerned in light of the principles and purpose of the RMA.

(b) The reasonable use need not be the landowner's preferred choice nor the best use of the land, but to be reasonable it must at least be viable.

(c) The enquiry is fact-specific and context-specific. Part of the context is the factual features of the site as well as the provisions of the District Plan.

(d) Neither the need for a resource consent nor the availability of a consenting pathway is determinative of whether land is incapable of reasonable use. Where the potential use is not a permitted activity, a consenting pathway (as a controlled, restricted discretionary or discretionary activity) is a prerequisite for the land to be found to be capable of reasonable use. Non-complying activities are excluded.

(e) In assessing reasonable use, the Court is not required to undertake a quasi-consent hearing exercise but is required to be satisfied that any potential use was feasible or viable.

(f) A granular consideration of reasonable uses by reference to the objectives and policies of the District Plan, and matters of discretion, is unrealistic. In determining whether the provision of a plan makes any land incapable of reasonable use, the Environment Court cannot speculate about the form a future resource consent may take, or its content.

(g) The test for whether the land is "incapable of reasonable use" is independent of the identity or characteristics of the landowner. In deciding whether the test is met, it is necessary to examine whether the land as a whole is incapable of reasonable use.

(h) "Reasonable use" is not synonymous with optimum financial return.

[115] Redmond at [48] and s 85(6).
[116] Legal Submissions, Matthew Conway, 22 May 2026 at 10.12

[167] He submitted that s85(3B)(a) is forward looking and a 'reasonable use' should be self-evidently reasonable, and not fanciful or out of character with the surrounding environment by virtue of the sites location or inherent attributes, which he said in this case contain the SASM listing.

[168] The second limb is whether the provisions place an unfair or unreasonable burden on any person who has an interest in the land. Mr Conway set out the factors relevant to the second limb established in caselaw as follows:[117]

(a) the natural and physical resources in the case;

(b) whether no reasonable use can be made of the land (first test);

(c) part 2 of the RMA, which underpins everything else in the RMA;

(d) part 3 of the RMA and the inference from section 9 that real property rights prima facie meets the purpose and principles of the Act;

(e) the relevant provisions of the plan concerned;

(f) the rebuttable presumption that the proposed plan is effective and efficient; and

(g) the personal circumstances of the applicant considered objectively.

[169] This framework was applied in *Heritage Lifestyle Parks NZ Ltd v New Plymouth District Council*[118] a case involving the constraints on a landowner pursuing a more intensive land use within a SASM. We note this was a case specifically about whether relief was available under RMA s85. The issue of the appropriateness of the SASM overlay and provisions was not pursued following expert conferencing.[119] The court considered that existence of a consenting pathway is a relevant matter when considering reasonable use.[120]

[170] Although submitters have asserted that the effect of the proposed SASM would render their land incapable of reasonable use, the matters before us are not and cannot be a declaration regarding reasonable use or the appropriateness of compensation. That is a matter for the Environment Court, if a landowner wished to pursue that argument. In any event the submitters who owned land within the proposed SASM (other than Mr Leeming) did not attend the hearing and provide evidence of the effect of the proposed SASM on their interests.

[117] Ibid at 10.16
[118] [2026] NZEnvC 068. (Heritage Lifestyle Parks)
[119] Ibid [13] and [14]
[120] Ibid [238] to [242]

[171] We have considered and compared the provisions in the Operative District Plan that would apply to the General Residential Zone with and without the proposed SASM. The activities that were able to take place before the notification of PC3 are set out in Appendix 3 to this Report. The SASM rules that now apply to WTSx1 and WTSx2 with the introduction of PC3 are set out in Appendix 1.

[172] The proposed SASM Wāhanga Rua overlay allows continued use and occupation of existing dwellings (which have existing use rights under s10 of the RMA in any event), however the following activity status for land use activities now applies:

(a) Land disturbance, earthworks and the alteration and disturbance of land associated with gardening and cultivation exceeding 10m³ per calendar year (following the accidental discovery protocol) is a restricted discretionary activity (SASM-R11).

(b) Fencing other than along the perimeter of the waahi tapu or site boundary is a restricted discretionary activity (SASM-R11).

(c) Tree planting and removal is a permitted activity (SASM-R3.8).

(d) Additions and alterations to existing buildings (other than minor buidings) are permitted subject to not including a basement or in ground swimming pool (SASM-R3). The accidental discovery protocol must be followed. If the additions and alterations cannot meet these standards then they are a restricted discretionary activity (SASM-R11).

(e) Construction of new ancilliary buildings and relocation of existing buildings (excluding minor buildings) are permitted (SASM-R3) and the accidental discovery protocol must be followed. Any other new buildings that fall outside these parameters are a restricted discretionary activity subject to following the accidental discovery protocol (SASM-R11).

(f) Subdivision that retains the waahi tapu in one allotment, or where the feature is contained within more than one allotment the number of allotments containing the feature does not increase, is a restricted discretionary activity (SUB-DW-R10). Subdivision that increases the number of allotments containing the waahi tapu is a discretionary activity (SUB-DW-R15).

[173] For restricted discretionary activities under SASM-R11 the matters of discretion are limited to:

(a) Effects on historic heritage values.

(b) Effects on landscape and amenity.

(c) Layout, design and location of proposed building.

(d) Effects on context and surroundings including any effects on 'key access and view points' listed in the Schedule of Sites and Areas of Significance to Māori.

[174] SUB-DW-R10 classifies subdivision of any site containing a SASM as a restricted discretionary activity so long as the feature is contained within one allotment or the number of allotments containing the feature is not increased. The matters of discretion include consideration of effects on historic heritage values. The provision for fully discretionary activities under SUB-DW-R15 is generic across the district for any activity that does not meet controlled or restricted discretionary activity standards.

