

Urban Development and Transport Committee
ATTACHMENTS UNDER SEPARATE COVER

Date: Thursday 1 April 2021
Time: 9.30am
Venue: Council Chambers, Civic Offices,
53 Hereford Street, Christchurch

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	<p>Resource Management Act 1991</p> <p>Christchurch District Plan</p> <p>Proposed Plan Change</p>	<p>8</p>
<p>NOTE: The rule amendments proposed in this Plan Change have no legal effect until the Council's decision approving the Change is publicly notified (s 86B).</p> <p>PAPAKĀINGA/KĀINGA NOHOANGA ZONE - RULE AMENDMENTS</p> <p>Explanation</p> <p>The purpose of Plan Change 8 is to revise the internal boundary setback, road setback, coverage and earthworks rules for Māori land in the Papakāinga/Kāinga Nohoanga zone, to better facilitate use and development of that land.</p> <p>The Plan Change also proposes to extend the definition of Māori land which applies within the Papakāinga/Kāinga Nohoanga zone, to include general land owned by Māori within the zone which is not formally "Māori land" under the Te Ture Whenua Māori Act 1993 (TTWMA), but which is still owned by descendants of the original grantees of the Māori Reserve land under the Port Cooper, Port Levy or Akaroa Deeds of Purchase by the Crown in the mid 19th Century. This is proposed to be done, by adding to the definition of Māori Land in the District Plan, land owned by Maori which is in following categories:</p> <ul style="list-style-type: none"> i) land where a status declaration under the Māori Affairs Amendment Act 1967 was made converting Māori freehold land to general title, and where there have been no subsequent changes of ownership; ii) land where one or more owners are able to provide written evidence of Whakapapa to the original grantees of the land as confirmed by the Te Runanga o Ngāi Tahu Whakapapa Unit or the Māori Land Court; iii) land which is vested in a Trust or Maori incorporation under the TTWMA; and iv) land which is owned by Runanga with authority over the area in which the original Maori Reserve is located. <p>There is no effect on the status of the land under the TTWMA.</p> <p>The extended definition of Maori land will enable the revised internal boundary setback, road setback, coverage and earthworks rules to apply to further areas owned by Maori within the Papakāinga/Kāinga Nohoanga zone.</p> <p>Papakāinga/Kāinga Nohoanga zones are provided in the District Plan at Rapaki, Koukourārata (Port Levy), Wairewa (Little River), Ōpukutahi (near Wainui) and Ōnuku, and are intended to facilitate and enable Ngāi Tahu whanau use and development of that ancestral land i.e. "coming home to live". The zones correspond to the outer extent of the main concentrations of land in Christchurch District set aside as Māori Reserves in the mid 19th Century. Four of the zoned areas (those other than Opukutahi) are based around marae. There are some further smaller land areas in the District that are Māori Reserve land but without marae and which are not zoned as Papakāinga/Kāinga Nohoanga. This plan change has no effect on the planning status of Māori land or general land owned by Māori outside of the Papakāinga/Kāinga Nohoanga zones e.g. in rural zones in the District.</p>		

Land parcels in the Papakāinga/Kāinga Nohoanga zones are relatively fragmented. The current setbacks requirements for Māori land within these zones leave little or no buildable area on many of the smaller sites in the zones. These setback rules add an additional constraint on development, to existing constraints resulting from properties frequently being in multiple ownership.

The primary objective of the zone is to facilitate and enable Ngāi Tahu whanau use and development of ancestral land in the zone. This objective would be given better effect to by reducing setbacks for Māori land, and therefore providing more flexibility for building locations which do not require resource consent. Internal boundary setback breaches in particular cause difficulty for Māori land. Under the RMA, if limited notification is to be avoided each property owner adjoining that boundary must be notified and their written approval obtained. This is often very difficult to achieve in multiple ownership situations if comprehensive and up-to-date records of all the owners' contact details are not available, causing delays and a possible need for limited notification. Reducing internal boundary setbacks will improve this situation.

This Plan change proposes to significantly reduce the current 15m road setback for buildings on Māori land to 3m, or 5m where the garage directly faces the road, and the current 10m internal boundary setback for buildings on Māori land to 2m. As this could result in adverse visual and privacy effects for neighbours in some cases, a recession plane is proposed on those internal boundaries between different landowners' properties to mitigate these effects, based on the standard Christchurch City recession plane rule.

In situations where there could be multiple buildings on communally owned land, the current coverage limit of 35% could be restrictive and it is proposed to increase it beyond what might otherwise be expected (to 50%), to recognise the unique nature of this form of land tenure, and an associated strong desire for kaitiakitanga. The current coverage rule also assumes residential land use when the zone provides for a wider range of land uses than purely residential.

A more generous earthworks allowance (the same as for residential zones) is also proposed for Māori land in the zone, where sites are below 2000m².

Date Publicly Notified: DD Month YYYY

Date Operative: DD Month YYYY

Council Decision Notified: DD Month YYYY

File No: PL/DP/8

Plan Details: Chapter 12

TRIM No: FOLDER19/1000

DISTRICT PLAN AMENDMENTS

Note: For the purposes of this plan change, any text proposed to be added by the plan change as notified is shown as **bold underlined** and text to be deleted as ~~**bold strikethrough**~~.

Text in blue underlined font identifies existing terms defined in Chapter 2 – Definitions and/or links to other provisions in the District Plan and/or external documents. These have pop-ups and links, respectively, in the on-line Christchurch District Plan. Where a term is defined in the newly added bold text it will show as blue underlined text in bold.

Chapter 2 – Definitions

Māori land

in relation to Chapter 12 Papakāinga/Kāinga Nohoanga Zone, means land with the following status:

- a. ~~Māori communal~~ Land gazetted **or determined by order of the Māori Land Court** as Māori reservation under s338 Te Ture Whenua Māori Act 1993; and
- b. Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993; and
- c. Any land where:
 - i. **a status declaration under the Māori Affairs Amendment Act 1967 was made converting Māori freehold land to general title, and where there have been no changes of ownership since the conversion other than to an owner's bloodline successor(s); or**
 - ii. **one or more owners are able to provide written evidence of Whakapapa to the original grantees of the land as confirmed by the Te Runanga o Ngāi Tahu Whakapapa Unit or the Māori Land Court; or**
 - iii. **the land is vested in a Trust constituted pursuant to Part 12 of Te Ture Whenua Māori Act 1993 or a Māori incorporation constituted pursuant to Part 13 of the Te Ture Whenua Māori Act 1993; or**
 - iv. **the land is owned by a Rūnanga with authority/mana over the area in which the original Māori reserve is located.**

Chapter 8 – Subdivision, Development and Earthworks

8.9 Rules - Earthworks

8.9.2.1 Permitted activities- earthworks

Table 9: Maximum volumes – earthworks

Zone / Overlay		Volume
d. Residential and Papakāinga/Kāinga Nohoanga	i. All residential zones. ii. <u>Māori land within the Papakāinga/Kāinga Nohoanga zone where sites have an area of 2000m² or less.</u>	20m ³ /site
f. Rural and Papakāinga/Kāinga Nohoanga	i. All rural zones <u>and non-Māori land within the Papakāinga/Kāinga Nohoanga zone</u> (excluding excavation and filling associated with quarrying activities). ii. <u>Māori land within the Papakāinga/Kāinga Nohoanga zone where sites have an area of more than 2000m².</u>	100m ³ /ha

Chapter 12 –Papakāinga/Kāinga Nohoanga Zone

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

- a. Papakāinga/kāinga nohoanga zones facilitate and enable:
 - i. Ngāi Tahu whānau use and development of Māori land ~~ancestral land~~ to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and
 - ii. use and development of non-Māori land for activities appropriate in a rural area.

[....]

12.2.1.4 Policy – Rural activities

- a. Enable rural activities on ~~any~~ non-Māori land in a manner which is consistent with the Rural Banks Peninsula Zone provisions.

12.4.2 Built form standards - Māori Land

12.4.2.1 Internal boundary setback

- a. The minimum setback from internal boundaries for buildings and structures, shall be ~~10~~ 2 metres and shall apply at the legal boundary of any property where it adjoins another property which is not held in the same ownership or used for the same development.
- b. Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

12.4.2.2 Road boundary setback

- a. The minimum setback distance for any building from the road boundary shall be ~~15~~ **3** metres, **or 5 metres where a garage has a vehicle door that faces a road.**
- b. Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

12.4.2.3 Building height

- a. The maximum height of any building shall be 9 metres. This standard shall not apply to art, carvings or other cultural symbols fixed to Māori land or to buildings on Māori land.
- b. Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

12.4.2.4 Recession planes

- a. Buildings and structures shall not project beyond a building envelope constructed by recession planes from points 2.3m above the internal boundary, as shown in Appendix 14.16.2 Diagram B.
- b. The recession plane shall only apply to the midpoint of each section of wall and roof of a building, as shown in Appendix 14.16.2B.
- c. This rule shall only apply at the legal boundary of any property where it adjoins another property which is not held in the same ownership or used for the same development.
- d. Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

Advice note:

1. Refer to Appendix 14.16.2 for permitted intrusions.

12.4.2.54 Maximum coverage

- a. The maximum percentage of net site area covered by buildings shall be ~~35%~~ **50%.**
- b. Any application arising from this rule shall not be publicly notified and may be limited notified only to directly abutting land owners (where the consent authority considers this is required, and absent written approval).

12.4.2.65 Water supply for firefighting

[...]

12.4.3 Activity status and built form rules- non-Māori ~~other~~ land

- a. In the Papakāinga /Kāinga Nohoanga Zone, on land which is not ~~held as~~ Māori land, the activity status and built form rules applicable to the Rural Banks Peninsula Zone apply.

~~Advice note:~~

~~The built form standards in Rule 12.4.2 do not apply to Rule 12.4.3.~~


Chapter 14 –Residential

Appendix 14.16.2 Recession planes

Add the following wording under Diagram B:

- In the Residential Hills zone and on Māori land within the Papakāinga /Kāinga Nohoanga zone

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	<p>Resource Management Act 1991 Christchurch District Plan Proposed Plan Change Section 32 Evaluation</p>	<p>8</p>
<p style="text-align: center;">PAPAKĀINGA/KĀINGA NOHOANGA ZONE – RULE AMENDMENTS</p> <p>Overview</p> <p>The following report has been prepared to support Plan Change 8 to the Christchurch District Plan, which proposes to revise the setback, coverage and earthworks rules in the Papakāinga/Kāinga Nohoanga zone for Māori land, to better facilitate use and development of that land. The Plan Change also proposes to extend all the Māori land provisions of the zone, and therefore the revised built form and earthworks rules, to that general land owned by Māori within the zone which is not formally “Māori land” under the Te Ture Whenua Māori Act 1993, but which is still owned by descendants of the original grantees of the Māori Reserve land.</p> <p>The explanation to the plan change, on the first page of that document, provides a fuller description of the amendments proposed.</p> <p>The plan change and this report have been prepared in accordance with the requirements of Section 32 (s32) of the Resource Management Act 1991 (RMA).</p> <p>It is not anticipated that there will be major changes in the character or density of settlement in the Papakāinga /Kāinga Nohoanga zones as a result of the changes proposed. Rather, the plan change will facilitate incremental development, in accordance with statutory and strategic direction.</p> <p>It is anticipated that the plan change will result in fewer resource consents being required for development on Maori land in the zone.</p>		

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1 Introduction

1.1 Purpose of this report

- 1.1.1 The overarching purpose of section 32 (**s32**) of the Resource Management Act 1991 (**RMA / Act**) is to ensure that plans (and plan changes) are developed using sound evidence and rigorous policy analysis, leading to more robust and enduring provisions.
- 1.1.2 Section 32 requires the Council to provide an evaluation of the changes proposed in Plan Change 8 to the Christchurch District Plan (**the Plan**). The evaluation must examine whether the proposed objectives are the most appropriate way to achieve the purpose of the RMA, and whether the proposed provisions are the most appropriate way to achieve the objectives of the Plan. The report must consider reasonably practicable options, and assess the efficiency and effectiveness of the provisions in achieving the objectives. This involves identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects anticipated from implementing the provisions. The report must also assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- 1.1.3 The purpose of this report is to fulfil the s32 requirements for proposed Plan Change 8 – Papakāinga /Kāinga Nohoanga Zone Rule Amendments. In addition, the report examines any relevant directions from the statutory context including higher order documents.

2 Resource management issues

2.1 Council's legal obligations and strategic planning documents

- 2.1.1 Sections 74 and 75 of the RMA set out Council's obligations when preparing a change to its District Plan. The Council has a responsibility under Section 31 of the RMA to establish, implement and review objectives and provisions for, among other things, achieving integrated management of the effects of the use, development, or protection of land and associated resources. One of the Council's functions is to control the actual and potential effects of land use or development on the environment, and to do so in accordance with the provisions of Part 2.
- 2.1.2 Under s6 of the RMA, the Council must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. The Papakāinga/Kāinga Nohoanga (**PKN**) zones were mapped at the recent District Plan Review as the outer extents of the largest five land areas in the Christchurch District set aside as Māori Reserves under several Deeds of Purchase by the Crown in the mid 19th Century. The reserves were intended for kāinga nohoanga (settlements and places of residence) and mahinga kai (food gathering places) for local Māori hapū, and made up only a very small percentage of the total land subject to the Deeds of Purchase, eg just over 1% in the case of the 1848 Port Levy Deed of Purchase. This plan change is intended to promote the relationship of Māori and their culture with these areas of ancestral land, and to assist members of the hapū to "come home to live".
- 2.1.3 Under section 7 of the RMA, Council must have particular regard to (a) kaitiakitanga; and (c) the maintenance and enhancement of amenity values. The proposed plan change provisions will assist Māori to exercise kaitiakitanga in the zoned areas. The purpose of the plan change is to better facilitate the use and development of Māori land in the zoned areas by Ngāi Tahu, by modifying some of the current built form rules which are proving a hindrance to development.

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Section 7 (c) does represent a constraint on the changes proposed, in that it requires Council to have particular regard to the maintenance and enhancement of amenity values, including those of property owners whose land adjoins that land which is being developed.

- 2.1.4 Under section 8 of the RMA, Council must also take into account the Principles of the Treaty of Waitangi, in relation to managing the use, development and protection of natural and physical resources. The Court of Appeal has clearly articulated these principles, which can be summarised as partnership (working together with Māori communities), participation (Māori to be involved in decision making and planning) and protection (safeguarding Māori cultural concepts, values and practices).

- 2.1.5 As required by s74 and s75 of the RMA and s60 Greater Christchurch Regeneration Act 2016, a Plan Change must specifically give effect to, not be inconsistent with, take into account, or have regard to the following “higher order” documents / provisions:

- a. New Zealand Coastal Policy Statement

The Christchurch District Plan must give effect to the NZ Coastal Policy Statement. In the context of this plan change Policy 2(a) is particularly relevant, as four of the five Papakāinga/Kāinga Nohoanga zones adjoin the coastline:

“Recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations”.

- b. National Planning Standards November 2019

This standard indicates that the Papakāinga/Kāinga Nohoanga Zone should eventually be renamed to Māori Purpose Zone. Christchurch City Council’s preferred approach is to consider and implement the majority of these standards in a holistic way at the next District Plan review. Because of the recent District Plan Review the Council has a seven year period, until November 2026, to implement these National Planning Standards.

- c. Canterbury Regional Policy Statement (CRPS)

The Christchurch District Plan must give effect to the relevant provisions of the Canterbury Regional Policy Statement.

- i. Chapter 5 Land Use and Infrastructure (for the entire Canterbury Region) includes Issue 5.1.5 Difficulty in Establishing Papakāinga Housing and Marae. It notes that there are multiple barriers to the development of papakāinga housing and marae, including difficulty of obtaining loans on multiply owned land, different views of the various owners, the cost of development including compliance costs, and a lack of co-ordinated services and advice from the courts, central government and local authorities. The RPS notes that the issue that it can influence is the inability to appropriately develop resulting from provisions in regional and district plans.
- ii. Policy 5.3.4 in Chapter 5 is to recognise that papakāinga housing, marae and ancillary activities are appropriate when they occur on ancestral land, subject to avoidance or mitigation of specified adverse effects and regard being given to amenity values of the surrounding environment. However a concluding statement in the explanation notes:

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“...not all the adverse effects on existing amenity values need to be avoided where this would result in the aspirations for papakāinga housing and marae being unduly compromised.”

