

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

**IN THE MATTER of Submissions and Further Submissions on Whangarei District
Council - Plan Change 94B: Papakāinga**

**Statement of Evidence of
Juliane Chetham and Bernadette Aperahama
On behalf of Patuharakeke Te Iwi Trust Board and Te Huinga**

1 Introductions

- 1.1 My full name is Juliane Kathryn Chetham. I hold Bachelor and Masters of Science degrees in Geography from Auckland University and have more than 17 years experience in resource management, consultation and advisory roles across a range of organisations such as industry, local and central government, iwi, hāpu, and community groups. I am also an accredited Environmental Commissioner. I have been a trustee on Patuharakeke Te Iwi Trust Board (PTB) since 2010 and am the convenor of the Trust's resource management committee and am presenting this evidence on their behalf and jointly for Te Huinga at their request.
- 1.2 My full name is Bernadette Joan Aperahama. I hold a Bachelor of Arts degree in Political Science and a Masters of Planning Practice from the University of Auckland. I have 10 years of experience in resource management including assessing resource consent applications and policy development for Auckland Council. I am a member of the New Zealand Planning Institute.
- 1.3 I am a self-employed planner. I was engaged by Ngā Uri o Pou Whānau Trust to prepare the resource consent application for their papa kāinga project. Therefore I have experienced the regulatory process of applying for a resource consent for a papa kāinga under the operative provisions. I am supporting Ngā Uri o Pou Whānau Trust and Patuharakeke in the delivery of their evidence and submission on the proposed plan change. I am engaged by other iwi for support in achieving their resource management objectives across several projects.
- 1.4 I live on Māori Freehold land to which my partner and my daughter whakapapa, near other blocks of Māori land and rural farming properties between two state highways.

2 Scope of Evidence

- 2.1 In general we concur with the majority of analysis and recommendations in the section 42 Report. The focus of this evidence is on those aspects of the report that we believe are inconsistent with the settled objectives and policies of PC94B or require further clarification. We also include evidence from Ngā Uri o Pou Whānau Trust to provide context and illustrate the benefits papa kāinga development can provide to whānau as well as the time and resources required to establish them under the current planning regime and the impact PC94B will have on the process if made operative.

3 Further comments in relation to Expert Evidence

- 3.1 Costs of the resource consent process
- 3.1.1 Ngā Uri o Pou Whānau Trust spent over \$27,000 in obtaining a resource consent from both the regional and district council. Under the most recent iteration of the provisions (Attachment 5 of the Hearing documents), the activity would have been permitted. The AEE for the Ngā Uri o Pou Whānau Trust project was extensive because of the provisions that were required to be addressed – while not being subject to resource area provisions. The current drafting of the planning provisions (Attachment 5 of the Hearing documents) do not enable a more streamlined AEE to be prepared. For those who need to submit a resource consent, they are likely to face similar costs or higher for the process of engaging relevant experts including those needing to address the resource area provisions.

- 3.1.2 The section 42 report states that resource consent fees fall outside of the scope of the plan change. It also acknowledges the high level of planning burden that applies to many blocks of Māori land, recognising the historical challenges that have prevented development and the values for which that land is now protected via resource area provisions.
- 3.1.3 Should the panel consider it appropriate to apply the resource area provisions to papa kāinga, we recommend including within this plan change a link to section 5.2.7 Method – Funding and assistance of the RPS. Section 5.2.7 of the RPS addresses incentive measures (applicable to all applicants) to bring about voluntary changes to consumer behaviour to promote sustainable patterns of resource use in new development. For example, measures that may promote the efficient use of energy and water. The RPS explanation includes incentives such as reduced resource consent fees for proposals that are able to demonstrate that they meet a nationally recognised assessment criteria (such as HomeStar), rebates on development contributions for sustainability measures (such as water tanks), or streamlined consenting processes.
- 3.1.4 Acknowledging the level of planning burden on many blocks of Māori land and recognising that the resource area provisions will trigger the need for consent for papa kāinga the plan change provisions could include such methods with necessary support in the LTP and Annual Plan. Methods such as these may provide some respite to owners of Māori land that has a high level of planning burden, creating greater planning equity. The methods are also appropriate as many blocks of Māori land will be in rural areas and therefore will need to be self sufficient. The Ngā Uri o Pou Whānau Trust project would have easily met such criteria.