[175] For the land proposed as Wāhanga Tahi, the differentiating factor is that all alterations and additions to lawfully established buildings (excluding minor buildings) start as a 'restricted discretionary activity', subject to following the accidental discovery protocol (SASM-R10) and new buildings are non-complying activities (SASM-R18). Roads and network infrastructure is similarly a restricted discretionary activity (SASM-R10.4). Land disturbance and earthworks is only permitted where it is to fence the perimeter of the waahi tapu or site (SASM-R2) subject to following the accidental discovery protocol, and is otherwise a restricted discretionary activity (SASM-R10). For SASM-R10, the matters of discretion are the same as for SASM-R11 discussed above.

[176] These rules apply irrespective of zone so will apply to the Natural Open Space Zone to be overlaid with Wāhanga Tahi also.

[177] In terms of the non-complying activity status, WLDC assert that the proposed SASM will have a 'significant and devastating' impact on their development expectations under the General Residential Zone. The caselaw referred to by Mr Conway that supported an argument that a consenting pathway as a controlled, restricted and fully discretionary activity is not

inherently unreasonable does not apply to non-complying activity status.[121] We think it is self-evident that given the waahi tapu status of the land and the relevant objectives and policies of the Operative District Plan[122] residential development may be inappropriate under the proposed SASM Wāhanga Tahi listing. New buildings are a non-complying activity and would need to be assessed against s104D of the RMA. This section is framed as a gateway whereby a consent authority may grant a resource consent only if it is satisfied that either:

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan(s)

[178] Subdivision (as a restricted discretionary or fully discretionary activity) would need to be assessed under s104C and s104B of the RMA, respectively. In light of the evidence we received from Dr. Baker, and the conclusions of the Waitangi Tribunal, it is likely that residential development could have significant adverse effects on cultural and heritage values. As such residential development within Wāhanga Tahi would not be a reasonable use (applying the definition in s85(6)). We have not undertaken any analysis on what other land uses might have a consenting pathway under SASM-R10 in light of the cultural and heritage significance of the proposed SASM. WLDC did not attend the hearing or present any evidence on this matter.

[179] We have considered that WLDC has already undertaken some preparatory subdivision development works. In the context of discoveries of kōiwi and the requirements to obtain approvals under the HNZPT Act, and the fact that an earlier application for an archaeological authority for stage 4B was declined, there is no guarantee that the development could proceed in the way initially envisaged in any event.

Findings

[180] In light of the cultural and heritage context, planning and land development context and our findings in paragraphs [122] to [125] and [157] and [158] above, we find that proposed SASM Wāhanga Tahi and Wāhanga Rua at Kārewarewa Urupā is proportionate and appropriately recognises and protects the SASM from inappropriate subdivision and use in

[121] At paragraph [163]] above.
[122] DO-07, SASM-P1

accordance with the RMA and planning documents (as assessed in section 6 below). We find that the proposed SASM Wāhanga Rua listing does not make the existing residential properties incapable of reasonable use as suggested by submissions. For proposed SASM Wāhanga Tahi we did not receive any evidence regarding the effect of the scheduling on future uses of the site. Given the waahi tapu significance of the site, we do not find that the existing provisions relating to Wāhanga Tahi and Wāhanga Rua to be unreasonable.

5. OVERALL EVALUATION OF THE PLAN CHANGE

[181] The RMA contains provisions in ss72-76 particularly relevant to plan changes and district plans. RMA s72 provides that the purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of that Act.

[182] RMA section 74 requires that a territorial authority must prepare and change its district plan in accordance with—

> (a) its functions under section 31; and
>
> (b) the provisions of Part 2; and
>
> (c) a direction given under section 25A(2); and
>
> (d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
>
> (e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and
>
> (ea) a national policy statement, a New Zealand coastal policy statement, and a national planning standard; and
>
> (f) any regulations.

[183] We are satisfied that PC3 forms part of the functions of a territorial authority for the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.[123]

[184] We address the relevant higher order planning framework in accordance with the requirements of s74 and s75 before returning to the provisions of Part 2.

[123] RMA, s31(1)(a)

Higher Order Planning Documents

[185] RMA s74(1)(ea) and s75(3)(a) and (b) requires that the Plan Change must be in accordance with national policy statements and give effect to them. We must also give effect to the Regional Policy Statement under s75(3)(c).

National Policy Statement on Urban Development

[186] Of all of the national policy statements, the National Policy Statement on Urban Development ("NPS-UD") is the most relevant to PC3. The s32 Evaluation Report identifies Objectives 1 and 5 and Policy 9 as the most relevant and we agree.[124] Objective 1 seeks to establish well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future. We consider that identifying the Kārewarewa Urupā as a SASM appropriately recognises the cultural significance of the site and thereby provides for the cultural wellbeing of the community. It provides certainty for mana whenua, landowners and the community now and into the future that those values will be protected.

[187] Policies 5 and 9 require the principles of the Treaty of Waitangi to be taken into account. Policy 9 also specifies the involvement of hapu and iwi in the preparation of RMA planning documents. We heard from Dr. Baker that mana whenua was involved in the development of the categories of SASM and their associated provisions. We also recognise the involvement of mana whenua in developing PC3, through both their input into PC2 as well as feedback on the draft of PC3.

[188] We consider that PC3 is aligned with the principles of Te Tiriti o Waitangi – not only in terms of the partnership in developing PC3, but also the effect of actively protecting the cultural values of the site through scheduling. We agree with the s32 Evaluation Report that PC3 supports tino rangatiratanga by recognising that the urupā is a site of spiritual and cultural significance to tangata whenua.[125]

[189] We are satisfied that PC3 gives effect the relevant parts of the NPS-UD.