- iii. The methods of implementation for this policy state that territorial authorities may include provisions to implement this policy, including providing for papakāinga housing and ancillary activities to be established on ancestral land for the occupation of one or more of the beneficial owners who all are members of the same hapū as a result of the implementation of a partition or occupation order of the Māori Land Court.
 - iv. Chapter 6 Recovery and Rebuilding of Greater Christchurch, covers similar ground to Chapter 5 in regard to the more geographically limited Greater Christchurch Area, with Policy 6.3.10 specifically addressing the Māori Reserves within Greater Christchurch, including Māori Reserve 875 at Rapaki. The Policy is to “Recognise and provide for the relationship of local Ngāi Tahu with their ancestral lands, waters, wāhi tapu and taonga by enabling Māori Reserves within the Greater Christchurch area to be developed and used for their intended purposes for which they were originally reserved”.
 - v. The explanation notes that development of Māori Reserves needs to be enabled while maintaining and enhancing the environmental qualities and rural amenity of the area. Development of this land “is seen as something that will likely take a more dense form in certain areas and this could result in a more closely settled development pattern.”
 - vi. Under Methods, territorial authorities are to include in district plans objectives, policies and rules (if any) in relation to Māori Reserve Land in Greater Christchurch that recognise and provide for their intended purpose.
- d. Land Use Recovery Plan (**LURP**)
- Chapter 6 of the RPS was inserted by the Land Use Recovery Plan in December 2013, with the relevant content as above. Under s60 of the Greater Christchurch Regeneration Act, the District Plan or a change to the Plan must not be inconsistent with the Land Use Recovery Plan.
- e. Mahaanui Iwi Management Plan (**IMP**)
- The District Plan must take into account the provisions of the Mahaanui Iwi Management Plan 2013. Part 5.4 of the Iwi Management Plan –Papatūānuku – Policy P5.3 on Papakāinga, requires that district plans recognise for papakāinga and marae and associated activities through:
- i. Objectives that specifically identify the importance of papakāinga development to the relationship of Ngāi Tahu and their culture and traditions to ancestral land; and
 - ii. Zoning and housing density policies and rules that are specific to enabling papakāinga and mixed use development, and that avoid unduly limiting the

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establishment of papakāinga developments through obligations to avoid, remedy or mitigate adverse effects on the environment.

- f. The Our Space 2018-2048 (Greater Christchurch Settlement Pattern Update) is the Future Development Strategy required by the National Policy Statement on Urban Development Capacity, which the District Plan must have regard to. It contains Section 5.6 on Land for Cultural Purposes, which refers to the possibility of new areas becoming kāinga nohoanga developments. Importantly it states that there needs to be an integrated and collaborative approach between District Councils and Ngāi Tahu whanui in regard to any necessary upgrades of infrastructure to service kāinga nohoanga developments, including reticulated sewerage, wastewater disposal and the supply of drinking water.
- 2.1.6 The higher order documents broadly identify the major resource management issues relevant to the Papakāinga/Kāinga Nohoanga Zone and are consistent in their direction to provide for and promote the relationship of Māori and their culture and traditions with their ancestral land.
- 2.1.7 The Te Ture Whenua Act 1993/Māori Land Act 1993 is not a higher order document in the hierarchy of the RMA, but is relevant to the resource management issues identified. The Act's Preamble includes the following: "It is desirable to recognise that land is a taonga tuku iho of special significance to Māori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapū, and to protect wāhi tapu; and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapū." The RMA and Te Ture Whenua Act are consistent in this intent.
- 2.1.8 The current zone provisions in Chapter 12 of the District Plan were put in place by Decision 37 of the Independent Hearings Panel in 2016. The provisions can be assumed to implement the higher order directives described above.
- 2.1.9 However since 2016 some issues have become apparent with some of the elements of the Decision 37 rule package. Separate rule regimes were put in place for Māori land as defined by the Te Ture Whenua Māori Act than for "Other Land" in the zone (categorised as "General land" or "General land owned by Māori" under that Act). Activity lists in particular differ significantly for the two types of land title, however there is less difference between the two sets of built form standards. Some of the more "conservative" rules for other land in the Papakāinga zone (being rules from the Rural BP zone), e.g. setback rules, have also been used in the same or similar form for Māori land in the Papakāinga zone, and this has proved problematic, as the size and shape of titles in the Papakāinga zone generally differ from those in the rural zones.
- 2.1.10 It is not considered that there is any uncertainty or lack of consistency in the relevant direction in the higher order documents for Māori land, meaning that there is no requirement to assessing the range of potential management options under Part 2. At the same time it is considered that there is scope within that higher direction to further refine the zone provisions to better reflect that higher order direction in respect of Māori land.
- 2.1.11 In the District Plan, higher level policy direction has been specifically given effect to in Chapter 3 - Strategic Directions, Objective 3.3.3 - Ngāi Tahu mana whenua. The objective seeks:
- "A strong and enduring relationship between the Council and Ngāi Tahu mana whenua in the recovery and future development of Ōtautahi (Christchurch City) and the greater Christchurch District, so that...."

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[including other matters]

(iv) "Ngāi Tahu mana whenua's historic and contemporary connections and cultural and spiritual values, associated with the land, water and other taonga of the district are recognised and provided for" and

(vi) "Ngāi Tahu mana whenua are able to exercise kaitiakitanga".

2.1.12 The objective in Chapter 12, in turn, seeks to reflect that strategic policy direction in Chapter 3 while also reflecting the mix of title type in the zone:

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

a. Papakāinga/kāinga nohoanga zones facilitate and enable:

- i. Ngāi Tahu whānau use and development of ancestral land to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and
- ii. use and development of land for activities appropriate in a rural area.

2.1.13 This plan change does not seek to change Strategic Objective 3.3.3. It does propose to make some changes to Objective 12.2.1, including deleting the word "ancestral", as the manner in which it is used in the current objective is confusing. All land in the Papakāinga/Kāinga Nohoanga zone is considered by Ngāi Tahu to be ancestral land, as it was continuously occupied and used by Māori prior to the land being set aside as Māori Reserves. It is more useful in the context of a zone with two sets of provisions to talk about Māori land and non-Māori land. Changes are therefore proposed to a.i. of the Objective, so that it is clear that this limb of the objective applies to Māori land, and to a.ii, to apply that limb only to the non-Māori land in the zone. It is considered that the outcomes desired for Māori land are adequately encapsulated in a.i. and it is not necessary and may not be appropriate to require that the use and development of land for activities on Māori land be appropriate in a rural area. These matters are discussed further in section 5.2 of this report.

2.1.14 It is also proposed to make additions to the definition of Māori land, which extend the application of Part a.i. of the objective to some general land owned by Māori. This affects the evaluation of the extent to which the objectives¹ of the proposal are the most appropriate way to achieve the purpose of the Act (section 5.2 below). The plan change is considered to give better effect to the relevant strategic directions through both the rule amendments proposed and the proposed widening of the definition of Maori land.

2.2 Current Christchurch District Plan provisions

2.2.1 Chapter 3 Strategic Directions and the Chapter 12 objectives for the PKN zone have been quoted above. They are consistent with the higher order direction. The Chapter 3 objective provides a wide framework which promotes the relationship between the Council and Ngāi Tahu in the future development of the District, while the Chapter 12 objective focuses on facilitating Ngāi Tahu whānau use and development of land in the Papakāinga/Kāinga Nohoanga zones to provide for economic, social and cultural well-being.

¹ Section 32(6) defines "objectives" and "proposal" in terms specific to sections 32 – 32A. "Objectives" are defined as meaning:

- (a) for a proposal that contains or states objectives, those objectives;
- (b) for all other proposals, the purpose of the proposal.

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- 2.2.2 The Chapter 12 objective uses the word “ancestral land”, a reference to section 6 of the RMA under which the Council must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. It must be noted that “ancestral land” is a broad term and could be used in respect of virtually all of the land in New Zealand, rather than just in respect of the limited area of land which was set aside as Māori Reserves in colonial times. Nevertheless continuous occupation of land is a factor which gives extra importance to the relationship of Ngāi Tahu with the Māori Reserve land which did remain in their ownership. As the RPS notes, ancestral land for papakāinga housing and marae is a finite resource at fixed locations, predominantly located in close proximity to natural resources which are highly valued, such as the coast. The District Plan PKN zone provisions are intended to allow mana whenua to exercise their relationship, culture and traditions with this land and the surrounding natural resources, in accordance with the purposes for which the land was set aside.
- 2.2.3 The second part of the Chapter 12 objective “to facilitate and enable use and development of land for activities appropriate in a rural area”, provides an intended outcome for non-Māori land in the zone not covered by the Māori land activity provisions.
- 2.2.4 Non-Māori land in the PKN zones shares many of the characteristics of Māori land, in terms of land parcel sizes and shapes, as all of this land was originally Māori Land under Māori Land Court title, and is dispersed through each of the PKN zone areas. There is more non-Māori Land in some of the PKN zones than others, e.g. Wairewa. However the zones are intended primarily for Māori settlement and also to provide for some degree of economic base for those who “come home to live”. They are not intended as standard settlement or rural-residential zones, but rather have a more unique purpose. There is no need to create further rural residential zones in Christchurch City as there are already significant numbers of “undersized” sites in most rural locations. There is also no ability to create further rural-residential zones in Greater Christchurch as a result of Policy 6.3.9 of the RPS. The emphasis in both the RPS and Chapter 3 of the District Plan is on facilitating Ngāi Tahu mana whenua’s connections with the land within the zones.
- 2.2.5 Building setbacks for Māori land in the zone are a primary focus of this plan change, and buildings setbacks on non-Maori land are not considered further. In the context of the primary purpose of the zone and of the sizes and shapes of properties in the zone the building setbacks for Māori land are overly restrictive and do not adequately achieve the objective of facilitating the use and development of Māori land in the zone.
- 2.3 Problem definition - the issues being addressed**
- 2.3.1 **ISSUE 1 –Building setbacks on Māori land**
- On many of the sites within the zone, it is difficult to meet the building setbacks from internal boundaries and road boundaries, due to the small size and long narrow shape of the sites. Breaches of these rules result in a need for restricted discretionary activity resource consent.
- 2.3.2 For Māori land in the zone, these rules impose an additional and potentially overly onerous constraint on development, adding to existing constraints deriving from properties being in multiple ownership. These may include achieving agreement between a large number of owners, working through Māori Land Court processes for succession and occupation, and difficulties of access to finance.

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- 2.3.3 Current building setbacks for Māori land in the PKN zones do not facilitate use and development for activities which are appropriate in the zone in terms of the zone objective and policies, and do not contribute to the implementation of higher order strategic directions for Māori land.
- 2.3.4 There is further discussion of this issue and analysis of the sizes of blocks and effect of various setbacks in subsequent sections of this report, especially sections 3.2 and 3.3.
- 2.3.5 **ISSUE 2 –Other applicable zone standards**
- 2.3.6 The PKN coverage rule for Māori land is 35%, which is the same as most of the standard residential zones in the District Plan. While there are not yet many examples of communal buildings in the zones or of more than one residential unit on a property (possibly because of the difficulty of building on multiply owned land), if more of these papakāinga developments occur, which is understood to be an aspiration, it will be advantageous to recognise the unique nature of this form of land tenure by providing for greater site coverage without the need for resource consent. If for example there were several owners of a title all wishing to develop over time on their own portion of a title, coverage could become a “first in, first served” situation.
- 2.3.7 Permitted earthworks volumes on Māori land in the PKN zones can also be seen as inequitable in the zone. They are currently the same as for rural zones meaning a limit of a limit of 100m³/per ha without a consent. If a site is 2000m² this would equate to 20m³ which is the same as for residential zones, but using a ratio for sites of less than this size means that the volume of earthworks permitted decreases to 10m³ per 1000m² or 5m³ for 500m², which could be unreasonably limiting on small residential sized sites, compared for example to the Residential Hills zone. Earthworks for building platforms which are entirely within the footprint of the building are exempted from the minimum volumes as they are covered by approved building consents, but this exemption does not apply to earthworks associated with retaining walls/structures which are not required for the structural support of the principal building on the site or adjoining site, or for minor recontouring of the site to improve usability e.g. for installation of water tanks. Earthworks for retaining walls and potentially for access/driveway improvements (battering etc) can be anticipated on some sloping sites within the zones.
- 2.3.8 **ISSUE 3 –Which land should benefit from PKN Māori land provisions**
- 2.3.9 The activity provisions for Māori land in the zone are currently applicable only to Māori Land as defined under the Te Ture Whenua Māori Act 1993. This effectively means only Māori freehold land, and land² gazetted as Māori reservation under section 338 of the Te Ture Whenua Māori Act, since according to the Māori Land Court Update 2019, there is no Māori customary land in the South Island.
- 2.3.10 Māori land law is complex and has evolved considerably over the last century and a half. Within the original Māori Reserve areas set aside in the mid 19th century and now forming the boundaries for the Papakāinga/Kāinga Nohoanga zone, a considerable amount of land has been “alienated” over time to become other than formal “Māori land”. This means that some land in the Māori Reserve areas which used to be Māori land, is ancestral land and which is still owned by Māori who belong to the relevant hapū, cannot now benefit from the zone provisions for Māori land. Such development might otherwise be in accordance with both the zone and strategic objective and with higher order planning documents.

² A correction is being made to this limb of the existing District Plan definition in this plan change, to delete the words “Maori communal” as this is not a status of land, and Maori Freehold Land, Crown land and general land can all be gazetted as Maori Reservation.

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- 2.3.11 The effect of a succession of legislation in the 19th and 20th centuries was to convert multiply owned Māori land both within Māori Reserves and elsewhere, to individual ownership so that it could be more readily put to economic use and/or sold. For example the Māori Affairs Amendment Act 1967 introduced compulsory conversion of Māori freehold land with four or fewer owners into general land. (A subsequent government ended this provision in 1974 by a further amendment to that Act).³
- 2.3.12 That General land owned by Māori⁴ that is known to the Māori Land Court because it also has other land statuses, such as being a more recent Māori Reservation or a section 338(1) TTWMA Māori Reserve, is mapped on the Ministry of Justice's website "Māori Land Online" even though it does not have full Māori Land status. Some but not all of the provisions of the TTWMA apply.
- 2.3.13 Section 338 reserves are for communal purposes eg marae, wāhi tapu or other communal purposes and are "to be held for the common use or benefit of the owners or of Māori of the class or classes specified in the [gazette] notice". There are three section 338 reserves identified by the Māori Land Court in the PKN zones as General land owned by Māori, and also being section 338 reserves. Two of these are at Koukourārata and one at Ōnuku (the marae site, a section 338 reserve since 2013). It was at Ōnuku in 1840 that the Treaty of Waitangi was first signed in the South Island. The current District Plan definition of Māori Land already includes s338 land as Māori Land as a result of mediation in 2015 during the IHP hearing process.
- 2.3.14 There are five other Māori Reserves in the PKN zones which are also on General land owned by Māori, and also section 338 reserves as confirmed by staff of the Māori Land Court. There is one at Koukourārata for the common use and benefit of members of the rūnanga and four at Rapaki in the "red zoned" area of the settlement. These four were set aside in 2016 for the individual owners and their descendants, as a management structure to enable them to keep the land in Māori ownership after it was sold to the Crown.
- 2.3.15 There is likely to be a considerable amount of land other than these blocks in the zone which is general land owned by Māori, who may be able to show they can whakapapa to the original grantees of the land. Once land becomes simply general land under LINZ, its ownership is no longer tracked by the Māori Land Court and it is not mapped by them. This means that the extent of such land cannot be readily established, except on a case by case basis.
- 2.3.16 General land owned by Maori as defined in section 4 and section 129 of the TTWMA includes a "majority" test. It is defined as "general land that is owned for a beneficial estate in fee simple by a Maori or by a group of persons of whom a majority are Maori". Both runanga, through Mahaanui Kurataiao Ltd⁵ and the Te Hononga Committee of Council have asked that the original proposal for a 50% or more test in the revised District Plan definition be removed. This would mean that land where only one or more owners could whakapapa to the original grantees of the land could also benefit from the Maori Land provisions in the District Plan. It is understood from discussions with Maori Land Court staff that most general land owned by Maori in the zone

³ Some of the information in this section is sourced from Community Law and Maori Land Court websites and from the publication "150 Years of the Maori Land Court" (2015).

⁴ In this report "General land" is capitalised when it is clear that that land meets the majority test in the TTWMA definition of General land i.e. it is owned by a Maori or by a group of persons of whom the majority are Maori. When it is unclear if the land being referred to meets the majority test, the words "general land" are not capitalised.

⁵ Mahaanui Kurataiao Ltd (MKT) is a resource and environmental management advisory company set up in 2007 by the six rūnanga in mid Canterbury to assist and improve the recognition and protection of mana whenua values in their takiwa.

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would have a majority of Maori owners. However there a number of variations of ownership structure which mean that some general land (partly) owned by Maori might not.

2.3.17 This plan change proposes to add to the District Plan's definition of Māori land:

- a. Any general land owned by Māori within the original Māori Reserves which make up the zone, where land was converted to general title as a result of a declaration of status under the Māori Affairs Amendment Act 1967, but where there has been no change of ownership other than by succession. This should be able to be shown by the Māori Land Court record and/or LINZ records, but will need to be demonstrated by the owner since Council does not hold such records;
- b. Any general land where one or more owner can whakapapa to the original grantees of the land as confirmed by the Māori Land Court or the Te Rūnanga o Te Tahu Whakapapa Unit. A Census of Ngāi Tahu kaumatua alive in 1848, provides a starting point for the Unit to confirm descent from the original landowners in one of the four takiwa/areas (Both Ōnuku and Ōpukutahi areas are within the takiwa of a single hapū);
- c. Any land vested in a Trust under Part 12 of the TTWMA or a Maori incorporation under Part 13 of the TTWMA. Advice from the Maori Land Court is that these would almost certainly have a majority of Maori owners. Such trusts can be constituted on General land owned by Maori as well as on Maori Freehold Land; and
- d. Any land owned by a Runanga with authority/mana over the area in which the original Maori reserve is located.