4 Issues raised by other submitters

- 4.1 Papa kāinga isolating those who are most at risk and most rely on social services (eg. Northland DHB submission)
- 4.1.1 The key motivations and aspirations for the Ngā Uri o Pou Whānau Trust project are clearly whānau focussed. These submissions lack an understanding of the RMA that requires consideration of the relationship Māori have with their land and taonga; lacks understanding of the negative impacts that isolation from ones own whenua / culture creates; lacks understanding of a model of housing central to our culture.
- 4.1.2 The Ngā Uri o Pou Whānau Trust project is an exemplar project. It provides a real opportunity for the whānau to improve their welfare, improve the quality of their lives, be self sufficient, support their whānau, and build their capacity of their hapū, whānau, as individuals. This project is more than just building a building, it addresses the healing of a whānau, helping a hapū and involving an Iwi.
- 4.2 Reverse Sensitivity, amenity, and protection of soils – applying measurements.
- 4.2.1 Setbacks are recommended to avoid conflict between adjoining land uses. The main issue is that the emphasis of the objectives and policies is development guided by the capacity of the whenua. Development is not meant to be guided by measurements such as setbacks, the relevance of which changes from site to site, but rather the whenua itself.

- 4.2.2 Applying these principles, the Ngā Uri o Pou Whānau Trust project demonstrates how papa kāinga can be designed in a manner guided by the whenua that not only protects the amenity of both the residents and that of the adjoining landowners but also creates positive environmental outcomes, unlike many of the nearby rural land uses which have resulted in a polluted waterway to the south of the site. We note that the operative permitted baseline for activities in rural environments enables a scale of effects far beyond that of the Ngā Uri o Pou Whānau Trust project.
- 4.2.3 There is also a planning equity issue that arises with these submissions. Owners of Māori land who have been unable to develop their whenua for numerous well documented reasons are now trying to repatriate their whenua but are required to consider those who have moved into the area, developed ancestral Māori land, modified the whenua substantially and are creating environmental degradation in the process. This is a process that is difficult for some owners of Māori land to rationalise.

5 Areas seeking more clarification

- 5.1 Tracked changes doc – rule 1.5.2 – we seek clarification on the use of the word prescriptive. Is it intended to use restrictive or prescriptive? There will be two different outcomes.
- 5.2 Provision 1.2.2: what is the rationale for not applying the papa kāinga provisions in the Business environments? Papa kāinga is the original mixed use development in New Zealand. Papa kāinga development is meant to be guided by the whenua itself.

6 Areas of Disagreement

6.1 Use of measurements

- 6.1.1 As discussed earlier in relation to submissions, the use of measurements such as required setbacks, is at odds with the objectives and policies emphasising development guided by the capacity of the whenua. When applying tikanga, matauranga and kaitiakitanga, the right environmental outcomes will result.

6.2 Resource notations over Māori Land Blocks

- 6.2.1 We recommend amending any other provisions of the District Plan that would better enable papa kāinga development to take place in a sustainable manner.
- 6.2.2 We again emphasise the significant challenges to develop Māori land and note that the planning burden from resource notations would render the proposed provisions ineffective.
- 6.2.3 We again emphasise that development is intended to be guided by the capacity of the whenua, not arbitrary measurements which have varying relevance.
- 6.2.4 Should the panel consider it necessary to apply the resource area provisions to papa kāinga, we recommend that earthworks or vegetation clearance be considered a permitted activity in resource areas for the purposes of providing the building platform of a house, necessary infrastructure and vehicle access. The scale of vegetation clearance and earthworks would be identified in the Papakāinga Development Plan.

6.3 Eligibility: Discretionary activity status for General Land Owned by Māori (GLOBM)

6.3.1 We do not agree with the analysis provided in the section 42 report with regard to GLOBM. The definition of GLOBM in s93 of Te Ture Whenua Māori Act is as follows:

“Land (other than Maori freehold land) that has been alienated from the Crown for a subsisting estate in fee simple shall, while that estate is beneficially owned by [a Maori or by a group of] persons of whom a majority are Maori, have the status of General and owned by Maori”.

6.3.2 The Māori Land Court further expresses the similar tenure of Māori Freehold Land (MFL) and GLOBM at s.17 of the 93 act:

17 General objectives

(1) In exercising its jurisdiction and powers under this Act, the primary objective of the Court shall be to promote and assist in—

(a) The retention of Maori land and General land owned by Maori in the hands of the owners; and

(b) The effective use, management, and development, by or on behalf of the owners, of Maori land and General land owned by Maori.

6.3.3 The Court has jurisdiction to change status of general land, including GLOBM to Māori Freehold Land at s.133

133 Change from General land [or General land owned by Maori] to Maori freehold land by status order

(1) The Maori Land Court shall have jurisdiction in accordance with the succeeding provisions of this section to make a status order declaring that any land shall cease to be General land [or General land owned by Maori] and shall become Maori freehold land.

(2) Without limiting the classes of person who may apply to the Court for the exercise of its jurisdiction, the District Land Registrar for the land district in which any land that is beneficially owned by more than 10 Maori is situated may apply to the Court for the exercise of its jurisdiction under this section in respect of that land.