[124] Section 32 Evaluation Report, section 2.3.3
[125] Section 32 Evaluation Report, section 2.2.3

New Zealand Coastal Policy Statement

[190] The section 32 Evaluation Report identifies Objective 3 and 6 and Policy 2 as being the most relevant provisions in the New Zealand Coastal Policy Statement ("NZCPS"). We agree with the analysis undertaken by Council that the recognition and consequential protection of Kārewarewa Urupā as a site of significance to Māori gives effect to Objective 3 of the NZCPS.[126] Objective 6 seeks to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development. We consider that the use of the Wāhanga Tahi and Wāhanga Rua provisions to recognise and provide for Kārewarewa Urupā enables people and communities to provide for their wellbeing. The application of Wāhanga Rua pragmatically recognises those areas already developed, while the application of Wāhanga Tahi establishes a higher level of protection for the undeveloped area.

[191] Policy 2 of the NZCPS seeks to take into account the principles of the Te Tiriti o Waitangi and the role of tangata whenua as kaitiaki. We agree with the section 32 Evaluation Report that PC3 recognises the cultural and traditional relationship of tangata whenua with the urupā. As outlined above, mana whenua was involved in the development of PC3. The rule framework that is associated with Wāhanga Tahi and Wāhanga Rua recognises the cultural significance of the site and management of future development. The identification of the site as a SASM supports tangata whenua to exercise kaitiakitanga.

[192] We are satisfied that PC3 gives effect to the relevant parts of the NZCPS.

Wellington Regional Policy Statement

[193] The relevant provisions of the RPS relate to both historic heritage (given that the definition of historic heritage in the RMA includes sites of significance to Māori including wāhi tapu) and the cultural relationship of Māori with their ancestral lands, water, sites, waahi tapu and other taonga.

[194] Objective 15 and Policies 21 and 22 are focused on identifying historic heritage and then protecting it from inappropriate modification, use and development. We consider that PC3 gives effect to these provisions. Firstly, the scheduling of Kārewarewa Urupā as a SASM has the effect of identifying a site of cultural significance, consistent with Policy 21(d) of the RPS.

[126] Section 32 Evaluation Report, section 2.3.2

Secondly the provisions which relate to Wāhanga Tahi and Wāhanga Rua will protect the urupā from inappropriate modification, use, and development in accordance with Policy 22 of the RPS. In particular, Policy 22(b) seeks to avoid the destruction of unidentified archaeological sites and waahi tapu with significant historic heritage values. PC3 will assist in achieving this Policy.

[195] Objective 28 and Policy 49 relate to matters of significance to tangata whenua. We consider that PC3 gives effect to these provisions. The recognition of Kārewarewa Urupā as a site of significance to Māori provides for the maintenance of the cultural relationship of Māori with their waahi tapu.

[196] Although not identified in the s32 Evaluation Report, Policy 48 of the RPS relating to the principles of Te Tiriti o Waitangi is also relevant to PC3. As we have set out above, we consider PC3 gives effect to these principles in terms of the process followed in developing the provisions as well as the provisions themselves.

[197] Proposed[127] Objective 22 and Policy UD.2 recognise that enabling Māori to express their cultural and traditional norms by providing for mana whenua / tangata whenua and their relationship with their culture, land, water, sites, waahi tapu and other taonga is a characteristic of a well-functioning urban environment. We are required to have regard to a proposed regional policy statement under RMA s74(2)(a)(i). We consider PC3 supports and strengthens the existing relationship of mana whenua with Kārewarewa Urupā and therefore gives effect to these provisions.

Management plans or strategies prepared under other Acts

[198] Section 74(2)(b)(i) of the RMA requires that the Council have regard to management plans and strategies prepared under other Acts. While the s32 Evaluation Report considered there are no plans or strategies prepared under other Acts that are relevant to PC3, we are mindful of the Waimanu Lagoons Management Plan 2000 which was provided to us by Council in response to our request in Minute 3. It is likely this was prepared under the Reserves Act 1977. Its relevance to PC3 is that Wāhanga Tahi is proposed to be applied to a sliver of Natural Open Space Zone on the southern edge of the Waimanu Lagoon and the triangle of Natural

[127] Proposed Change 1 and Variation 1 to the RPS.

Open Space Zone at the top end of the Lagoon. These areas sit within the Waimanu Lagoons Reserve.

[199] Section 9 of the Waimanu Lagoons Management Plan sets out eight objectives, covering matters such as informal public recreational activities, ecological health of the lagoons, public appreciation of the natural and cultural heritage features and its contribution to the wider open space network. The policies emphasise that the purpose of the Waimanu Lagoons Reserve is for informal recreation, and pedestrian access is an important part of this. For example Policy 11 states:

> 11. The informal character of the circular route around the lagoons shall be maintained, with a formed pathway only put in place where excessive wear or ground conditions necessitate it or where foot traffic needs to be directed.

[200] Further, section 14.1 clarifies that no additional buildings are envisaged beyond the toilet block close to the main Tutere Street entrance.

[201] We note that Objective 3 seeks to have particular regard for kaitiakitanga and therefore consider that PC3 is entirely consistent with the Waimanu Lagoons Management Plan. Based on the purpose of the Waimanu Lagoons Reserve for informal recreation with little buildings or structures, the provisions of Wāhanga Tahi will not constrain the ongoing use or management of the reserve. We record that the Kāpiti District Council Parks, Open Space and Environment Team submitted in support of PC3.[128]

Iwi Management Plans

[202] Section 74(2A) of the RMA requires Council to take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority. As catalogued in the s32 Evaluation Report, there are four iwi management plans relevant to PC3:

(a) Proposed Ngāti Raukawa te au ki te Tonga Ōtaki River and Catchment Iwi Management Plan (2000);

(b) Nga Korero Kaupapa mo Te Taiao: Policy Statement Manual for Kapakapanui: Te Runanga O Āti Awa ki Whakarongotai Inc (2001);

[128] Submitter 7.