2.3.18 The effect of adding these categories to the District Plan's definition of Māori land will be that activities permitted on Māori land including papakāinga development will be permitted on more land in the zone.

2.3.19 For example an application was lodged recently by Te Rūnanga O Rapaki for kaumatua flats at Rapaki on general land. This application was required to be considered as a non-complying activity even though the land is part of Māori Reserve 875, as indicated by the legal description, but was converted to general title under the Māori Affairs Amendment Act 1967⁶. If this plan change had been operative at the time, such development would have been a permitted activity in respect of the use, although in this particular case breaches of built form and other standards such as earthworks rules would still have necessitated a resource consent.

2.3.20 Providing for papakāinga planning provisions on land which is general land owned by Māori (with or without a majority test) but not Māori land is becoming more common in other districts in New Zealand. Examples are Whangarei, Dunedin (proposed District Plan), Hastings and Porirua (proposed District Plan). Of these, the only District with a (proposed) zone similar to the PKN zone in Christchurch is Porirua, with the others providing for papakāinga on general land owned by Māori in rural or any zones, by the use of qualifying criteria. (Porirua is intending to use both a zone and provision elsewhere in the District). The status of such development is usually controlled or restricted discretionary rather the permitted. The qualifying criteria are generally similar to those proposed here. Both Hastings and Porirua have an additional requirement that it should be demonstrated that the land will remain in Māori ownership in the long term (eg via a covenant or encumbrance) or that the land will be converted to Māori Freehold land.

⁶ This application was subsequently processed and approved under the Covid-19 (Fast Track Consenting) Act 2020.

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- 2.3.21 In the case of the PKN zones in Christchurch, it is considered that this is an unnecessary and unenforceable requirement given the history and purpose of the zone and the difficulty of establishing what will happen in the long term. Showing either no change of ownership outside of the whanau or hapū since conversion or being able to whakapapa to the original grantees of the land is considered to be adequate to enable use of the Māori Land provisions. While general land owned by Māori and not subject to other protections could be on-sold to non-Māori, the opposite is also true and some general land where development under Māori Land provisions may occur could be converted back to Māori Freehold land in the longer term.

3 Development of the plan change

3.1 Why are the current District Plan provisions the way they are?

- 3.1.1 Decision 37 of the IHP records that under the Papakāinga zone of the Notified Version, both Māori Land as defined under the TTWMA, and "Other Land" (General Land under the TTWMA) were treated on the same basis. The zone conferred significantly greater development opportunity for all land within the Papakāinga zone than was proposed for rural zoned land generally. This was not seen by the IHP as appropriate for non-Māori land. It was considered important that the zoning regime recognised the different challenge associated with the fact the Māori land was held in collective ownership. In the Decision, different provisions were adopted for Māori Land, where specific mostly more enabling activity and built form standards were to apply, and Other Land where Rural Banks Peninsula zone standards were to apply. It was noted at p17 that differential treatment between Māori Land and Other Land in close proximity was well supported by the evidence of the Joint Parties (TRONT, Nga Rūnanga, the Council and the Crown).
- 3.1.2 The Decision does not record any significant debate on the appropriateness of built form standards for Māori land other than in regard to height.
- 3.1.3 For Māori land, the internal boundary building setback of 10m first appeared in the Second Revision of the zone produced by the Joint Parties dated 15 December 2015, and was then used in the Decision. This contrasted with a setback of 1.8m in the Notified Version, which had been aimed at maximum flexibility for development. Page 164 of the Transcript of the hearing on 24 November 2015 suggests that this figure was intended to apply only to Māori land adjoining general Land, and not to Māori land adjoining Māori land with a different owner. However the 10m figure now applies to all property boundaries even within Māori land. 10m is the default setback in the Rural Banks Peninsula zone for all non-residential buildings other than residential units.
- 3.1.4 For Māori land, the road boundary building setback of 15m also first appeared in the Second Revision of the zone (as opposed to 4.5m in the Notified Version), and this is the same setback as in the Rural Banks Peninsula zone.
- 3.1.5 The section 32 report for the Rural Chapter provisions in the District Plan indicates that both the internal boundary and road boundary setbacks for rural zones were selected to reflect a rural character with predominantly larger sites, abundant open space, a low density of built form and a dominance of the natural environment. It is noted that in rural areas there is an expectation of rural dwellings being set back from the road. This appears to be based on landscape values rather than any considerations of matters such as traffic noise or dust.

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- 3.1.6 A preliminary review of some other local authority papakāinga provisions shows some variation in approach, likely reflecting the amount and title sizes of Māori land in their areas. Built form standards eg setbacks vary from minimal (eg Whangarei District Plan) to the same or nearly the same as for rural zones and activities generally eg Waimakariri District Plan and Dunedin's 2G District Plan, both with 20m road and internal boundary setbacks.

3.2 How did this plan change come about?

- 3.2.1 The issue of restrictive internal boundary and road setbacks making it very difficult to find complying building platforms on smaller titles in the zone, was raised with Council by Mahaanui Kurataiao Ltd in early 2019 and reiterated later in 2019 as a result of further consent issues of this nature. Mahaanui (MKT) is a resource and environmental management advisory company set up in 2007 by the six rūnanga in mid Canterbury to assist and improve the recognition and protection of mana whenua values in their takiwa.
- 3.2.2 Investigations of recent consents in the zones and discussions with consent planners indicated that the setback rules were indeed problematic, and were resulting in potentially onerous restrictions on land owners and potentially unnecessary resource consents.
- 3.2.3 Resource consent applications have been granted for a total of 11 proposals on sites in the papakāinga zones since the PKN rules were introduced in 2016 , 6 at Koukourārata, 2 at Rapaki, 2 at Ōnuku and 1 at Wairewa. At the time of writing, there was one additional consent application at Rapaki on hold due to non-compliance with road and internal boundary setbacks. One of the proposals granted approval, for 10 kaumatua flats replacing 4 existing flats at Rapaki, was approved in late 2020 under the Covid-19 (Fast Track Consenting) Act 2020.
- 3.2.4 Of the total of 11 consents granted (5 on Māori land, 3 on general land owned by Māori and 3 on non-Māori land), the biggest issue was setbacks, with 7 of the proposals having internal boundary setback non-compliances and 5 having road boundary setback non-compliances. Two applications had earthworks non-compliances, one at Rapaki and one at Koukourārata. The three non-Māori land consents were for houses on undersized lots processed according to Rural Banks Peninsula zone rules, with two of these having non-compliances on coverage.
- 3.2.5 Rating Unit (property) sizes within the zone are variable, as shown in the table below:

PKN Zone	No. of Rating Units	Min Area (Ha)	Max Area(Ha)	Average Rating Unit Area (Ha)
Rapaki	91	0.0298	172.75	4.6250
Koukourārata	101	0.0583	658.85	20.3502
Wairewa	111	0.0757	32.04	1.9559
Ōpukutahi	30	0.5172	166.67	11.9514
Ōnuku	25	0.0522	180.26	13.3975
TOTAL	358	0.0298	658.85	9.4604

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The size distribution of properties in each sub-area is illustrated below. While around a third of the properties are of what might be termed an “urban” size eg are less than 2000m², these smaller rating units are concentrated in Rapaki and Koukourārata, with more properties of larger sizes in other parts of the zone. However only 15% of rating units in the zone exceed 10 ha, and only 23% exceed 4 ha.

PKN Zone	0-1000m ²	1000-2000m ²	2000-5000m ²	5000-10000m ²	1 ha to 4 ha	4 ha to 10 ha	>10ha	Total
Rapaki	24	29	16	6	12	1	3	91
Koukourārata	12	27	12	4	7	7	32	101
Wairewa	4	14	20	27	33	11	2	111
Ōpukutahi		-	1	2	13	3	11	30
Ōnuku	3	-	3	1	5	7	6	25
TOTAL	43	70	52	40	70	29	54	358

- 3.2.6 As well as the generally small size of rating units/properties as shown in the tables above, a greater than normal proportion of titles in the zone are narrow and/or of irregular shape, probably a result of partition of land by the Māori Land Court in the past to separate the shares of some owners from the rest.

“A hapū partition is where all the owners are members of the same hapū. These are not subject to the same assessment as a ‘normal’ subdivision being considered by a council, particularly regarding size, shape, area, access, and infrastructure and servicing – unless the Māori Land Court chooses to address these issues Before partitioning is approved, the Māori Land Court needs to be satisfied that either the action is necessary in order for the land to be effectively used, or that it will give effect to a gift from one of the owners to a member of his or her whānau. Also, the area to be partitioned must not restrict access to the rest of the land or take too much of the flat or useable parts of the land”.

<https://www.subdivision.net.nz/what-you-need-to-know-about-subdividing-Māori-land/>

3.3 Analysis of effect of setbacks

- 3.3.1 For the purposes of analysis, GIS staff at Council obtained a GIS layer from Māori Land Court data which enabled identification of those parcels within the P/KN zone in the City which are held in Māori land titles. (This information had not been previously held by Council). This includes the eight additional titles known to the Māori Land Court as being General land owned by Māori because they have other protections. (see 2.3.14).
- 3.3.2 Land parcels not shown as Māori land titles by the MLC share similar characteristics of fragmented title size and irregular shape, due to their common origin as Māori Reserve land. However this land is not included in this analysis. Residential development on the “other land”

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in the zone is currently non-complying on new or existing sites of less than 4 ha, and discretionary on existing sites of 4 to 40 ha.

- 3.3.3 The current setbacks of 15m for road setbacks and 10m for internal boundary setbacks were mapped for Māori land titles in the zone as identified by the Māori Land Court. The mapping was over an aerial photo base and was able to show which vacant sites would not be able to be built on at all (without a consent) due to the setbacks, as well as those vacant sites where there was only a small portion of the site not affected by setbacks.
- 3.3.4 For the second category (only a small portion of the site not affected by setbacks) a visual comparison was done with existing houses nearby, to estimate whether the non-setback portion of the vacant site was or was not large enough to accommodate a house. This method was used as it is impractical to be completely sure about the ability of sites being considered to accommodate a house without encroaching into the setbacks, as houses vary in size, design and orientation i.e. they do not necessarily occupy a standard building envelope, the “buildable” portion of the site also varies in shape, and there are other variables such as practicality of access.
- 3.3.5 This analysis also revealed that there are a number of sites in the zone which already have a house on them, which would not be buildable with current setbacks. This could be because these houses were built before there was subdivision control i.e. prior to minimum site sizes (generally since the 1960s), or because previous setback rules were less restrictive, or as a result of resource consents having been granted. Some of these sites are large enough to accommodate a second house if setbacks were reduced, but these sites have not been included in the totals below.
- 3.3.6 The table indicates that approximately 33 vacant sites with formal Māori Land title could not be built on without a consent, due to the size of current internal and road setbacks. (A red zoned site on Omaru Road has been excluded from the table). The majority of the sites affected are in Rapaki, with smaller numbers in Wairewa and a few in Koukourārata. Fragmentation through partition into small, narrow and often irregularly shaped sites is likely to be the main cause of these setback difficulties (see 3.2.5. above). A schematic view of the current setbacks is shown in **Appendix A** with the first diagram for each area showing land “taken out” from development (without a consent) by current setbacks.
- 3.3.7 For the purposes of comparison of effect, proposed setbacks were mapped for options of 5m for road setbacks and 3m for internal boundary setbacks (similar to the Residential Small Settlement zone) and for 3m for road setbacks and 2m for internal boundary setbacks (similar to the Residential Banks Peninsula zone, although 5m would still be required in that zone for the road setback if a garage faces the road).
- 3.3.8 For the scenarios with setbacks as for the RSS zone, the number of Māori land sites which could not be built on without a consent reduces from 33 with the current setbacks to approximately 8. It must be emphasised that these figures are indicative only, because there may be other reasons why a resource consent is still required e.g. waterway setback rules, and are likely to be other matters that this simple analysis has not taken into account e.g. topography and access.

PKN Zone	Vacant Māori Land Titles not buildable with current setbacks	Vacant Māori Land Titles not buildable with setbacks as for RSS zone	Vacant Māori Land titles not buildable with setbacks as for the RBP zone
Rapaki	21	5	1

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Koukourārata	3	-	-
Wairewa	9	3	2
Ōpukutahi	-	-	-
Ōnuku	-	-	-
TOTAL	33	8	3

- 3.3.9 For a setback scenario as for the RBP zone, these setback figures of 2m internal boundary setback and 3m or 5m road boundary setback further reduce totals of “non-buildable” sites. A schematic view of these setbacks (which are now those proposed in this plan change) is shown in **Appendix A** with the second diagram for each area showing land “taken out” from development (without a consent) by the proposed setbacks. The two diagrams, one showing current setbacks and one showing proposed setbacks, can be compared for each area.
- 3.3.10 It must be noted that it is difficult to be accurate with totals, with small differences in the size of the setbacks for example between the RSS and RBP scenarios, and some of the resultant “compliant” building platform areas are very narrow eg between 12m and 14m wide for four Rapaki sites, which would limit house design. The biggest change in number of sites which are buildable, results from a significant setback reduction in the first place e.g. from 10m to 3m for internal boundary setbacks. It also needs to be emphasised that for all of the zoned areas, some sites are so narrow or of such unusual shape that they will always be difficult to build on, irrespective of setbacks.
- 3.3.11 There may be other issues raised by smaller internal setbacks, depending on the placement of buildings on adjoining sites. Larger buildings which are close to boundaries are potentially visually dominant over neighbouring sites, especially for a downhill neighbouring site, and could have an adverse effect on privacy. There may be loss of outlook for uphill sites with the reverse scenario. The effect of smaller road setbacks on functionality of sites, street scene and the character of the settlements also needs to be considered. These issues are covered in more detail in the evaluation of options, along with the option of adopting a recession plane from internal boundaries.
- 3.4 What other District Plan issues have also been considered in this plan change?**
- 3.4.1 Mahaanui Kurataiao Ltd have questioned the 35% maximum coverage figure in the PKN zone for Māori land, as landowners at the consultation hui (see below) have sought an increase, particularly in respect of the possibility of some land parcels being able to accommodate multiple buildings.
- 3.4.2 There was no maximum coverage rule in the notified version of the PKN zone and a rule was only recommended at the rebuttal stage of the IHP stage of the hearing, in response to submissions from owners of non-Māori land. The 50% (zone) maximum coverage rule proposed at that stage was in relation to communal development at the core of the zones and in recognition of the fact that due to natural hazards, servicing and other restrictions, as well as the functional and cultural need to concentrate buildings in a complex, it would be better to enable a higher concentration of building within the zone than would normally apply for a site. This figure was subsequently

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reduced to 35% (site) maximum coverage after further discussion and mediation, and then in the IHP Decision.

- 3.4.3 The maximum coverage figure in residential zones in the City is 50% in the Residential Medium Density zone. This is in the context of considerably more “intense” development on average than is currently present in the Papakāinga/Kāinga Nohoanga zone. Site coverage in the nearby Residential Banks Peninsula zone is 35%. Property sizes are variable in the PKN zone as described in 3.2.4 below, but are on average larger than in urban zonings, so 35% coverage should allow flexibility for development in most cases. Coverage allowable does need to be balanced against the need for sites to function well by having open space as well as room for parking. Other than in Rapaki where there is reticulated sewerage, there is also a need for open space for septic tank outfall fields. In what is essentially a rural settlement zone, the generally relatively open character of the zone does mean that it would be desirable not to unduly compromise the character of the zone by allowing too high a figure for permitted coverage, especially since setbacks are being significantly reduced, so that more building mass could be closer to neighbours.
- 3.4.4 On the other hand a case can be made for increased coverage for cultural reasons, for example putting a group of dwellings on a property in a papakāinga development. Evidence presented to the IHP on the papakāinga zone hearing indicates papakāinga in the examples examined in other regions in NZ tended to have low dwelling densities. Nevertheless there was a desire for these developments to extend beyond housing and include employment or commercial opportunities⁷. In the Christchurch case it is considered that permitted coverage could be increased to 50% as an enabling measure to reflect the possibility of communal development.
- 3.4.5 Mahaanui Kurataiao Ltd have also raised an issue around the volumes of earthworks permitted without consent in the zone (see paragraph 2.3.7). The rural zone ratio of volume of earthworks to size of site does appear limiting and inequitable when considering small sites within the zone.
- 3.4.6 Three consents have been granted for breaching earthworks rules within the zone. One for a barn would not have been required if a building consent had been applied for initially, (it was subsequently sought and granted) as the earthworks would have been covered by that consent. The earthworks for another consent application only marginally exceeded the permitted amount, and were for driveway and carport contouring due to a slight slope and for setting up of water tanks. The earthworks for the third consent at Rapaki involved a retaining wall, with the scale of the earthworks required (around 500m³ of cut and 50m³ of fill, to a max depth of 3m) being considerably more than would be permitted for a standard residential zone, partly because of the extent of built development. It is appropriate for this scale of earthworks to require consent, not least to provide an assurance of geotechnical stability.