(3) The Court shall not make a status order under this section unless it is satisfied that—

(a) The land is beneficially owned by one or more Maori; and

(b) The owners have had adequate opportunity to consider the proposed change of status; and

(c) Either—

(i) All the owners agree to the proposed change of status; or

(ii) The land can be managed or utilised effectively as Maori freehold land and a sufficient proportion of the owners agree

to the proposed change of status; and

(d) It is desirable that the land become Maori freehold land having regard to the history of the land, and to the identity of the owners and their personal association with the land.

6.3.4 It isn't clear why the Discretionary activity status is appropriate. There appears to be a perception that this land status is widely occurring and there is no formal ancestral link to GLOBM. As such the reporting planner suggests that papa kāinga being permitted on GLOBM could fundamentally undermine the intention of the provisions and exponentially expand the potential for papa kāinga developments in the District. Firstly, we do not consider that expanding the potential for papa kāinga developments should be seen in a

negative light. The s32 for the Hastings District Council Papa kāinga provisions¹ provides an excellent overview of GLOBM and how that status came into being, that is through the Maori Affairs Amendment Act 1967. This Act resulted in a significant transfer of land from Māori freehold title to general title. In our submission, GLOBM was all originally Māori Freehold Land and therefore is certainly Māori Ancestral Land.

- 6.3.5 We recommend the permitted activity provisions should apply to GLOBM because:
- Current and previous legislation deals with GLOBM the same as Māori Freehold Land
 - Multiple ownership is a defining feature of GLOBM
 - It is subject to the same development barriers as Māori Freehold Land (as identified in the RPS)
- 6.3.6 We were not able to obtain definitive data on the amount of GLOBM in Whangarei. From a quick search on Māori Land Online we were able to identify only one site in the District.
- 6.3.7 We recommend allowing papa kāinga development on land given a Declaration of Status to General land under the Maori Affairs Amendment Act 1967. We again refer to the s32 for the Hastings District Council Papa kāinga provisions which appropriately addresses this issue.

6.4 Business environments

- 6.4.1 The section 42 report recommends the addition of clause PKA.1.2 clarifying that the PKA provisions shall not apply to land located in the Business Environments, stating “it was always intended that that the papakāinga provisions would not apply to land located in the Business Environments.” This “intent” is not obvious anywhere in the supporting documentation. The argument is that papa kāinga developments would not be suitable in the Business Environments due to potential reverse sensitivity effects. However, there are only five Māori land blocks are in the Business Environments (all Business 2) and these are the various titles that make up the Whangarei Terenga Paraoa marae complex on Porowini Avenue.
- 6.4.2 In our opinion, this is a narrow view and represents a significant departure from the objectives and policies of PC94B. The development of innovative contemporary and urban papa kāinga is being advanced and assisted elsewhere in the country² and aligns to what is intended in the inner city development plan currently in draft eg. a focus on residential mixed use while at the same time enhancing Māori cultural associations with the City. This site could potentially be a flagship for such development – acknowledging the history of this location ie. The rangatira Kaka Porowini’s eleven room home was on this site and was utilised by his extended whānau and friends as a communal gathering place to stay when they came to Whangarei for business, court hearings and the like. ‘Mixed use’ (residential in association with commercial and or industrial) development will allow further sustainable outcomes as whanau would be able to live and work in the same area.

At the Porowini Avenue site there is living 1 zoning right across the road from, and directly behind, the marae complex and any reverse sensitivity matters could be dealt with via

¹ <http://www.hastingsdc.govt.nz/files/all/documents/districtplan/review/section-32s/21.1-papakainga-dwa.pdf>

² see <http://www.tetumupaeroa.co.nz/news/wellington-s-first-urban-papak-inga-opens-its-doors>

consent notices – as papa kāinga development in this location would trigger a consent due to density requirements and would be assessed as such.

- 6.4.3 In summary the basis for this recommendation is unclear and does not appear to relate to any specific submission points. It seems very limiting to exclude this possibility at this stage and we seek deletion of proposed clause PKA.1.2.

7 Conclusion

We wish to acknowledge the time and effort that the Council and staff have put in to engaging with hapu and whanau to progress this plan change over the past several years. Overall we are of the opinion that the plan change will better enable the development of papa kāinga and assist whanau and hapu to repatriate their ancestral whenua in a way that sustains both the land and people, our culture and traditions. We have made recommendations where we believe clarification or amendment is needed to achieve the spirit of maximum flexibility intended by the plan change, the existing safeguards set out in the objectives and policies, and in recognition of the challenges that remain for our people to develop their own whenua.

Kia Ora