(c) Te Haerenga Whakamua – A Review of the District Plan Provisions for Māori: A Vision to the Future for the Kāpiti Coast District Council District Plan Review 2009-12 (2012);

(d) Whakarongotai o te moana, Whakarongotai o te wā Kaitiakitanga Plan for Te Ātiawa ki Whakarongotai (2019).

[203] Having reviewed these documents, we are satisfied that the identification and protection of Kārewarewa Urupā is consistent with iwi management plans, in particular Whakarongotai o te moana, Whakarongotai o te wā, the Kaitiakitanga Plan for Te Ātiawa ki Whakarongotai. Provisions in this document that are particularly relevant to PC3 include:

2.2.G All sites of significance and associated names and kōrero within the rohe of Te Ātiawa ki Whakarongotai are respected and protected.

3.3.H Waahi tapu sites are mapped so that kaitiaki can ensure any potential effects of development on them are avoided.

3.3.I Kaitiaki determine measures for providing necessary protection for waahi tapu, wāhi tūpuna and archaeological sites.

District Plan Objectives and Policies

[204] We turned our mind to the objectives of the District Plan and are satisfied that PC3 will assist in achieving them. Starting with the Strategic Objectives, PC3 is consistent with:

(a) DO-O1 Tangata Whenua

(b) DO-O3.6 Development Management

(c) DO-O20 Well-functioning urban environments

(d) DO-O7 Historic Heritage

[205] PC3 supports the identification and protection of historic heritage. It recognises Kārewarewa Urupā and the values associated with it, and in doing so strengthens the relationship between tangata whenua and the urupā. The provisions associated with Wāhanga

Tahi and Wāhanga Rua recognise the existing level of development on each portion and protect these areas from inappropriate subdivision, use and development in the future.

[206] Turning to the District Plan policies, the single policy in the SASM chapter (SASM-P1) has three parts to it:

(a) Protection from inappropriate subdivision, development, land disturbance, earthworks or change in land use; and

(b) Council working in partnership with the relevant iwi authority for the ongoing and long term management and protection of waahi tapu.

(c) Consultation with iwi authorities on all resource consents affecting sites listed in Schedule 9 of the District Plan.

[207] We consider that PC3 is consistent with the first two parts, while the third part is focused on resource consents and is therefore not relevant to this process. The scheduling of the Kārewarewa Urupā and application of the District Plan provisions for Wāhanga Tahi and Wāhanga Rua will achieve protection from inappropriate subdivision, development, land disturbance, earthworks or change in land use at a level commensurate with the cultural values of the site. The involvement of iwi in the development of PC3 demonstrates a partnership with Council. The scheduling of the site will ensure the ongoing and long term management and protection of Kārewarewa Urupā.

[208] The relevant policies in the Historic Heritage chapter traverse the following matters:

(a) HH-P1 Identify Historic Heritage

(b) HH-P2 Criteria for Identifying Historic Heritage

(c) HH-P4 Protection of Historic Heritage

(d) HH-P9 Subdivision Involving Historic Heritage

[209] Based on the evidence presented throughout the PC3 process we are satisfied that Kārewarewa Urupā is appropriately identified as a site of historic heritage, and meets HH-P2.3 and HH-P2.4. We consider that the provisions associated with Wāhanga Tahi and Wāhanga

Rua in both the SASM and Subdivision chapters will achieve the protection sought in HH-P4 and HH-P9.

Section 32

[210] We have had particular regard to the Council's s32 Evaluation Report throughout this Report when making our recommendations to the Council.

[211] Section 77G(6) of the RMA provides for District Plan provisions to be less enabling of development than the requirements of the Medium Density Residential Standards where a qualifying matter exists. Where a plan change proposes to accommodate a qualifying matter (such as identification of a new SASM), section 77J(3) of the RMA requires an evaluation report to:

(a) demonstrate why the territorial authority considers-
  (i) that the area is subject to a qualifying matter; and
  (ii) that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and

(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and

(c) assess the costs and broader impacts of imposing those limits.

[212] This analysis is set out in sections 8.1 – 8.4 of the s32 Evaluation Report. We agree with and adopt that analysis.

Part 2

[213] In terms of the provisions of Part 2, we have found that PC3:

(a) Fulfils the Council's obligation to recognise and provide for the Kārewarewa Urupā under RMA s6(e) and 6(f). We are satisfied that the proposed identification of the Kārewarewa Urupā as a SASM in the District Plan appropriately recognises and provides for the relationship of Te Ātiawa, Te Rūnanga o Toa Rangatira and Ngā Hapū o Ōtaki and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga and recognises and provides for the protection of historic heritage from inappropriate subdivision, use, and development.

(b) Has particular regard to s7(a) kaitiakitanga, s7(aa) the ethic of stewardship, and 7(g) the finite characteristics of natural and physical resources. In doing so we find that the proposed SASM enables the exercise of kaitiakitanga, the ethic of stewardship and responds to the finite characteristics of the land area of the urupā and former battle grounds.

(c) Takes account of the principles of Te Tiriti o Waitangi as required by s8. We are satisfied that the identification of Kārewarewa Urupā in the District Plan appropriately takes account of the principles of Te Tiriti o Waitangi of tino rangatiratanga, active protection and participation and partnership in accordance with s8 of the RMA.

(d) We further acknowledge that this plan change was allowed to proceed to hearing a decision by the Minister because this plan change "supports upholding the Crown/Māori relationship and directly addresses a Crown-acknowledged Treaty breach by protecting the Kārewarewa Urupā from further disruption."[129]

(e) We are satisfied that the plan change meets the overall purpose of the RMA s5 of sustainable management, as is articulated in the provisions of the higher order documents which we have addressed above.

6. RECOMMENDATIONS TO THE COUNCIL

[214] Having considered the relevant statutory, cultural and historical context, planning and development context, the Council's s32 Evaluation Report and accompanying notification materials, the submissions and further submissions received on PC3 and the evidence presented at the hearing we recommend that the Council:

(a) approve the plan change as notified; and

(b) accept submissions supporting the plan change and reject those that oppose the plan change in whole or in part or seek amendments to PC3 in accordance with the recommendations in the Section 42A Report Appendix 1.