3.5 Other environmental issues in the zones

- 3.5.1 The Council has not commissioned additional or detailed technical advice from experts to assist with this plan change, since the environmental issues in the zone were canvassed during the District Plan review hearings, and rule changes rather than rezoning are now being proposed, i.e. significant additional development as a result of this plan change is unlikely. However some of the environmental issues are briefly discussed below, in order to provide context for the degree of development which could occur.

⁷ Evidence in chief of Courtenay Bennett on behalf of Ngāi Tahu.

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- 3.5.2 **Infrastructure**⁸: Rapaki is now reticulated for wastewater with an ultimate connection through to Bromley. It is understood that there is capacity in the bulk wastewater network for the size of the settlement to double from its current size. New water supply mains were installed on Omaru Road and Rapaki Drive in 2011, again with the capacity sufficient to accommodate a number of additional houses. However these assessments will be revisited as part of a servicing needs assessment that Council is undertaking as part of the Three Waters Reform currently being undertaken by central government, and the potential for development which might be realised as a result of this plan change will be fed into this assessment, to ensure that any constraints e.g. of capacity are accurately identified. This also applies across the other papakāinga zone locations, although there is less potential for or likelihood of “intensification” in those other parts of the zone.
- 3.5.3 Due to its remoteness, Koukourārata relies on rainwater tanks and wells for water supply and septic tanks for wastewater treatment and disposal. There are issues with adequacy of water for household supply and farming activities in summer. The relatively low level of development likely to occur at Koukourārata in future means that any options for reticulated water supply or wastewater are likely to be prohibitively expensive in the short to medium term at least. However the rūnanga is seeking to develop financially viable water supply solutions to support the rūnanga and community.⁹
- 3.5.4 The marae at Ōnuku has recently installed a private water supply and wastewater treatment and disposal system to cater for events. Any provision of a reticulated water supply and wastewater system in the future would need to be by extension of the planned wastewater infrastructure for Akaroa.
- 3.5.5 Wairewa and Little River township are currently on a reticulated water supply which extends northeast to Cooptown. There is capacity for a number of additional houses but the marae is currently not connected in, and has its own limited water storage for events. There is no reticulated wastewater system at Little River, although some scoping of constraints and potential costs has been undertaken. On-site treatment and disposal for the papakāinga zone area might be an option, depending on the extent of development long term. It is understood that kāinga nohoanga development is not a priority for Wairewa rūnanga at the current time, as the key focus is the ecological restoration of the lake and surrounding land¹⁰. Evidence to the IHP hearing in 2015 on the Papakāinga zone from Council technical staff noted the need for a stormwater management plan in this area given potential flooding issues from the Orana River, and also the need for minimum floor levels for residential buildings.¹¹
- 3.5.6 Tikao Bay (Ōpukutahi) has a small package sewage treatment plant but this has limited capacity. A possible option for connecting in any development in the future located beyond the current grouping of houses would be to connect to the Wainui wastewater system, but there would need to be capacity increases and investigation of additional land for disposal of treated wastewater. There is a small private water scheme at Tikao Bay taking water from two adjoining streams for the existing settlement. Other than this there is low or no flow in local streams, so any additional development would likely need to rely on rainwater.

⁸ Information in this section is drawn from a report to the Te Hononga Committee dated June 2019, titled “Building in the Papakāinga Kāinga Nononga zones”, with this report including input from Council’s Asset Planning Water and Wastewater team.

⁹ Council response to key points raised on Rūnanga priorities, report to the Te Hononga Committee 9 September 2020.

¹⁰ As for 8.

¹¹ Evidence of Brian Norton on behalf of CCC: “Papakāinga Zone – Stormwater” 13 October 2015.

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- 3.5.7 **Geotechnical assessment:** Land on the uphill side of Governors Bay Road at Rapaki, and an area of land west of Omaru Road in the settlement itself are in Rockfall Management Area 1 in Rule 5.6.1.1., meaning that non-complying activity consents are required in this area for residential buildings and restricted discretionary consents are required for other buildings and structures. While there have been some recent updates proposed to hazard area boundaries through Plan Change 2, these did not affect Rapaki as it is not likely that the hazard would be able to be removed.
- 3.5.8 Because GNS investigations post-earthquakes (which were the basis for the hazard overlays) concentrated on the worst affected rockfall and other hazard areas, all other PKN zone locations are now within the Reminder of Port Hills and Banks Peninsula Slope Instability Management Area. In these areas, site specific geotechnical investigations will be required in some cases to establish suitability for building or other development.
- 3.5.9 **Road network/transport:** Koukourārata is relatively remote from urban areas, with the main road access being over the hill from Purau on Lyttelton Harbour. The road is sealed but windy. Other papakāinga zones are generally more accessible, but Te Pātaka o Rākaihautū/Banks Peninsula as a whole has many rural and some unsealed roads. Council is not generally in a position to improve levels of service because of funding constraints.
- 3.5.10 **Landscape Character:** There was extensive discussion in IHP Decision 37 of the appropriate way to make provision for papakāinga/kāinga nohoanga development within the parts of the zones within identified Outstanding Natural Landscapes or areas of High Natural Character, e.g. the higher parts of Rapaki and Koukourārata and the lower part of Ōpukutahi. The outcome was controlled activity status, with Council's control limited to mitigation of adverse effects on the qualities of those landscape areas.
- 3.6 **Description and scope of the changes proposed**
- 3.6.1 The Plan Change does not propose any significant changes to the objective and policies for the PKN zone, however it does propose to reword Objective 12.2.1 and Policy 12.2.1.4 to improve understanding of the objective as it applies to the zone, and to the two types of land tenure within the zone.
- 3.6.2 The purpose of the Plan Change is to better facilitate use and development of Māori land in the PKN zone, by:
- Providing more flexibility in built form rules by reducing internal boundary and road boundary setbacks; and
 - Increasing permitted coverage, and increasing permitted earthworks volumes on sites under 2000m².
 - Extending all the Māori land provisions of the zone, and therefore those revised built form and earthworks rules, to that general land owned by Māori within the zone which is not formally "Māori land" under the Te Ture Whenua Māori Act 1993, but which is still owned by descendants of the original grantees of the Māori Reserve land.
- 3.6.3 c. is proposed to be done by adding that general land owned by Māori to the classes of land which are covered by the definition of Māori Land in the District Plan. (see paragraph 2.3.7 and the Plan Change 8 document for more detail). This proposed amendment to the definition in the District

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Plan is solely for the purposes of the Papakāinga/Kāinga Nohoanga zone provisions, and would have no effect on the status of the land under the Te Ture Whenua Māori Land Act.

- 3.6.4 The plan change does not propose any change to waterway setbacks within the PKN zone, as this would have implications across the whole City and is therefore beyond the scope of this plan change.
- 3.6.5 Neither does it propose changes to the limited notification provisions for setbacks, which have proved problematic in the Papakāinga zone due to multiple ownership. There are often a large number of owners of a particular parcel of land, with neither the Council nor the Māori Land Court holding comprehensive contact details. This makes it very difficult to obtain the written approval of all owners for an adjoining development.
- 3.6.6 Section 95B(7) of the RMA requires Council to determine in accordance with section 95E whether an owner of the allotment adjoining the boundary setback infringement is an affected person, and legal advice to Council on this section is that the discretion not to consider adjoining landowners "affected" should only be used very sparingly, with serious and prolonged attempt made to contact all owners. In the circumstances of multiple ownership, this may mean that boundary setback infringements need to be limited notified. Nevertheless if there is more flexibility in built form rules e.g. smaller setbacks required as a result of this plan change, fewer consents will be required, which will go a considerable way towards mitigating this issue.

3.7 Community/Stakeholder engagement

- 3.7.1 A series of discussions were initially held with MKT staff to better understand the circumstances and background of Māori land within the zone locations, and the issues which have arisen with recent development.
- 3.7.2 In late 2020, hui were held with Māori land owners of the four rūnanga areas, facilitated by MKT, to present options and proposals for amendments to the zone rules and to hear the views of locals. Hui were advised via notices sent out to the rūnanga and marae, and 20 landowners attended the hui at Rapaki, 8 at Koukourārata and 3 at the final hui held at MKT offices in the City.

Date	Consultation method	Stakeholders	Feedback and resulting changes to the draft proposal
24/9/2019	Meeting	Mahaanui Kurataiao Ltd (MKT)	General scoping of plan change. MKT raised issues they wished the PC to cover (rules for setbacks, including waterway setbacks, earthworks).
15/10/2019, 11/11/2019 and 28/11/2019	Meetings	MKT	Further scoping of matters to be covered in plan change, additional matters added re alignment between rules for Māori and non-Māori Land. Discussion of definition of Māori Land and meaning of and information on general land, general land owned by Māori.
23/1/2020	Meeting	MKT	Refinement of options, deletion of potential changes to definition of Māori Land at MKT request

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Feb 2020	Emails/phone conversations	MKT	Consideration of need for recession planes, and agreement on options for setback mapping through GIS. (Mapping subsequently provided)
May/June 2020	Skype calls	ECan	Discussion of meaning and effect of RPS policies in relation to non-Māori Land in PKN zones.
May 2020	Emails/phone conversations	MKT	Decision to exclude non-Māori Land from Plan change.
July to Sep 2020	Emails/phone conversations	MKT	Discussion and provision of recession plane diagram options for hui
September 2020	Hui at Rapaki (19 Sep) and Koukourārata (26 Sep)	MKT, Māori land owners	Discussion of three options for boundary setbacks, two options for recession planes and an earthworks rule proposal. Feedback as set out in paragraphs below.
November 2020	Hui at MKT offices for Ōnuku, Wairewa and Ōpukutahi (23 Nov)	MKT, Māori land owners	Discussion of three options for boundary setbacks, two options for recession planes and an earthworks rule proposal. Feedback as set out in paragraphs below.
November 2020	Emails/phone conversations	MKT	Discussion of desire to add in general land owned by Māori as requested at hui, and methods/wording for this.
December 2020	Meeting	MKT	Request to confirm progress and request to increase permitted coverage.
January to March 2021	Meeting and several phone and email conversations	MKT	Discussion of specific issues with adding in general land owned by Māori to definition of Māori land.
January and February 2021	Meeting and phone conversations	Maori Land Court Christchurch staff	Discussion of issues around adding in general land owned by Maori to definition of Maori land.
February 2021	Letter	All landowners in zone and adjoining zone	Pre-notification summary of what the plan change proposes and invitation to comment.

3.7.3 Options put to the hui in regard to boundary setbacks were as follows:

- a. Setbacks
 - i. Road boundary building setback 3 metres and Internal boundary setback 2 metres
 - ii. Road boundary building setback 5 metres and internal boundary setback 3 metres.
 - iii. No setbacks
- b. Recession planes
 - i. Fixed recession plane angles at 45 degrees as for Banks Peninsula Residential zones.

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ii. Varied recession plane angles dependent on the orientation of the site

- 3.7.4 The preferred option for setbacks expressed at each of the hui was to have no setbacks at all. The attendees acknowledged that this might not be feasible and said that they would be prepared to accept Option a.i. 3m and 2 metre setbacks. The complication of needing a greater road setback of 5m where garages faced roads, to enable space to park off road and open garage doors was not discussed at the hui for simplicity's sake. It was considered that Option a.ii. was too restrictive, might not address the issues with for example the very narrow sites at Rapaki, and that their setbacks ought to be the same as at Cass Bay.
- 3.7.5 The two recession plane options were discussed using example diagrams showing real house plans for both a one storey and a two storey house on a hypothetical narrow site, for each of the internal boundary setback options. It was agreed that with a reduction of boundary setbacks there was a need to control any impacts of reduced sunlight/shading. Option b.i. of fixed angles was considered unnecessarily restrictive in some cases and the preferred option was varied angles as it directly addresses the issue but in a more nuanced manner.
- 3.7.6 For earthworks, only one option was presented to the hui, that of increasing permitted earthworks volumes on sites of up to 2000m² to 20m³, and leaving the rural zone ratio for sites of over this size. This approach was accepted as addressing an unintentionally restrictive rule in the Plan.
- 3.7.7 Other issues arising at the hui included coverage, waterway setbacks and non-planning issues such as lack of infrastructure. It was requested that coverage be increased in regard to it limiting the capacity of land to house multiple buildings, and to reflect the original intent of the MR reserves.
- 3.7.8 There is a concern that waterway setbacks eg the 10m setback from the centreline of the hill waterways at Rapaki and Koukourāta have the potential to limit development on many of the sites, eg at Rapaki. There are several hill waterways at Rapaki, with two of them located just inside road boundaries on the eastern side of Omaru Road and the eastern side of Rapaki Road. There has been considerable discussion between Council surface water and land drainage staff and rūnanga representatives eg in 2017 about naturalising and enhancing these waterways. As noted in 3.6.4., this plan change does not propose any change to waterway setbacks within the PKN zone, as this would have implications across the whole City and is therefore beyond the scope of this plan change. This does mean that reducing road boundary setbacks via this plan change will not permit development closer to the road, at least without resource consent, on these particular road boundaries due to the continuing existence of the waterway setbacks.
- 3.7.9 In February 2021, pre-notification letters containing a summary of the proposals in the Plan change and an invitation to comment informally were sent out to all landowners in the zone, adjoining landowners and to statutory bodies in accordance with Schedule 1 of the RMA, clause 3(1)(d). Mahaanui Kurataoio is also liaising directly with Te Runanga o Ngai Tahu and will feed back any issues to Council. This stage of feedback closes on 15 March.
- 3.7.10 The pre-notification letter also noted that drop-in sessions and/or hui will be held post notification to facilitate further feedback from landowners and inform potential submissions.

4 Scale and significance evaluation

4.1 The degree of shift in the provisions

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- 4.1.1 The level of detail in the evaluation of the proposal has been determined by the degree of shift of the proposed amended provisions from the status quo and the scale of effects anticipated from the proposal.
- 4.1.2 The degree of shift in the provisions from the status quo is moderate. The plan change reflects the strategic direction in higher order documents to facilitate the use and development of Māori ancestral land, and liberalises some of the current built form rules in the PKN zone, in particular setbacks, to better achieve that. The Plan Change also proposes to extend all the Māori land provisions of the zone, and therefore the revised built form and earthworks rules, to that general land owned by Māori within the zone which is not formally "Māori land" under the Te Ture Whenua Māori Act 1993, but which is still owned by descendants of the original grantees of the Māori Reserve land.
- 4.1.3 The two sets of activity rules in the zone, one for Māori land and one for non-Māori (or other) land, will stay the same as they are currently.
- 4.2 Scale and significance of effects**
- 4.2.1 The scale and significance of the likely effects anticipated from the implementation of the proposed provisions has also been evaluated. The revised provisions may enable more development in the zone e.g. of residential units, with fewer consents being required. However, the extent of further development which can occur is limited by lack of infrastructure services in the zone other than at Rapaki, and may also be limited by administrative issues caused by multiple ownership (e.g. the difficulty of reaching agreement between multiple owners, or the need to get occupation licences from the Māori Land Court in respect of Māori land) or difficulties of financing. See section 3.3.3 for more detail in regard to the effect of changes in setbacks and sections 5.3 and 6 in regard to other rule amendments.
- 4.2.2 In making this evaluation, it has been considered that the proposed provisions:
- will result in effects that have been considered, implicitly or explicitly, by higher order documents. The effects of the proposed provisions in relation to Māori land (further development on Māori land) are consistent with higher order documents including the Regional Policy Statement, and are also consistent with the Mahaanui Iwi Management Plan.
 - will give better effect to Objective 12.2.1 of the Plan, as they will facilitate greater use and development of land in the PKN zone.
 - are of localised significance for the five areas of PKN zoning, but will have a positive impact on communities and development opportunities, since these areas and resources are of significance to iwi.
 - will affect a number of individual and joint property owners of Māori land and have a moderately positive impact on development opportunities on Māori land titles and other land titles in the zone which are general land owned by Māori, where there has been continuous occupation by descendants of the original grantees of the land.
 - are likely to reduce adverse effects on Māori owners in the zone including discouragement of development as a result of current setback rules, and should reduce the frequent need for resource consents and resource management fees including from limited notification, in order to develop land.

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- f. are not likely to result in significant change to the character and amenity of the PKN communities, although they may facilitate some further development especially of smaller sites.
- g. will have positive effects on social, cultural and economic wellbeing.
- h. will not impose significant costs on individuals or communities, since any adverse effects, e.g. on neighbours from buildings closer to boundaries, will be mitigated so far as possible, and are likely to be outweighed by the benefits across the communities of more flexibility in building on Maori land.

5 Evaluation of the proposal

5.1 Statutory evaluation

- 5.1.1 A change to a district plan should be drafted in accordance with sections 74 and 75 of the Act to assist the territorial authority to carry out its functions, as described in s31, so as to achieve the purpose of the Act. This section of the report evaluates whether and to what extent the proposed plan change meets the applicable statutory requirements, including the District Plan objectives. The relevant higher order documents and their directions are outlined in section 2.1 of this report, as are the directions provided by the District Plan strategic objectives in Chapter 3 and the zone specific objectives in Chapter 12.
- 5.1.2 This plan change does propose to make changes to Objective 12.2.1. One change is intended to improve the clarity of the objective as a higher level framework and context for the zone provisions, by deleting the use of the word “ancestral”, and inserting the words “Māori” and “non- Māori” as appropriate.
- 5.1.3 A further proposed change in meaning and application of the objective is to specify that the second limb of the objective (facilitating use and development of land for activities appropriate in a rural area) applies only to non- Māori land, rather than to all land in the PKN zone including Māori land. The reasons for this are set out in 5.2 below.
- 5.1.4 It is also proposed to make a change to the definition of Māori land for the purposes of the District Plan and the zone only, which would as a consequence extend the application of Part a. of the objective to some general land owned by Māori in the zone.
- 5.1.5 Ordinarily definitions are considered to be rules and proposals to change rules would be assessed under the sections of a section 32 report on options for provisions. However in this case the adoption of an amended definition affects the meaning of the objective, and also the evaluation of the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the Act (section 5.2 below). Therefore the proposed changes to the definition will in this instance be dealt with in section 5.2.
- 5.1.6 Nevertheless one of the intentions of plan change is to give better effect to the relevant strategic directions through rule amendments. These are discussed in section 5.3.

5.2 Evaluation of the objectives of the plan change

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- 5.2.1 Section 32 requires an evaluation of the extent to which the objectives¹² of the proposal are the most appropriate way to achieve the purpose of the Act (s 32(1)(a)). This plan change proposes to amend Objective 12.2.1 of the Plan. This section of the report, therefore, examines whether the proposed amended objective would give effect to the relevant objectives set out Chapter 3 Strategic Directions, the higher order documents such as the RPS and is the most appropriate way to achieve the purpose of the Act.
- 5.2.2 The proposed amended Objective 12.2.1 is as follows:
- 12.2.1.1 Objective - Use and development of Ngāi Tahu whānau ~~ancestral~~ land and other land
- a. Papakāinga/kāinga nohoanga zones facilitate and enable:
- i. Ngāi Tahu whānau use and development of Māori land ~~ancestral land~~ to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and
- ii. use and development of non-Māori land for activities appropriate in a rural area.
- 5.2.3 There are two components to the proposed amendments to the objective. One is to remove the term ancestral land from the zone objective, because in this context the term is confusing (and undefined). Section 1.2.13 of the Introduction to the District Plan (Sites of Ngāi Tahu Cultural Significance) states that "for Ngāi Tahu whānau all of the greater Christchurch area is regarded as ancestral land". However Objective 12.2.1 is specific to the PKN zone, and the title suggests that there is land in the PKN zone which is not ancestral land and is "other land". In reality the "other land" is land which is not formally Maori land today, (it may either be general land owned by Maori or general land owned by non-Maori) but is still considered ancestral land, and was part of the Maori Reserves in Banks Peninsula before being converted out of formal Maori Land status. Section 6 of the RMA, Policies 5.3.4 and 6.3.10 of the RPS, and Strategic Objective 3.3.3 of the District Plan, all provide the wider context of promoting the relationship of Māori and their culture and traditions with ancestral land, water, sites etc. across the District. Section 6 does not limit the application of the term "ancestral land" to land which is currently formally Maori land.
- 5.2.4 It is more useful in the context of a zone which has two sets of rules, depending on whether the land in question is defined as Māori land or not, to refer consistently to Māori land and non-Māori land.
- 5.2.5 A second amendment to the objective relates to the current overlap between a.i. and a.ii.. In the operative Plan, there is no limitation on which land the second half of the objective applies to, i.e. Māori land falls under a.ii., as well as a.i., making it necessary for permitted activities on Māori land to also be appropriate in a rural area. A wide range of activities are permitted on Māori land including residential, community and even commercial uses which might not normally be considered appropriate in a rural area, as well as rural activities. It is therefore proposed to split out the two parts of the zone objective, to apply to one category of land tenure each. The two parts of the proposed amended objective would refer specifically to each type of land, setting out desired outcomes for each.
- 5.2.6 It is considered that the outcomes desired for Māori land are adequately encapsulated in a.i. of the objective, which covers the concepts of kāinga nohoanga, and economic, social and cultural

¹² Section 32(6) defines "objectives" and "proposal" in terms specific to sections 32 – 32A. "Objectives" are defined as meaning:

(a) for a proposal that contains or states objectives, those objectives;
(b) for all other proposals, the purpose of the proposal.

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wellbeing. PKN zone locations happen to be in rural areas as a product of history and the need for communities based around marae to have a resource base. However the application of rural zone objectives and policies to Māori land may not be appropriate when those relate to a predominance of open space and significant visual separation between residential buildings on neighbouring properties. For example Chapter 6 of the RPS notes that development of Māori Reserve land “is seen as something that will likely take a more dense form in certain areas and this could result in a more closely settled development pattern”.

- 5.2.7 As noted, it is also proposed to extend the definition of Maori land so that the objective (and also the provisions for Maori land) cover general land owned by Maori where there has been continuous occupation by descendants of grantees of the Maori Reserve, i.e. those owners can whakapapa to those original grantees. On registration with Te Runanaga o Ngāi Tahu, members are registered with the hapu (and runanga) they are descended from, so this path to use of the rules is likely to be straightforward for many Maori. To provide an easier path than needing to show whakapapa, proof of a Maori Land Court status declaration (likely in the 1960s or 1970s) by which land was converted to general title will serve the same purpose, combined with information on ownership in recent decades which can be obtained from LINZ title information. The Maori Land Court is a Court of record, which provides a service for owners of Maori land in tracing whakapapa and the history of blocks of land, but they do not maintain ownership schedules for blocks once they become general land.
- 5.2.8 Clauses for land vested in trusts and Maori incorporations under the TTWMA and for land owned by runanga, are also proposed to be included in the definition. There is a presumption that in these circumstances either all or a majority of land owners can whakapapa to the local hapu. (Maori Land Court staff have confirmed that this is the case).
- 5.2.9 For the purposes of changing the District Plan, Rule 3.3.a (Interpretation) of the District Plan imposes an internal hierarchy for the District Plan objectives. Strategic Directions objectives 3.3.1 and 3.3.2 have relative primacy, and all other Strategic Directions objectives are to be expressed and achieved in a manner consistent with those objectives.
- 5.2.10 Objectives and policies in all other chapters of the District Plan are to be expressed and achieved in a manner consistent with the Strategic Directions objectives. No changes to Strategic Directions objectives are proposed. Minor amendments are proposed to Objective 12.2.1, as set out above. Objective 3.3.1 is “enabling recovery and facilitating the future enhancement of the District, which includes “meeting the community’s immediate and longer term needs for housing”. While this plan change is not specifically related to earthquake recovery, it will contribute to making it easier for Ngāi Tahu whanau to live in and use Maori land in the PKN zone. Strategic Objective 3.3.2 is “clarity of language and efficiency”. This objective goes on to list minimising reliance on resource consents and minimising the number, extent and prescriptiveness of development controls in order to encourage innovation and choice. Both of these parts of the objective are key drivers for this plan change. Minimising the requirement for notification and written approval, a further part of the overall objective, cannot be done in the case of boundary setbacks because of the requirements of the RMA (see 3.6.6).
- 5.2.11 Amending Objective 12.2.1 is also consistent with Strategic Objective 3.3.3 (See paragraph 2.1.11) which seeks to ensure that “Ngāi Tahu mana whenua’s historic and contemporary connections and cultural and spiritual values, associated with the land, water and other taonga of the district are recognised and provided for”. It will indirectly promote kaitiakitanga through potentially enabling more mana whenua to return to living on the land in the zones.

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5.2.12 The following table provides a broad consideration of the appropriateness of the amended PKN zone objective and definition of Maori land in achieving the purpose of the RMA.

5.2.13

Objective	Summary of Evaluation
<p>Objective 12.2.1 - Option 1 – Amended Objective; plus Extension of definition of Māori land for the purposes of the PKN zone, to some general land owned by Māori, where continuous occupation can be shown.</p> <p>12.2.1 Objective - Use and development of Ngāi Tahu whānau ancestral land and other land</p> <p>a. Papakāinga/kāinga nohoanga zones facilitate and enable:</p> <p>i. Ngāi Tahu whānau use and development of <u>Māori land</u> ancestral land to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and</p> <p>ii. use and development of <u>non-Māori</u> land for activities appropriate in a rural area.</p>	<p>a. The intent of Objective 12.2.1.a.i. is to facilitate development of land in the PKN zones to provide Ngāi Tahu whānau with opportunities to “come home to live”, and to provide for an expanded economic base in these locations. This is consistent with strategic directions in the NZ Coastal Policy Statement Policy 2(a), and the CRPS at Policies 5.3.4. and 6.3.10. The objective also takes into account Policy P5.3 of the Mahaanui Iwi Management Plan 2013.</p> <p>b. Extension of the definition of Māori land so that the objective and other provisions in the zone cover some general land owned by Māori where continuous occupation by descendants of grantees can be shown, is also seen as consistent with facilitating more Ngāi Tahu “coming home to live” in accordance with strategic directions in the NZCPS, and CRPS. The latter uses the wider term “ancestral land” in Policy 6.3.10 in discussing the enabling of Māori Reserves to be developed and used for their originally intended purposes.</p> <p>c. This option reflects Strategic Direction 3.3 in the District Plan, to recognise and provide for Ngāi Tahu mana whenua’s historic and contemporary connections and cultural and spiritual values associated with the land, water and other taonga of the district, in this case within the PKN zones.</p> <p>Proposed Objective 12.2.1 and the proposed change to the definition of Māori land are part of an approach which seeks to address the following resource management issues identified earlier, namely:</p> <p>i. Overly onerous building setbacks (Issue 1)</p> <p>ii. The need for more flexibility in other zone standards for Māori land (Issue 2)</p> <p>iii. Inability to apply Māori land rules to Māori Reserve land which has been alienated (is not formally “Māori Land”) but which is still owned by Māori who belong to the relevant hapū.</p> <p>Option 1 (Proposed Objective 12.2.1) and the proposed change to the definition of Māori land would (in the context of Part 2 matters):</p> <p>d. Support papakāinga settlements and the social, economic and cultural wellbeing of those communities. (Section 5)</p>

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	<p>e. Recognise and provide for the relationship of Māori and their culture and traditions with ancestral land, which is a matter of national importance. (section 6)</p> <p>f. Assist in allowing Māori to exercise kaitiakitanga by being able to live on their land, though providing greater built form flexibility, especially for the location of buildings on sites, and a reduced need to apply for resource consents. (section 7)</p> <p>g. Changes in built form rules should enable more efficient use and development of smaller parcels of land within the papakāinga zones (section 7).</p> <p>h. A more flexible set of built form standards better suited to the circumstances of titles owned by Māori will give greater effect to the Crown and local government duty to protect Māori rights and interests. (section 8)</p> <p>i. Amending Objective 12.2.1.a.ii provides a clearer direction about the outcomes anticipated for both the Māori land in the zone and for non-Māori land in the zone, and separates out the outcomes intended for each.</p> <p>j. The IHP justified a difference between the rules for Māori and non-Māori land in the zone on the basis that those seeking to occupy and develop Māori land face relatively greater process complexity and risk than typically arises for development of other land.</p> <p>k. Leaving the policy direction for other land in the zone the same, will mean continuing to apply rural built form standards to this land. Increasing the differences between built form rules applying to Māori land and those built form rules applying to non-Māori land may be seen as inequitable, but can be justified by the unique purpose of the zone.</p> <p>l. More flexible built form rules could in some cases result in adverse visual and privacy effects for neighbours. However this can be mitigated to some extent by the introduction of recession planes from internal boundaries. The RPS does note that “not all the adverse effects on existing amenity values need to be avoided where this would result in the aspirations for papakāinga housing and marae being unduly compromised.” (RPS, explanation to Policy 5.3.4).</p>
<p>Objective 1 - Option 2 Status quo No change in objective or consideration of general Land owned by Māori.</p>	<p>a. The intent of Objective 12.2.1.a.i. is to facilitate development of ancestral land in the PKN zones to provide Ngāi Tahu whanau with opportunities to “come home to live”, and to provide for an expanded economic base in these locations. This is consistent with strategic directions in the NZ Coastal Policy Statement Policy 2(a), and the CRPS</p>

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<p><i>[It is assumed that built form and other rules would still be amended under this objective]</i></p> <p>12.2.1 Objective - Use and development of Ngāi Tahu whānau ancestral land and other land</p> <p>a. Papakāinga/kāinga nohoanga zones facilitate and enable:</p> <p>i. Ngāi Tahu whānau use and development of ancestral land to provide for kāinga nohoanga and their economic, social and cultural well-being and to exercise kaitiakitanga; and</p> <p>ii. use and development of land for activities appropriate in a rural area.</p>	<p>at Policies 5.3.4. and 6.3.1. The objective also takes into account Policy P5.3 of the Mahaanui Iwi Management Plan 2013.</p> <p>b. Not considering the extension of the definition of Māori land to cover land alienated within the zone but still in continuous occupation, provides for the intent of Objective 12.2.1.a.i. but to a lesser extent than Option 1.</p> <p>c. This option reflects Strategic Objective 3.3 in the District Plan, to recognise and provide for Ngāi Tahu mana whenua's historic and contemporary connections and cultural and spiritual values associated with the land, water and other taonga of the district, in this case within the PKN zones, but to a lesser extent than Option 1.</p> <p>d. An unchanged Objective 12.2.1 could still provide a framework for more flexible rules for built form on Māori Land, and thereby facilitate additional development on vacant smaller sites in the zone; but to a lesser extent than Option 1.</p> <p>e. Leaving the wording of the second portion of Objective 12.2.1.a.ii. the same, would mean continuing confusion of runanga about whether a.ii. is intended to apply to Māori land as well as to non-Māori land in the zone.</p> <p>If Objective 12.2.1 was left unchanged, with no change to how general land owned by Māori is considered, only some of the resource management issues identified earlier would be able to be addressed, namely:</p> <p>i. Overly onerous building setbacks on Māori Land (Issue 1),</p> <p>ii. The need for more flexibility in other zone standards for Māori land. eg earthworks volumes and coverage permitted (Issue 2).</p> <p>iii. Issue 3, Māori Reserve land which is no longer formally "Māori Land" but which is still owned by Māori who belong to the relevant hapū, would not be able to be addressed.</p> <p>Option 2 (Objective 12.2.1 as it is currently) would (in the context of Part 2 matters):</p> <p>f. Support papakāinga settlements and the social, economic and cultural wellbeing of their communities, but to a lesser extent than Option 1. (Section 5)</p> <p>g. Recognise and provide for the relationship of Māori and their culture and traditions with ancestral land, which is a matter of national importance, but to a lesser extent than Option 1 section 6).</p>
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	<ul style="list-style-type: none"> h. Assist in allowing Māori to exercise kaitiakitanga though providing a framework for greater built form flexibility, especially for the location of buildings on sites, and a reduced need to apply for resource consents. (section 7) i. Changes in built form rules should enable more efficient use and development of smaller parcels of land in Māori land title within the papakāinga zones (section 7). j. A more flexible set of built form standards better suited to the circumstances of Māori Land titles will give greater effect to the Crown and local government duty to protect Māori rights and interests. (section 8) k. Increasing the differences between built form rules applying to Māori land and built form rules applying to non-Māori land could be seen as inequitable, but can be justified by the unique purpose of the zone. l. A more flexible approach to the development of Māori Land titles will be to the economic and social benefit of the settlements, but these benefits could be greater under Option 1 (section 5). m. More flexible built form rules for Māori Land could in some cases result in adverse visual and privacy effects for neighbours. However this can be mitigated to some extent by the introduction of recession planes from internal boundaries.
<p>Recommendation:</p> <p>Both options are in accord with higher level direction with regard to Māori land, but Option 1 extends the zone objective to apply to more Maori land in the zone, and promotes greater clarity around intended outcomes for Maori land, so better achieves higher level direction.</p> <p>Higher level direction uses a wide concept of ancestral land, and promotes the development and use of the Māori reserves for the purposes for which they were originally intended. Option 1, including adding to the definition of Māori land for the purposes of the zone provisions, will better enable the use and development of the Māori Reserves and provide greater social and economic benefit to the PKN communities than the status quo.</p> <p>The proposed amended Objective 12.2.1. and the revised definition supporting it i.e. Option 1, are recommended as the most appropriate to achieve the purpose of the Act.</p>	

5.3 Reasonably practicable options for provisions

- 5.3.1 In establishing the most appropriate provisions for the proposal to achieve the objectives and any relevant higher order directions, reasonably practicable alternative options for achieving these objectives were identified and evaluated. There are two possible options for policies,

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leaving them as they stand, or amending Policy 12.2.1.4 to reflect the proposed amended zone objective, i.e. making it specific to non-Māori land in the zone, so that activities on Maori land are not required to be appropriate to a rural area in terms of all of the elements of Objective 17.2.1.1 – The Rural Environment and Policy 17.2.2.8 Rural Banks Peninsula. There are a range of options possible for each of the Māori land rules under review. The combinations possible have been simplified into broad options for packages of rules as set out below. Taking into account the environmental, economic, social and cultural effects, the broad options identified have been assessed in terms of their benefits, and costs. Based on that, the overall efficiency and effectiveness of the alternative options has been assessed.