[129] Letter from Hon. Chris Bishop to Kāpiti Coast District Council, 28 January 2025 https://www.kapiticoast.govt.nz/media/3hspwqr1/letter-of-decision-exemption-application-for-k%C4%81piti-coast-district-council-plan-change-3.pdf

[215] Our reason for that recommendation, based on our findings set out above is that the proposed provisions are the most appropriate method of achieving the objectives of the plan change and the purpose of the RMA because:

(a) The provisions are the most effective and efficient method of protecting the cultural and heritage values associated with Kārewarewa Urupā from further inappropriate land disturbance and urban development that is otherwise enabled by the provisions of the underlying General Residential Zone and the Natural Open Space Zone.

(b) The provisions recognise and provide for the relationship between Te Ātiawa ki Whakarongotai and their ancestral land and waahi tapu, and recognise their role as kaitiaki.

(c) The provisions provide certainty for current and future landowners as to the status of the area as a waahi tapu site, and enable current and future landowners to be aware of the historical use of the site, the cultural and heritage values of the site, and the significance of the site to tangata whenua.

(d) The provisions provide for appropriate levels of land disturbance and development to be managed through permitted activity standards or resource consent processes.

(e) It is consistent with the Waimanu Lagoons Management Plan 2000.

(f) It is consistent with the iwi management plans for this rohe.

(g) It will achieve District Plan Objectives DO-O1, DO-O3, DO-O20 and DO-O7.

(h) It is consistent with District Plan Policies SASM-P1, HH-P1, HH-P2, HH-P4 and HH-P9.

(i) Recognising and providing for Kārewarewa Urupā gives effect to Objectives 15 and 28, and Policies 21, 49 and has regard for proposed Objective 22 and Policy UD.2 of the RPS.

(j) Recognising and providing for Kārewarewa Urupā gives effect to Objectives 3 and 6, and Policy 2 of the NZCPS, and Objectives 1 and 5 and Policy 9 of the NPS-UD.

(k) The provisions enable Council to fulfil its obligations under sections 6(e), 6(f), 7(a), 7(aa), 7(g), and 8 of the RMA.

(l) PC3 achieves the purpose of the RMA.

[216] The Recommended provisions are included in Appendix 4.

Dated 31 August 2026.



C E ROBINSON



C R L WRATT



E A BURGE

Appendix 1

Proposed Plan Change 3 (Kārewarewa Urupā)[130]

Implications for land use and subdivision

The plan change proposes to classify areas of the land at Kārewarewa urupā as either "Wāhanga Tahi" or "Wāhanga Rua" in the District Plan. This triggers the application of some rules in the District Plan, as described in the following table. A "key" explaining the colours, and various classes of activities mentioned, is provided below the table (overleaf). "SASM" refers to the "Sites and Areas of Significance to Māori" chapter of the District Plan.

Activity	Wāhanga tahi overlay	Wāhanga rua overlay
Land disturbance/ earthworks	Rule SASM-R2 (permitted): Permitted land disturbance is limited to fencing of the perimeter of the site, subject to an accidental discovery protocol.	Rule SASM-R3 (permitted): Up to 10m^3 of land disturbance or earthworks is permitted per year, subject to an accidental discovery protocol.
	Rule SASM-R10 (restricted discretionary): Other land disturbance and earthworks require resource consent as a 'restricted discretionary activity', subject to an accidental discovery protocol.	Rule SASM-R11 (restricted discretionary): Other land disturbance and earthworks require resource consent as a 'restricted discretionary activity', subject to an accidental discovery protocol.
Additions/ alterations of existing lawfully established buildings	Rule SASM-R10 (restricted discretionary): Additions and alterations require resource consent as a 'restricted-discretionary activity', subject to an accidental discovery protocol.	Rule SASM-R3 (permitted): Additions and alterations are permitted, subject to not including a basement or in-ground swimming pool.
		Rule SASM-R11 (restricted discretionary): Other additions and alterations require resource consent as a 'restricted-discretionary activity', subject to an accidental discovery protocol.
Construction of new buildings	SASM-R18 (non-complying): New buildings require resource consent as a 'non-complying activity'.	Rule SASM-R3 (permitted): New ancillary buildings are permitted, subject to not including a basement or in-ground swimming pool.
		Rule SASM-R11 (restricted discretionary): Other new buildings require resource consent as a 'restricted-discretionary activity', subject to an accidental discovery protocol.
Subdivision	SUB-DW-R10 (restricted discretionary): Subdivision of land that does not increase the number of allotments within which the site of significance is located, requires resource consent as a 'restricted discretionary' activity.	
	SUB-DW-R15 (discretionary): Subdivision of land that increases the number of allotments within which the site of significance is located, requires resource consent as a 'discretionary' activity.	

[130] Table provided at the hearing by s42A Report author.