5.3.2 **Option 1– Status quo:** Objective and policies as they stand. Setbacks largely reflecting Rural Banks Peninsula zone standards, with slightly less stringent standards for setbacks for sites in Māori Land titles. Earthworks rules based on rural standards but not related to site size. Coverage rules as for standard residential zones with no additional provision for multiple buildings on sites.

5.3.3 **Option 2– Proposed Plan change:** Objective and Policies as proposed to be amended, along with amended more inclusive definition for Māori land. Reduced internal boundary and road setbacks for Māori land and a recession plane on internal boundaries for that land. Earthworks rules for Māori land for sites below 2000m² based on residential standards, with earthworks rules for sites above 2000m² continuing to be based on rural standards. Coverage rules amended to increase permitted coverage.

5.4 Evaluation of options for provisions

5.4.1 The policies of the proposal must implement the objectives of the District Plan (s75(1)(b)), and the rules are to implement the policies of the District Plan (s75(1)(c)). There is only one composite objective, Objective 12.2.1 for the PKN zone, which has been discussed in section 5.2.

5.4.2 In addition, each proposed policy or method (including each rule) is to be examined as to whether it is the most appropriate way for achieving the objectives of the plan change.

5.4.3 Before providing a detailed evaluation of the policy amendment and rules proposed in the plan change (section 6 of this report), the alternative options identified have been considered in terms of their potential costs and benefits and overall appropriateness in achieving the objectives of the Plan and the relevant directions of the higher order documents.

5.4.4 The tables below summarise the assessment of costs and benefits for each option based on their anticipated environmental, economic, social, and cultural effects. The assessments are supported by the information and analysis provided earlier in this report and obtained through consultation.

5.4.5 The overall effectiveness and efficiency of each option has been evaluated, as well as the risks of acting or not acting.

5.4.6 **Option 1 - Status quo: Objective and policies as they stand. Setbacks reflecting Rural Banks Peninsula zone standards, with slightly less stringent standards for setbacks for sites in Māori Land titles. Earthworks rules based on rural standards but not related to site size. Coverage rules as for standards residential zones with no additional provision for multiple buildings on sites.**

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Objective and policies. See District Plan Chapter 12, or section 2.1.12 of this report for the current objective. Current Policy 12.2.1.4 is to “Enable rural activities on any land in a manner which is consistent with the Rural Banks Peninsula Zone provisions.”

Internal boundary setback: Māori Land 10m. Other land 25m (for a residential unit).

Road boundary setback: Māori land 15m. Other land 15m but State Highway or arterial road 30m (Governors Bay Road and Christchurch-Akaroa Road).

Earthworks: All land in zone: 100m³ per ha.

Coverage: Māori land 35%. Other land 10% of net site area or 2000m², whichever is the lesser.

Benefits	Appropriateness in achieving the objectives/ higher order document directions
<p><i>Environmental:</i></p> <p>A low density of development within the settlements will mean fewer adverse effects on neighbours eg from shading or dominance from built development close to boundaries.</p> <p>A low density of development will mean the settlements blend more easily into the surrounding rural landscape.</p> <p>A low density of development will mean less need for additional infrastructure in the future.</p>	<p><i>Efficiency:</i></p> <p>The costs of maintaining these standards appear to be greater than the benefits.</p> <p>Retaining the status quo would not address the issues identified and the current discouragement of development would continue. It would result in a continuing requirement for resource consents, and written approvals for reduced setbacks on Māori land or adjoining Māori land in circumstances where all owners signatures are likely to be very difficult or impossible to obtain, triggering limited notified applications and higher fees. The need for and costs of consents is likely to be imposing an unnecessary burden on landowners (Strategic Direction 3.3.2).</p> <p>Some development is likely to have been completely discouraged because of the need for consent.</p> <p><i>Effectiveness:</i></p> <p>The current setbacks are not facilitating the outcome set out in the higher order documents and in Objective 12.2.1 in the District Plan for Māori Land. The current earthworks rules are also more stringent than for similarly sized residential lots elsewhere.</p>
<p><i>Economic:</i></p> <p>N/A</p>	
<p><i>Social:</i></p> <p>N/A</p>	
<p><i>Cultural:</i></p> <p>No clear cultural benefits. Despite some built form standards being less stringent for Māori Land titles than for non-Māori titles, the current built form standards, and in particular setbacks, are not facilitating and enabling development of Māori land in accordance with the objective for the zone.</p>	
<p>Costs</p> <p><i>Environmental:</i></p> <p>The table in section 3.3.3 indicates that large boundary setbacks on their own are a significant impediment to development in the PKN zones, because of the high proportion of small and irregularly shaped sites.</p>	

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<p><i>Economic:</i> Most titles are already too small on their own for viable farming operations.</p>	
<p><i>Social:</i> Population of each papakāinga area is likely to stay too small to support community services.</p>	
<p><i>Cultural:</i> While the objective and policies for Māori Land support papakāinga development, the current built form rules are not facilitating “coming home to live”; rather they are discouraging development on Māori Land.</p>	
<p>Risk of not acting There is a relatively good evidence base indicating problems with the current built form rules, and it is clear that there are costs associated with maintaining the status quo. There is sufficient information to make a decision to change the status quo.</p>	
<p>Recommendation: The current built form rules are neither efficient nor effective in facilitating the outcome set out in the proposed District Plan objective for Ngai Tahu whanau use and development of Maori land.</p> <p>This option is not recommended as it is considered that it does not address the issues being experienced with built form rules and the frequent need for resource consent.</p>	

- 5.4.7 Option 1 is not considered as efficient and effective in achieving the objectives of the Plan and the relevant directions of higher order documents as the preferred option. Option 1, the status quo, does not address the issues that prompted this plan change and which are impeding development in the zone. The detailed evaluation of Option 2, the preferred option, follows.

6 Evaluation of the preferred option for provisions

- 6.1.1 **Option 2** is the proposed plan change, which can be summarised as follows:

Minor changes to Objective 12.2.1 and Policy 12.2.1.4 as discussed in sections 5.2 and 5.3 above. Reduced internal boundary and road setbacks for Māori Land and a recession plane on internal boundaries for that land. Revised earthworks volumes for Māori Land, with a set volume for sites of residential size. Permitted coverage increased.

Internal boundary setback: Māori Land: 2m, plus a recession plane requirement on internal boundary setbacks.

Road boundary setback: Māori Land: 3m, and 5m where a garage has a vehicle door that faces the road.

Earthworks: Māori Land: 20m³ per site for sites of less than 2000m², 100m³ per ha for sites of 2000m² or more.

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Coverage: Māori Land: Maximum of 50% of net site area covered by buildings.

6.2 Assessment of costs and benefits of proposed policies

- 6.2.1 **Proposed Policy 12.2.1.4 - Rural activities:** Enable rural activities on ~~any~~ non-Māori land in a manner which is consistent with the Rural Banks Peninsula Zone provisions.

Benefits
<p>Environmental:</p> <p>The amended policy will work with the amended second half of the objective to clarify that only the non-Māori land in the zone is expected to be developed in a way which is consistent with the Rural Banks Peninsula provisions. At present the policy applies to both types of land and implies that Māori Land should also be developed in line with those provisions, which along with the second part of the zone objective has caused some confusion in the rūnanga. The zone has comprehensive provisions for Māori Land which include rural activities including farming and horticulture, existing forestry and conservation activities. These can be supported in a policy sense by the existing policies 12.2.1.1 Provision for a range of residential and non-residential activities on Maori land and 12.1.2.1 Sustainable Management. Rural activities on Maori land should be seen as providing part of the economic base which will assist in a return to the land and in the context of papakāinga zone provisions.</p>
<p>Economic:</p> <p>N/A</p>
<p>Social:</p> <p>A clearer direction for Māori land in the zone will be to the overall social benefit of the settlements and their surrounds.</p>
<p>Cultural:</p> <p>As for social.</p>
Costs
<p>Environmental:</p> <p>It is not considered that amending Policy 12.2.4.1 will cause any change in the use of Maori land used for rural activities. Amending the policy does not mean that activities appropriate for a rural area would no longer be facilitated on Maori land. Elements of the Rural Banks Peninsula objectives and policies on the function, character and amenity values of a rural environment are not necessarily directly relevant in the PKN zone, which has more of the character of a rural settlement rather than a truly rural zone, and this will be to some extent a continuing problem for non-Māori land in the zone, where titles are also fragmented.</p>
<p>Economic:</p> <p>N/A</p>
<p>Social:</p> <p>N/A</p>
<p>Cultural:</p> <p>N/A</p>

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6.2.2

Appropriateness in achieving the objectives/ higher order document directions	
Efficiency:	The amended Policy 12.2.1.4 is efficient in working with the amended Objective 12.2.1 to make it clear that there is a different policy direction for other (non-Māori) land in the zone, than for the Māori land within the zone. Effectively, the zone purpose is primarily to facilitate and enable Ngāi Tahu whanau use and development of the zone including by papakāinga development, rather than to consider both types of land within the zone as the same. Additional residential development on non-Māori land in the zone for example by further subdivision or additional houses, is already discouraged by Rural Banks Peninsula zone provisions requiring resource consents either as a non-complying activity or fully discretionary activity, depending on circumstances.
Effectiveness:	The amended Policy 12.2.1.4 is consistent with and effective in achieving the outcomes sought by the amended Objective 12.2.1.a.i. Both will enable the continuation of the primary focus of the PKN zones as being on promoting papakāinga development on Māori Land within the zone, in accordance with higher order direction and Strategic Objective 3.3.3.
Risk of acting	There is sufficient information to indicate that the proposed amended policy would be better than the status quo in terms of being clearer as to the intentions and policy direction for the zone.

6.3 Assessment of costs and benefits of proposed rules

6.3.1 **Internal boundary setbacks for Māori Land – Rule 12.4.2.1** proposes to reduce internal boundary setbacks considerably to 2m, for Māori land titles which adjoin another property not held in the same ownership or used for the same development.

6.3.2 If boundary setbacks are reduced to this extent, there could be potential adverse effects on neighbours. It is therefore proposed to introduce a recession plane requirement on those boundaries to directly address the potential adverse effects at issue i.e. shadowing, visual dominance and privacy. The recession plane proposed is a variable angle based on the Christchurch City recession planes. It is proposed to use Diagram B in Appendix 14.16.2 as for Residential Hills zones, as much of the land in PKN zones is sloping to some degree. The effects of this are discussed below.

6.3.3

Benefits
<p>Environmental:</p> <p>There are a number of vacant Māori land sites at Rapaki and a smaller number at Wairewa that are unable to be built on because of the current setbacks. Some sites are only 12-14m wide. While some particularly narrow or irregular shaped sites are always going to be difficult to build on in a complying manner, it is clear that significantly reduced setbacks are required to better facilitate the use and development of small sites in the zone in accordance with the zone objective. This would move a significant number of sites from “non-buildable without consent” into the “buildable” category, eg see the table in paragraph 3.3.8., although other constraints mean that only a proportion of these sites would be likely to be built on over time.</p> <p>Two scenarios in particular were examined:</p>

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1. that of 3m internal boundary setbacks as for the former Banks Peninsula District Plan rule for the Papakāinga zone, which covered the core of the Rapaki and Koukourāta settlements, and for the Residential Small Settlement zone in the current District Plan, which applies to Governors Bay and some other settlements in the Banks area.
2. 2m internal boundary setbacks as for the Residential Banks Peninsula zone at Cass Bay, Diamond Harbour etc.

The table in paragraph 3.3.8 does indicate a difference between 3m and 2m in that the smaller measurement could facilitate more development, all other things being equal.

The option of no setbacks at all was also put to the hui (see sections 3.7.3 and 3.7.4) for the sake of completeness, and was favoured by landowners, but this is not considered a realistic scenario due to Building Code requirements (Clause 3.7 – Fire affecting areas beyond fire source) for a 1m setback from boundaries unless buildings are constructed from materials which are not combustible. It is not appropriate to propose no setbacks in the District Plan on a conditional basis and depending on the requirements of separate legislation, i.e. setbacks for a permitted activity need to be achievable in all cases.

As noted, if boundary setbacks are reduced to this extent, there could be potential adverse effects on neighbours, in terms of shadowing, visual dominance and privacy. See discussion on proposed recession planes under environmental costs below.

Reducing setbacks to this extent is likely to significantly decrease the need for consents to build near boundaries, thereby reducing delays and difficulty associated with the need to obtain written approvals from (often multiple) owners of adjoining land. This is in line with Strategic Objective 3.3.2 in the District Plan (see paragraph 5.2.6 above).

Economic:

There may be some increase in land value as a result of the larger permitted buildable areas, and in a number of cases, the creation of a buildable area where none existed previously.

The ability to build more houses without resource consent is likely to facilitate development and be to the overall economic benefit of the settlements.

Social:

Reducing required setbacks will benefit a number of property owners in the settlements, especially at Rapaki, who may be able to construct houses more easily on their sites. This could result in some increase in population, which could strengthen the communities socially.

Cultural:

Reducing boundary setbacks addresses the primary planning issue raised by MKT on behalf of rūnanga, and increases the degree to which members of the various hapū can exercise kaitiakitanga over their ancestral land.

Costs

Environmental:

Reducing setbacks significantly could mean that owners of larger sites, may in some cases also choose to locate buildings close to internal boundaries with neighbours. However it is unnecessarily complex to have larger setbacks for larger sites, or a range of setbacks depending on the size of the site.

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<p>As noted, if boundary setbacks are reduced to this extent, there could be potential adverse effects on neighbours, in terms of shadowing, visual dominance and privacy. It is proposed to introduce recession planes on internal boundaries to directly address this effect. The notified PKN zone in 2015 did have a recession plane, but this rule was eventually dropped when larger setbacks were introduced in the IHP decision. A recession plane is a cost to the developing owner in that they are unable to build as much building bulk close to southern boundaries as they might otherwise wish to do; this is a benefit to the neighbouring owner in terms of reduced shadowing etc so these new costs must be balanced against benefits to neighbours.</p>
<p>Recession planes in the former Banks Peninsula area (eg in the current Residential Small Settlement zone) use the relatively simple recession plane formula of 2m plus a set 45 degree angle, ie an angle that does not vary with orientation, as those in the former smaller Christchurch City area do. In initial modelling work for a forthcoming Council plan change on residential rules, which will propose minor amendments to recession planes, it has been shown that in multi-unit situations (which should also hold true for single houses adjoining each other in similar positions on their sites), there may be an extra 7 weeks a year of good solar access into the ground floor of a neighbouring unit to the south, using the variable angle approach rather than a fixed 45 degree angle. The variable angle approach also provides for more building bulk on the north side of the site itself, for most orientations.</p>
<p>Consultation at the hui using recession plane diagrams showing both approaches, indicated support for the variable angle approach, as fixed angles are unnecessarily restrictive in some cases. At the Rapaki hui it was requested that it be confirmed that the recession planes are designed to work on sloping and steep land. It is proposed to use Diagram B in Appendix 14.16.2 as for Residential Hills zones, for this reason. In the Residential Hills zone the recession plane rule only applies at the midpoint of each section of wall and roof of a building as shown in diagrams under Appendix 14.16.2, and this rule is proposed to be used in the papakāinga zones as well, for simplicity.</p>
<p>Appendix B shows the Residential Hills recession plane with a schematic diagram of an actual house recently built in Rapaki, located at a theoretical 2m from an internal boundary. This diagram shows that the introduction of recession planes may mean that, for a worst case true southerly boundary which would have a 30 degree recession angle, buildings which extend to 2m of that boundary would need to be no more than around 3.5m height, which will potentially mean no gable ends facing boundaries, low pitched roofs or setting the building further from the boundary than 2m to comply with the recession plane. A 45 degree recession angle (due easterly or due westerly of the boundary with the neighbour) would allow around 4.5m in height. The minimum wall height for a (habitable) building is around 2.75m i.e. 150mm slab, 2.4m stud and 200mm structure. These potential limitations due to the introduction of a recession plane are considered to be an acceptable cost of the measure at a community level.</p>
<p>Economic: N/A</p>
<p>Social: Reducing building setbacks on Māori land sites could cause adverse effects on privacy and visual dominance, resulting in conflict between neighbours, but this possibility can be mitigated by the recession plane proposed, and will not outweigh the wider social benefit of increased flexibility for building.</p>
<p>Cultural:</p>

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Cultural costs are limited to any inequity concerns arising from the rules being amended for Māori land and for some general land owned by Māori, but not being amended for land in the zone which has passed out of Māori ownership.

Consistency with the policies and appropriateness in achieving the objectives

Efficiency:

A significant reduction in internal boundary setbacks across the board will provide considerable benefit for the use and development of small Maori land sites in the zone. Reduced setbacks provide more flexibility for development without consents. Any significantly adverse effects of new development close to boundaries will be mitigated by the recession plane proposed. It is considered that the benefits of a significant reduction in internal boundary setbacks outweigh the costs.

Effectiveness:

The internal setback reduction proposed will address a key issue, is in accordance with the current and proposed zone objective and policies for Māori land, and with higher order directions eg RPS policies of enabling development of Māori Reserves for the purposes for which they were originally intended.