KEY

	Permitted activity	A resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
	Restricted discretionary activity	A resource consent is required for the activity and the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise. Additionally, if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
	Discretionary activity	A resource consent is required for the activity and the consent authority may decline the consent or grant the consent with or without conditions. Furthermore, if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
	Non-complying activity	A resource consent is required for the activity and the consent authority may decline the consent; or grant the consent, with or without conditions, but only if the consent authority is satisfied that the requirements of section 104D are met and the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

(Classes of activities as defined under the Resource Management Act 1991)

Appendix 2 Aerial Photographs



Photo 1, 1 August 1942 (source, L Petherick Response to Minute 3)



Photo 2, 17 April 1952 (source, L Petherick Response to Minute 3)



Photo 3, 15 April 1966 (source, L Petherick Response to Minute 3)



Photo 4, 29 October 1973 (source, L Petherick Response to Minute 3)



Historical aerial image of Kārewarewa site and surrounding area, 1987. (Sourced from http://retrolens.nz)

Photo 5 (Source Council Response to Minute 3 Appendix C)



Historical aerial image of Kārewarewa site and surrounding area, 1991. (Sourced from http://retrolens.nz)

Photo 6 (Source Council Response to Minute 3 Appendix C)

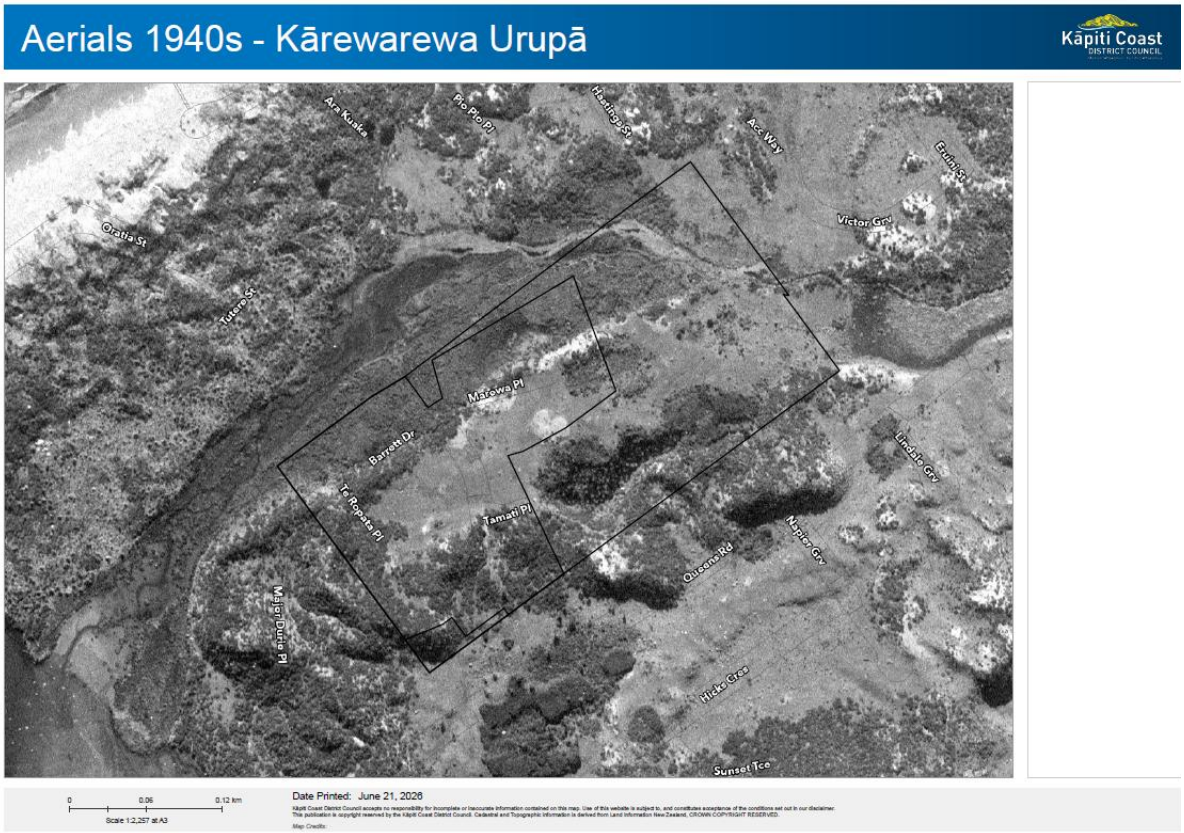


Photo 7 (Source Council Response to Minute 3 Appendix C)

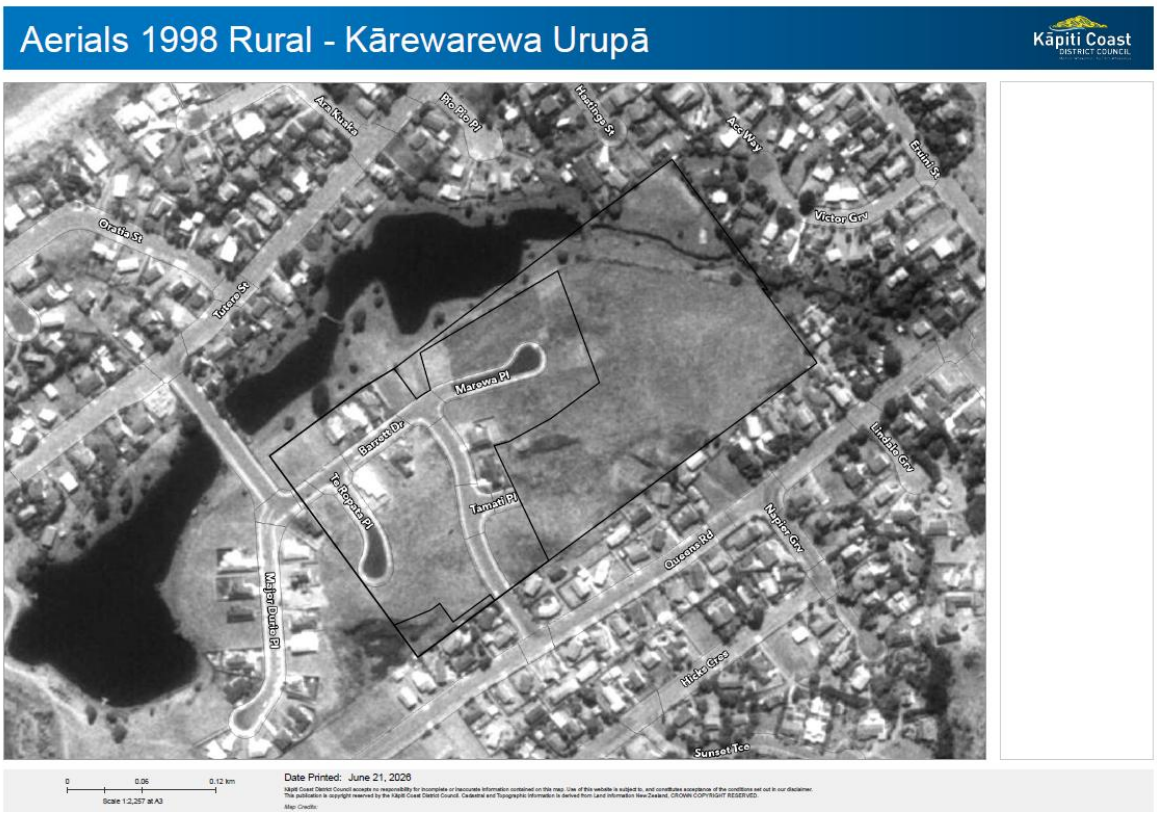


Photo 8 (Source Council Response to Minute 3 Appendix C)

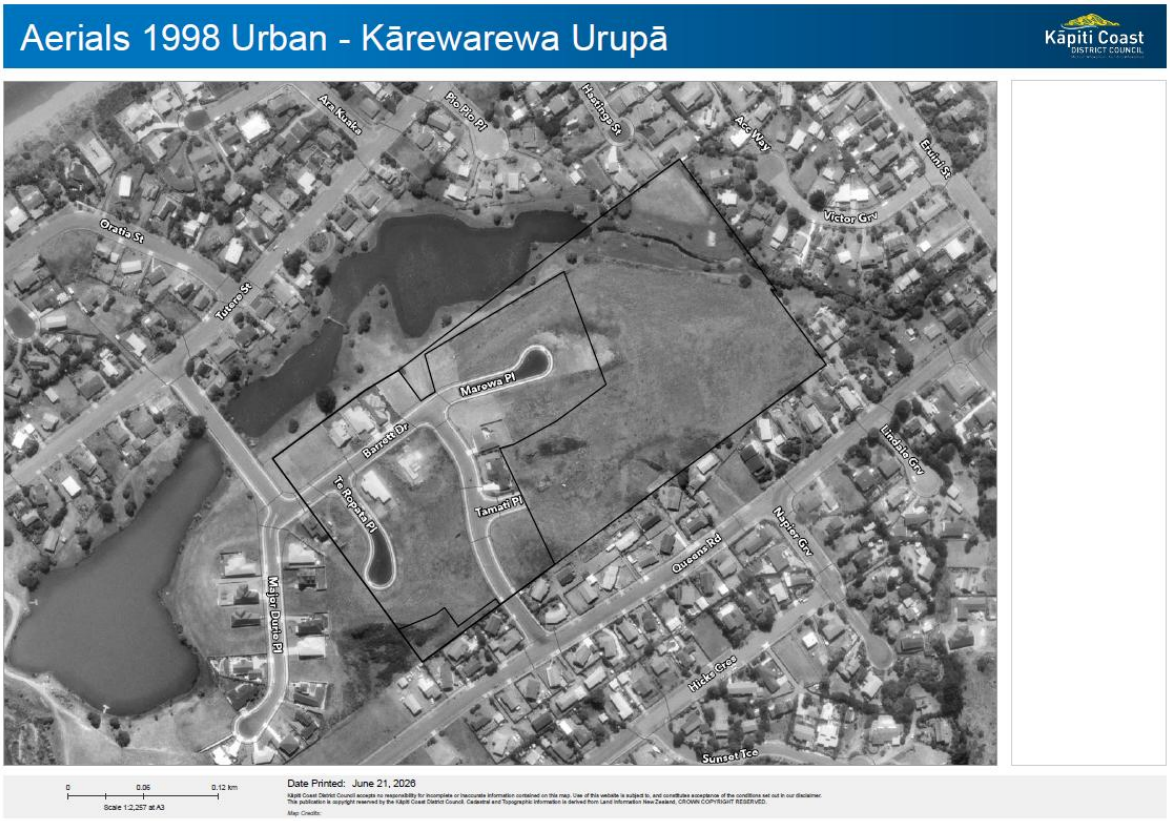


Photo 9 (Source Council Response to Minute 3 Appendix C)