Risk of acting

Earlier sections of this report have presented sufficient information and analysis to show that this option would be better than the status quo at facilitating development on Māori land and some general land owned by Māori in the PKN zone. The option includes some mitigating measures to address new issues which could arise.

- 6.3.4 **Road boundary setbacks for Māori Land – Rule 12.4.2.2.** The plan change proposes to reduce current setbacks by a considerable amount to 3m for Māori land titles as defined under this Plan change, or 5m if there is a garage with a vehicle door facing the road (to enable a car parked or stationary in front of the garage not to extend onto the road).

- 6.3.5

Benefits

Environmental:

A reduced road setback of 3m, or 5m if the garage faces the road is the same as the Residential Banks Peninsula zone, and similar to the Residential Small Settlement zone setback rule of 4.5m, or 5m where the garage faces the road. The current road setback of 15m contributes to the difficulty of developing small sites especially if there is a wide road frontage due to an irregularly shaped site, and a reduced figure will provide more flexibility. As noted in paragraph 3.1.5, the use of the road boundary setbacks from rural zones was intended to reflect a rural character with predominantly larger sites, and a low density of built form. There was an expectation of rural dwellings being set back from the road.

These expectations are erroneous for many of the sites in the PKN zone, and there is an existing pattern of some houses relatively near the road in those parts of the settlements with concentrated development. On non-local roads with a higher speed limit eg the Christchurch Akaroa Road at Wairewa and on Governors Bay Road in the Rapaki Road area, the legal road boundaries are considerably wider than the formed road, i.e. the road boundaries of properties are set back from the formed road, and those road berms will effectively contribute to building setbacks.

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As for the proposed changes in internal boundary setbacks, reduced road boundary setbacks will better facilitate use and development of small Maori land sites in the zone in accordance with the zone objective.
<p>Economic:</p> <p>Reduced road setbacks may reduce the length and therefore cost of driveways and will provide more flexibility for developing small sites.</p>
<p>Social:</p> <p>As for internal boundary setbacks, some property owners in the settlements may be able to construct houses more easily on their sites, resulting in some increase in population.</p>
<p>Cultural:</p> <p>Increases the degree to which members of the hapū can exercise kaitiakitanga over their ancestral land.</p>
Costs
<p>Environmental:</p> <p>There could be some adverse effects with potentially closer proximity of houses to roads with higher speed limits e.g. the Christchurch Akaroa Road. However as noted above the road berms will contribute to effective building setbacks. The expectation of dwellings in the Rural Banks Peninsula zone being set back from the road appears to have been based on landscape values rather than any considerations of for example, traffic noise or dust.</p> <p>Houses closer to the road on local roads within the zones could progressively change the “street scene” of the PKN zones to a more intensively developed character. The scale and degree of this effect will depend on the extent of new housing and intensification in the settlements which eventuates over time as a result of these rule changes.</p> <p>There are two hill waterways passing through the fronts of properties at Rapaki, on Omaru Road and Rapaki Road, requiring a 10m waterway setback, which because it is more restrictive, will override a 5m road boundary setback. (see also paragraph 3.7.8), making the 5m road boundary setback unachievable. Some of the west-east oriented lots have alternative access at the other ends of properties.</p> <p>Waterway setbacks are not being addressed in this plan change and should be considered separately from boundary setbacks as they have different purposes and matters of discretion applying.</p>
<p>Economic:</p> <p>N/A</p>
<p>Social:</p> <p>As for internal boundary setbacks, road boundary setback reductions could cause some adverse effects in terms of visual dominance across local roads. This can be considered a minor effect as the road frontage of many of the smaller sites is not wide enough to permit more than one building near the road, and will not outweigh the wider social benefit of increased flexibility for building.</p>
Cultural:

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Cultural costs are limited to any inequity concerns arising from the rules being amended for Māori land and for some general land owned by Māori, but not being amended for land in the zone which has passed out of Māori ownership.

Consistency with the policies and appropriateness in achieving the objectives

Efficiency:

A significant reduction in road boundary setbacks will provide some benefit for the use and development of small sites in the zone. Reduced setbacks provide more flexibility for development without consents.

It is considered that the benefits of a significant reduction in road boundary setbacks outweigh the potential costs.

Effectiveness:

The road setback reduction proposed will address what appears to be the second biggest planning rule issue in the zone, and which has caused the need for a number of consents since these rules became effective in 2016. Reducing these setbacks is in accordance with the current zone objective and policies for Māori Land, with the directions of higher order documents, and with higher order directions eg RPS policies of enabling development of Māori Reserves for the purposes for which they were originally intended.

Risk of acting

There is sufficient information and analysis to show that this option would be better than the status quo at facilitating development in the PKN zone.

- 6.3.6 **Earthworks rule for Māori land – Rule 8.9.2.1 Table 9 Maximum volumes – earthworks - Rural and Papakāinga/Kāinga Nohoanga Zones.** The plan change proposes to increase the volume of earthworks (both excavation and filling) provided for on Māori land sites in the zone which are less than 2000m² in area, to 20m³ per site, as for the permitted volume for earthworks in residential zones. The permitted volume for Māori land sites of 2000m² or over in size in the PKN zones would remain at 100m³/ha in line with the rural zones earthworks permitted volume.

6.3.7

Benefits

Environmental:

The rural zone ratio of volume of earthworks to size of site is limiting and inequitable when considering small Maori land sites within the PKN zone, e.g. it would only provide for 10m³ for a 1000m² site and 5m³ for a 500m² site. (Note that this does not include earthworks for building platforms within the footprint of a building). Across the five areas of the zone, a third of properties are less than 2000m² in area, while at Rapaki this proportion is 58%.

Increasing the permitted earthworks volume to a standard 20m³ for smaller sites in line with all residential zones in the City may provide more development flexibility e.g. greater ability to construct retaining walls where required on sloping sites, or to provide for driveway replacement, or the creation of platforms for installation of water tanks. A volume of 20m³ volume equates to approximately one truckload in and one truckload out of a property. Retaining walls of more than 6m² in area and/or more than 1.8 metres in height still require a building consent.

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This change will promote greater equity for smaller sites with similar sized sites in residential zones, and in combination with other rule changes, will assist in better facilitating use and development of small sites in the zone in accordance with the zone objective.
Economic: Reducing consenting costs, albeit to a minor degree, will help facilitate development and redevelopment in the zone.
Social: The change promotes equity with other residential zones, for Māori land sites of less than 2000m ² in the PKN zone.
Cultural: Addresses an issue raised by MKT on behalf of rūnanga, in respect of facilitating development of land in the zone.

Costs
Environmental: Advice given on resource consents for increased volumes of earthworks on small sites, including on sites in this zone, from Council subdivision engineers, is that increasing earthworks to this scale would not be anticipated to have significant environmental effects, in terms of erosion, sediment control, or impacts on drainage patterns. Earthworks will still require a consent in waterway setbacks and are subject to greater restriction in certain overlay areas e.g. Flood Management Areas (which includes part of the Wairewa PKN zone). Overall the potential environmental costs of this change are considered to be minor.
Economic: N/A
Social: N/A
Cultural: As for other rule amendments in this plan change, there could be concerns about inequity arising from the rules being amended for Māori land and for some general land owned by Māori, but not being amended for land in the zone which has passed out of Māori ownership.

Consistency with the policies and appropriateness in achieving the objectives
Efficiency: The benefits of this change are considered to outweigh any environmental costs.
Effectiveness: In combination with other changes, this proposed change will help facilitate development and redevelopment in the zone, by reducing consenting costs and delays.
Risk of acting/not acting Any potential environmental effects resulting from this change will be the same as in similar residential zones with the same permitted earthworks volume. The risk of acting is considered to be minimal, while the risk of not acting will be a continued perception of over-restrictiveness.

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- 6.3.8 **Maximum Coverage for Māori land – Rule 12.2.4.2.** The plan change proposes to increase the permitted maximum coverage for Māori land in the zone from 35% to 50%.

6.3.9

Benefits
<p>Environmental:</p> <p>50% maximum coverage will provide more flexibility for multiple buildings on one parcel of Māori land. e.g. a papakāinga development. Evidence presented to the IHP on the papakāinga zone hearing indicates papakāinga in the examples examined in other regions in NZ tended to have low dwelling densities, but this would not necessarily be the case if such developments were proposed on smaller sites in the Christchurch PKN zones. Such developments might occur on a staged basis and it is important to ensure that a “first in first served” situation does not occur, even if communal development provides an element of co-ordination. Council planning staff are currently aware of two possible proposals for grouped housing in the zone, one at Rapaki and one at Koukourāata.</p> <p>Ensuring that there is space on-site for servicing including septic tank disposal fields (other than at Rapaki), parking, other open space and any landscaping, mean that it is useful to have a maximum coverage allowable.</p> <p>Other non-residential activities which could be located in papakāinga zones eg a health centre or small retail shops, would benefit from higher permitted coverage than is normally provided for in residential zones.</p>
<p>Economic:</p> <p>Increased building coverage could enable more efficient use of some properties in the zone. In practice, realised coverage/intensity of development will in many cases be limited by other factors such as the lack of servicing and relative isolation of some parts of the zone.</p>
<p>Social:</p> <p>Addresses an issue raised by MKT on behalf of rūnanga, in respect of facilitating development of land in the zone.</p>
<p>Cultural: This proposed change will contribute to facilitating papakāinga and other communal developments in the zone. Along with other proposed changes, this increases the degree to which members of the hapū can exercise kaitiakitanga over their ancestral land.</p>

Costs
<p>Environmental:</p> <p>Increased coverage could be limited to some activities such as non-residential or communal residential activities, but this could also be considered restrictive and complicated. Alternatively increased coverage could be limited to smaller sites, but this could be unfair to proposals for multiple buildings on medium to large size sites, which could not achieve the same densities proportionately.</p> <p>50% coverage on larger sites could theoretically result in some very large buildings with potentially adverse amenity effects, in the (landscape) context of small rural settlements. In practice this is not especially likely. Larger buildings may be justified depending on the</p>

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circumstances eg in association with permitted activities such as rural processing or rural tourism activity which contribute to the economic base of the settlements.
Economic: N/A
Social: N/A
Cultural: N/A as increased coverage is being enabled to address a cultural need.
Consistency with the policies and appropriateness in achieving the objectives
Efficiency: The benefits of this change are considered to outweigh any environmental costs.
Effectiveness: Policy 12.2.1.2 for the PKN zones indicates that it is appropriate for land use and development to be undertaken in a way which ensures the exercise of kaitiakitanga and tikanga Māori, including in the design and layout of buildings, facilities and activities.
Risk of acting/not acting The benefits of assisting in facilitating papakāinga and other communal developments in the zone, are considered to outweigh any risk of adverse amenity effects.

6.4 The most appropriate option

- 6.4.1 Option 2 discussed in detail in 6.2 and 6.3 above is the preferred option. The option includes a package of changes making the built form rules in particular more liberal in the PKN zone. These changes better reflect the (amended) objective and policies of the zone for Māori land than the current rule provisions, including the proposed change to the definition of Maori land to include general land owned by Māori where the owners can whakapapa to the original grantees of the land. The changes are also consistent with sustainable management of land under section 5 of the RMA, and recognising and providing for the relationship of Māori with their ancestral land under section 6 (e) of the Act.

7 Conclusions

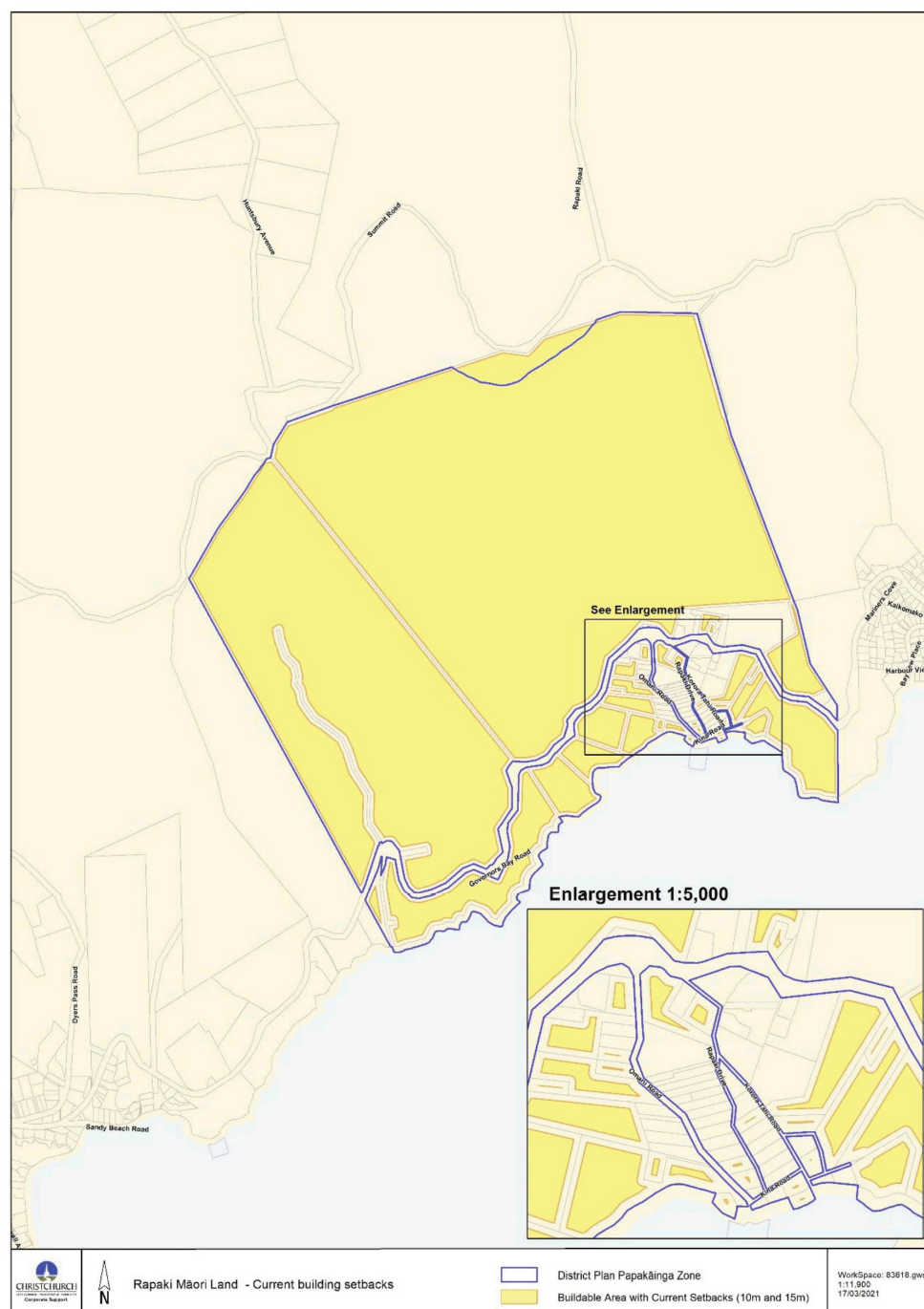
- 7.1.1 This plan change has been developed with considerable input from Mahaanui Kurataiao Ltd and rūnanga. It is considered that the proposed plan change is the most appropriate method to achieve the District Plan Strategic Objectives, Chapter Objectives and higher order document directions, and that the plan change is in accordance with the sustainable management purpose of the RMA.