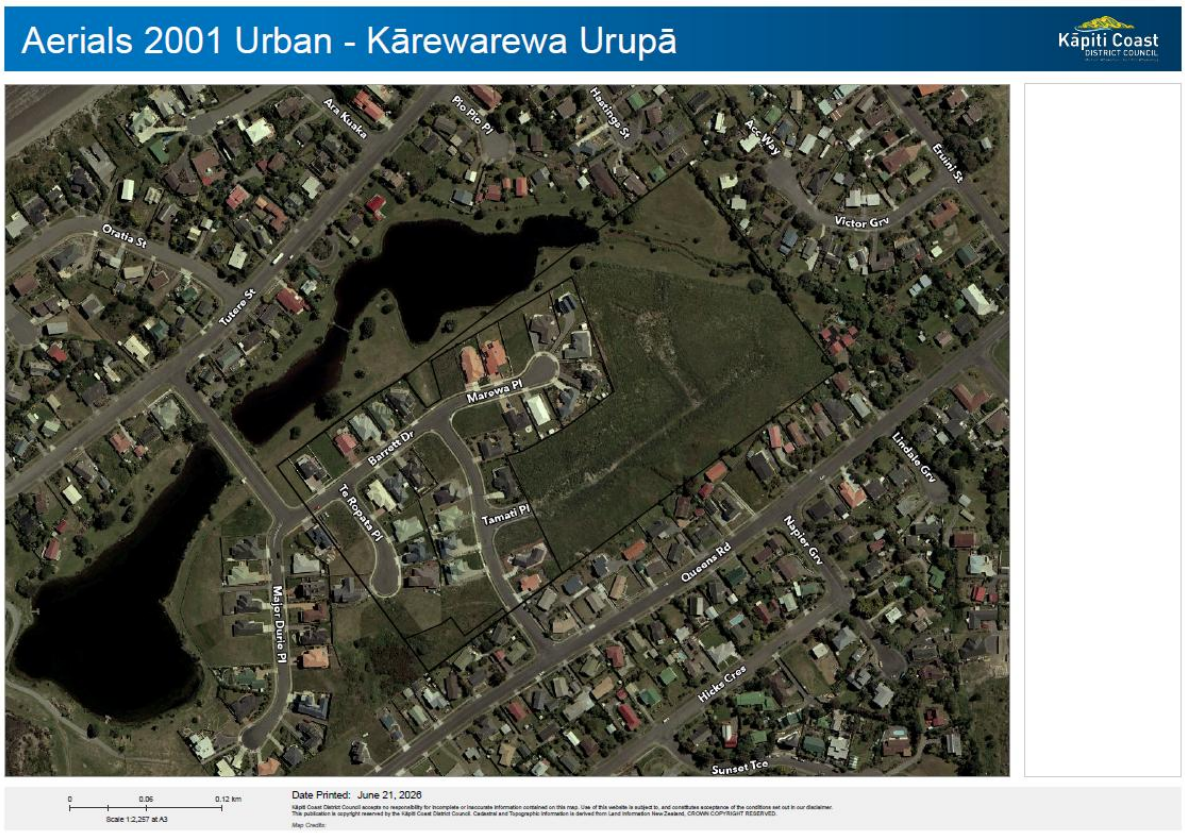


Photo 10 (Source Council Response to Minute 3 Appendix C)

Appendix 3 Operative District Plan provisions for General Residential Zone and the Natural Open Space Zone[131]

Activity	General Residential Zone	Natural Open Space Zone
General permitted activities (subject to standards)	• Rule GRZ-R2: Residential activities • Rule GRZ-R4: Shared and group accommodation and supported living accommodation • Rule GRZ-R8: Arable farming and the keeping of animals • Rule GRZ-R10: Home businesses and home craft occupations • Rule GRZ-R35: Papakāinga on land held under Te Ture Whenua Māori Act 1993	• Rule NOSZ-R3: Recreation, community, and cultural activities. • Rule NOSZ-R9: Species protection and conservation management works. • Rule NOSZ-R10: Landscaping.
Fences and walls	• Rule GRZ-R3: Fences and walls up to 2 metres tall (or 1.8 metres tall adjacent to the Natural Open Space Zone) are permitted.	• Rule NOSZ-R1: Fences and walls between 1.2 metres and 1.8 metres (depending on permeability) are permitted.
Permeable surfaces	• Rule GRZ-R1: At least 30% of the site must be permeable.	• N/A.
New buildings and structures, and alterations to existing buildings and structures	• Rule GRZ-R33: New buildings and structures, and alterations to existing buildings and structures, are permitted subject to the following standards: ○ No more than 3 residential units or retirement units per site. ○ Must be generally no more than 11 metres in height. ○ Must not project beyond a 60° recession place measured from a point 4 metres vertically above the ground level. ○ Set back between 1 metres and 1.5 metres from the boundary. ○ Maximum building coverage of 50% of the net site area.	• Rule NOSZ-R6: New buildings and structures, and alterations to existing buildings and structures, are permitted subject to the following standards: ○ Maximum building coverage of 2% ○ Maximum gross floor area of any building of 350m^2 ○ Maximum height of 6 metres ○ Minimum yard setback of 5 metres from the General Residential Zone ○ Buildings and structures must not project beyond a 45° recession place measured from a point 2.1 metres vertically above the ground level.

[131] Table sourced from s32 Evaluation Report, section 3.1.2

Activity	General Residential Zone	Natural Open Space Zone
	○ Outdoor living space of at least 20m^2. ○ Outlook space from each habitable room. ○ 20% of the street-facing building façade is glazing. ○ Minimum landscaped area of 20% of the developed site.	
Earthworks	• Rule EW-R2: Earthworks (excluding for approved building platforms) subject to the following standards: ○ Earthworks must not be undertaken on slopes greater than 28°. ○ Earthworks must not be undertaken within 20 metres of a waterbody. ○ Earthworks must not disturb more than 50m^3 of land per subject site within a 5 year period and must not alter the original ground level by more than 1 metre vertically. ○ General standards for surface runoff, and management of silt, sediment, and erosion. ○ An accidental discovery protocol being followed. • Rule EW-R3: Earthworks for approved building platforms that do not extend more than 2 metres beyond the foundation line of the building, subject to: ○ General standards for surface runoff, and management of silt, sediment and erosion. ○ An accidental discovery protocol being followed.	
Subdivision	• Rules SUB-DW-R25 and SUB-RES-R33: subdivision to create new allotments is a controlled activity, subject to standards.	• SUB-OS-R60: subdivision to create new allotments is a discretionary activity.

Appendix 4 Recommended amendments to the District Plan

Amend Schedule 9 – Sites and Areas of Significance to Māori to add the following items to the schedule:

[s86E note: this amendment has immediate legal effect pursuant to section 86B(3)(d) of the RMA]

District Plan ID	Name	Type	Iwi	Key access and view points	Wāhanga
WTSx1	Kārewarewa Urupā	Urupā	Āti Awa		Tahi
WTSx2	Kārewarewa Urupā	Urupā	Āti Awa		Rua

Amend the "Historical, Cultural, Infrastructure and Districtwide" map series to add the sites identified in amendment 1.1 to the "waahi tapu" layer of the District Plan maps, as set out below.

[s86E note: this amendment has immediate legal effect pursuant to section 86B(3)(d) of the RMA]