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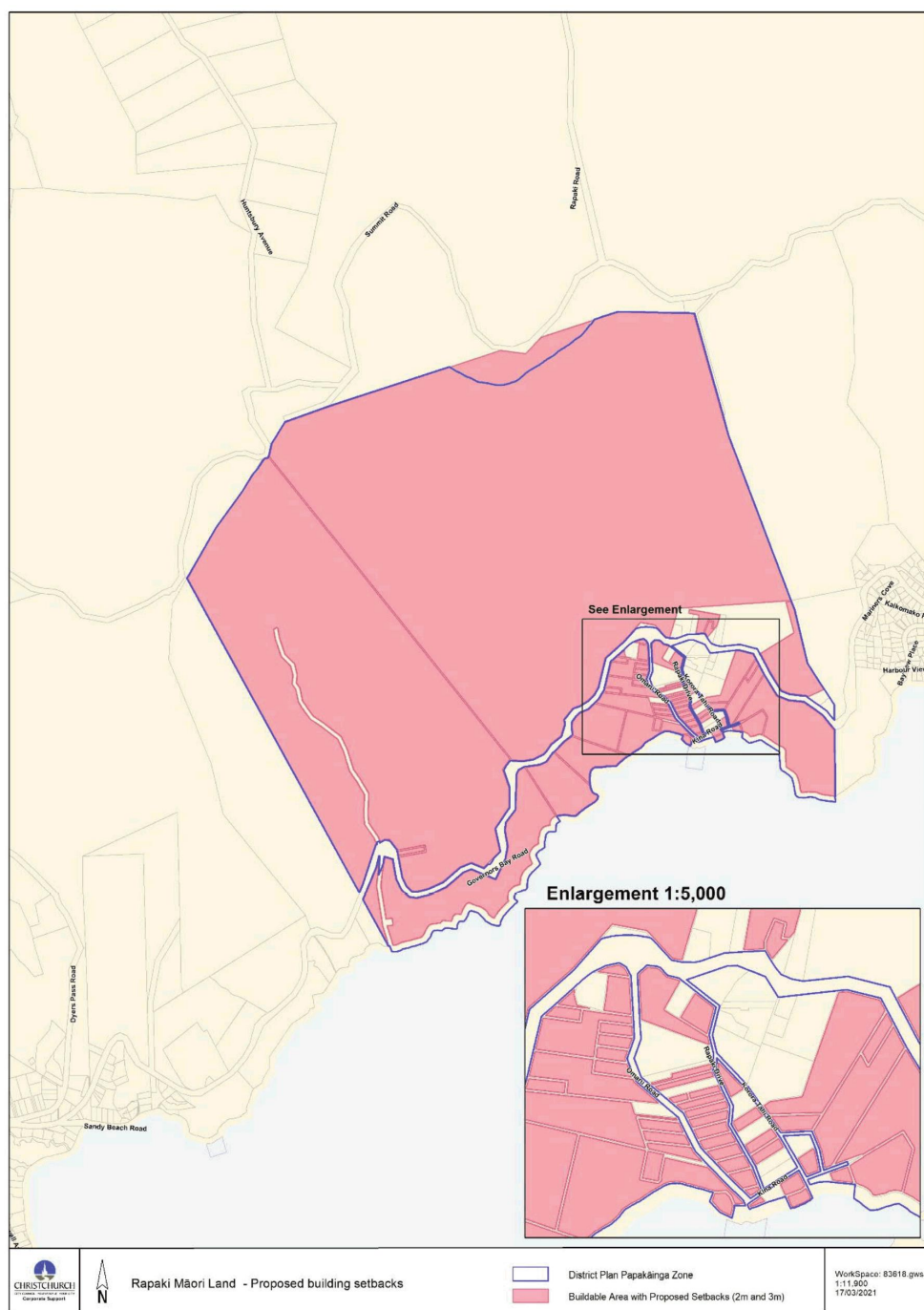
Appendix A – Maps of Current and Proposed Building Setbacks

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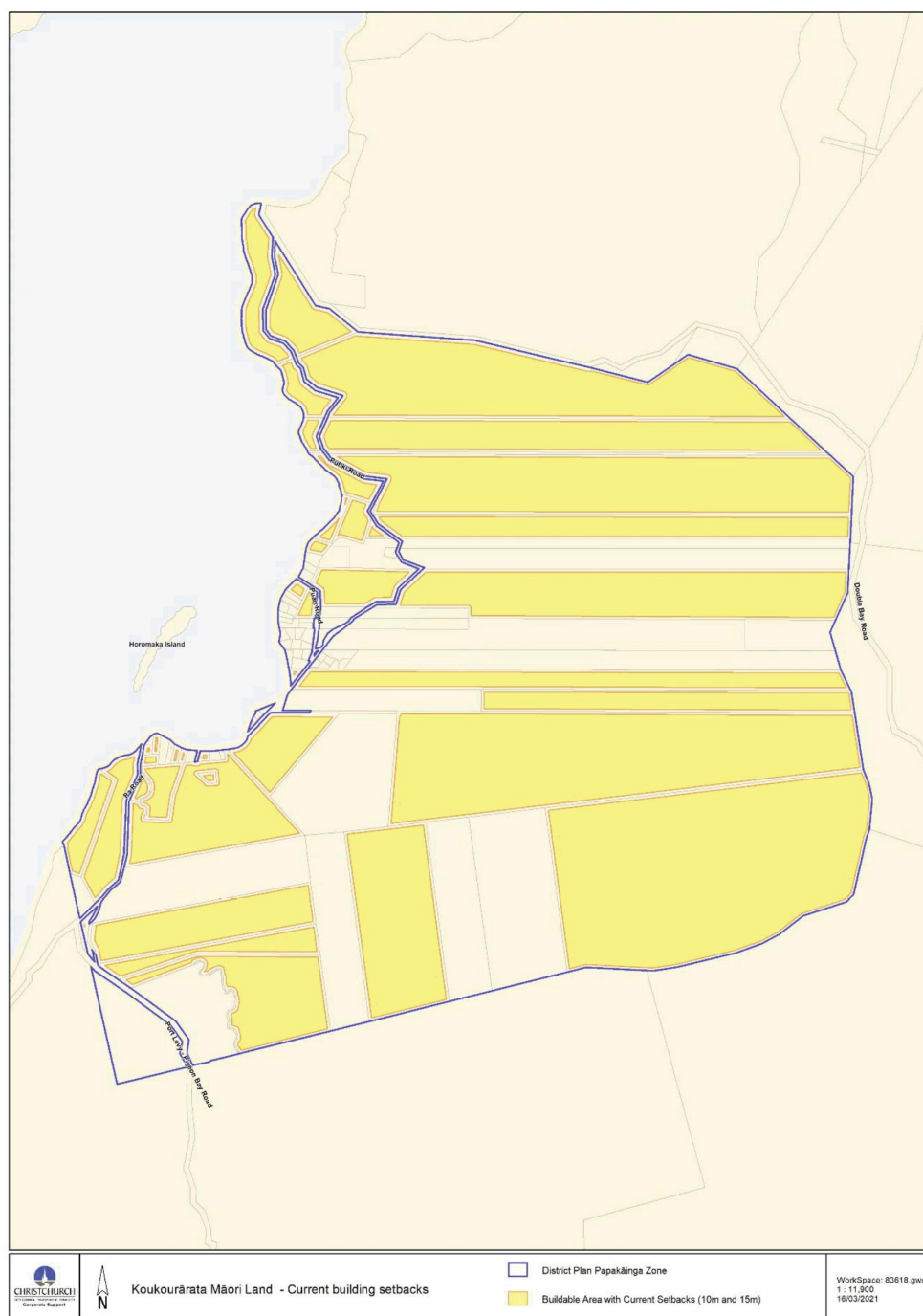
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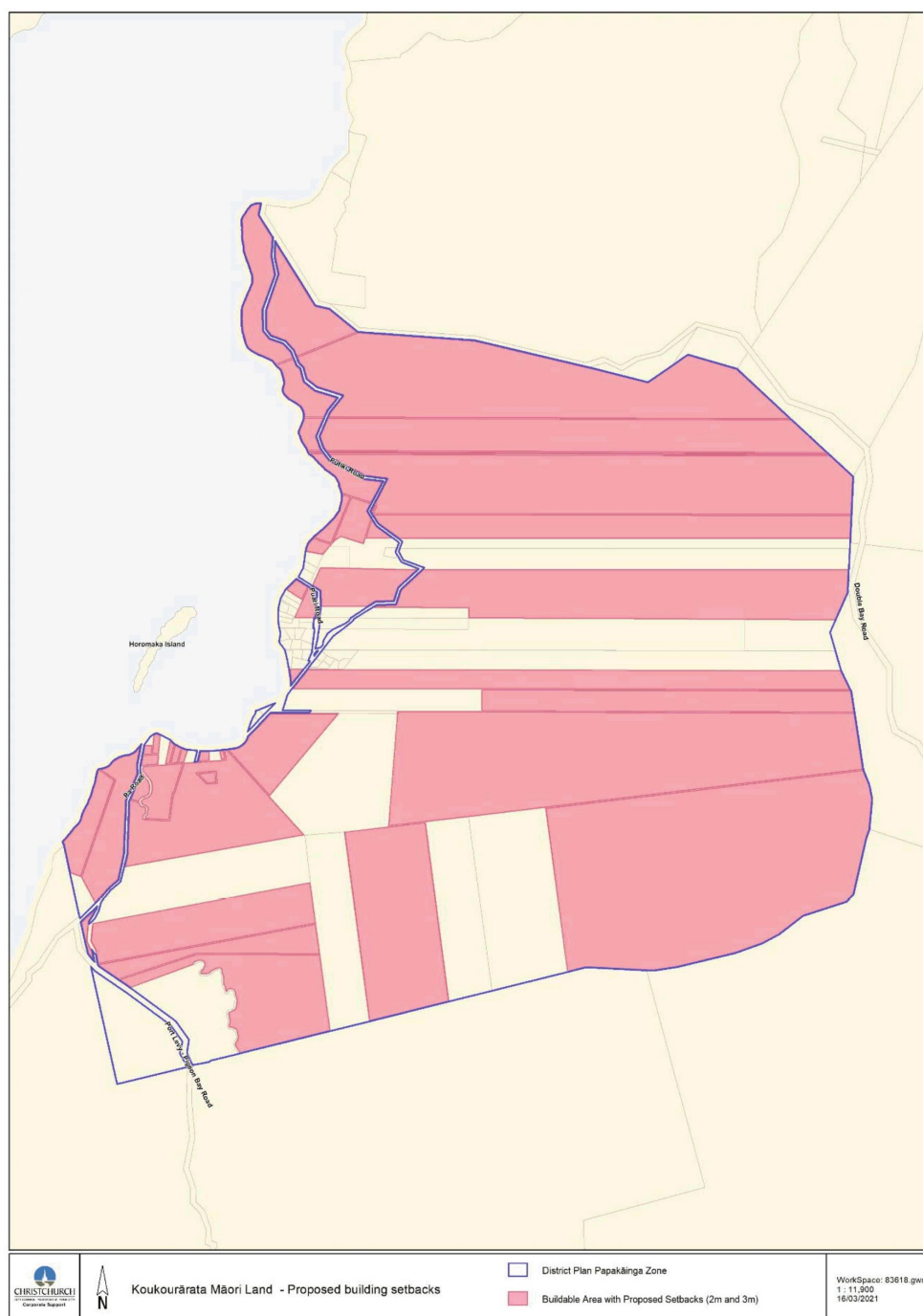
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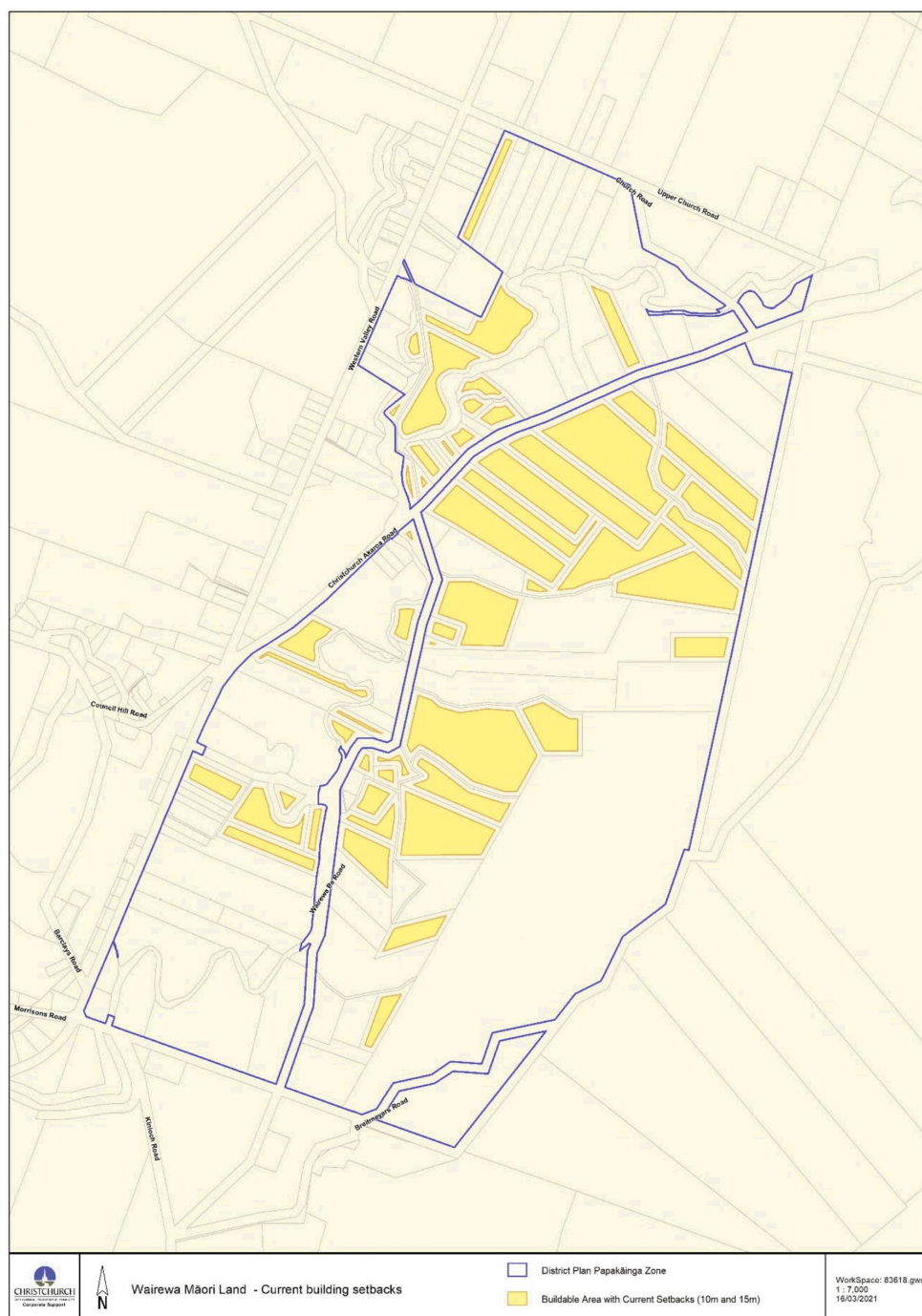
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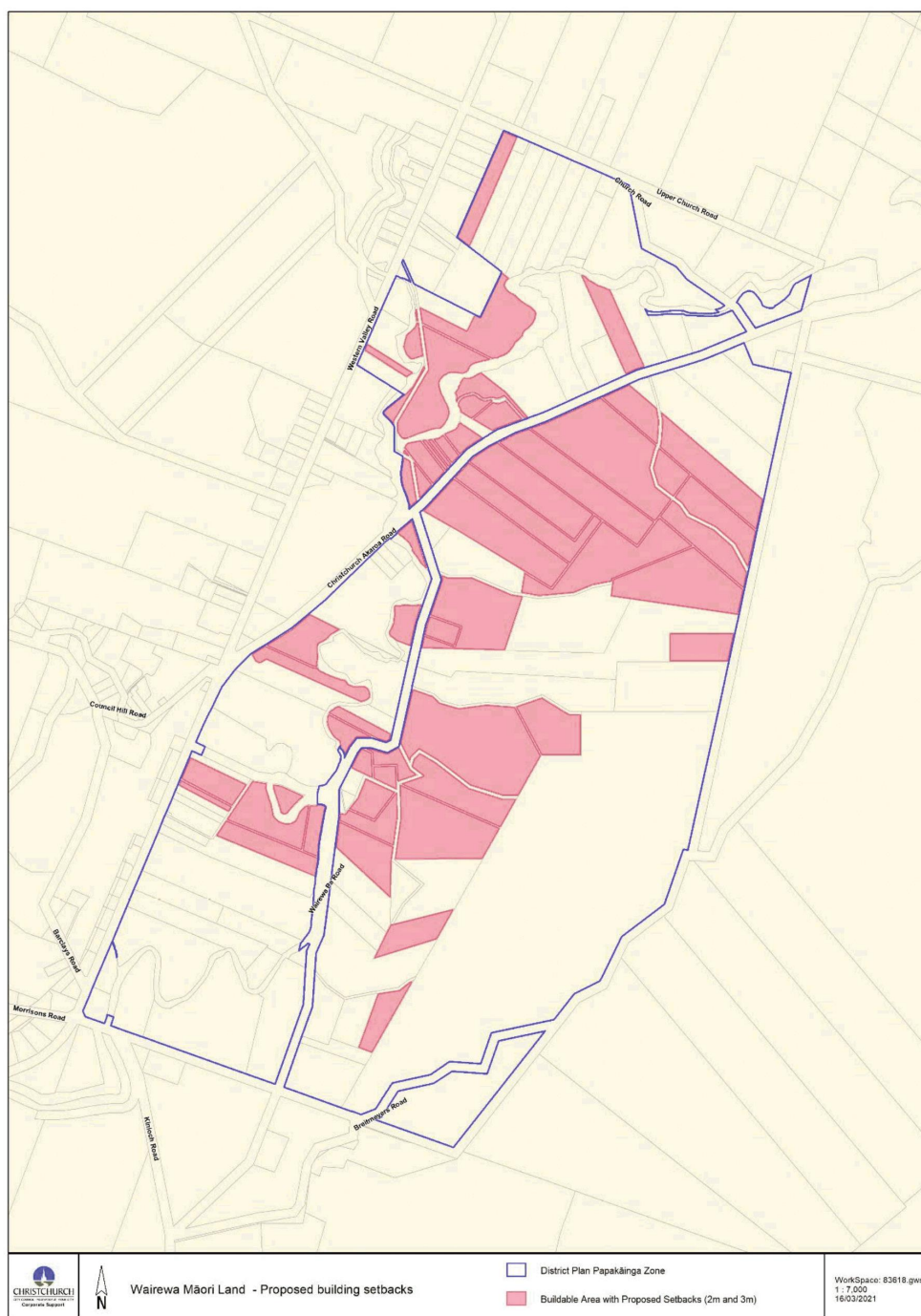
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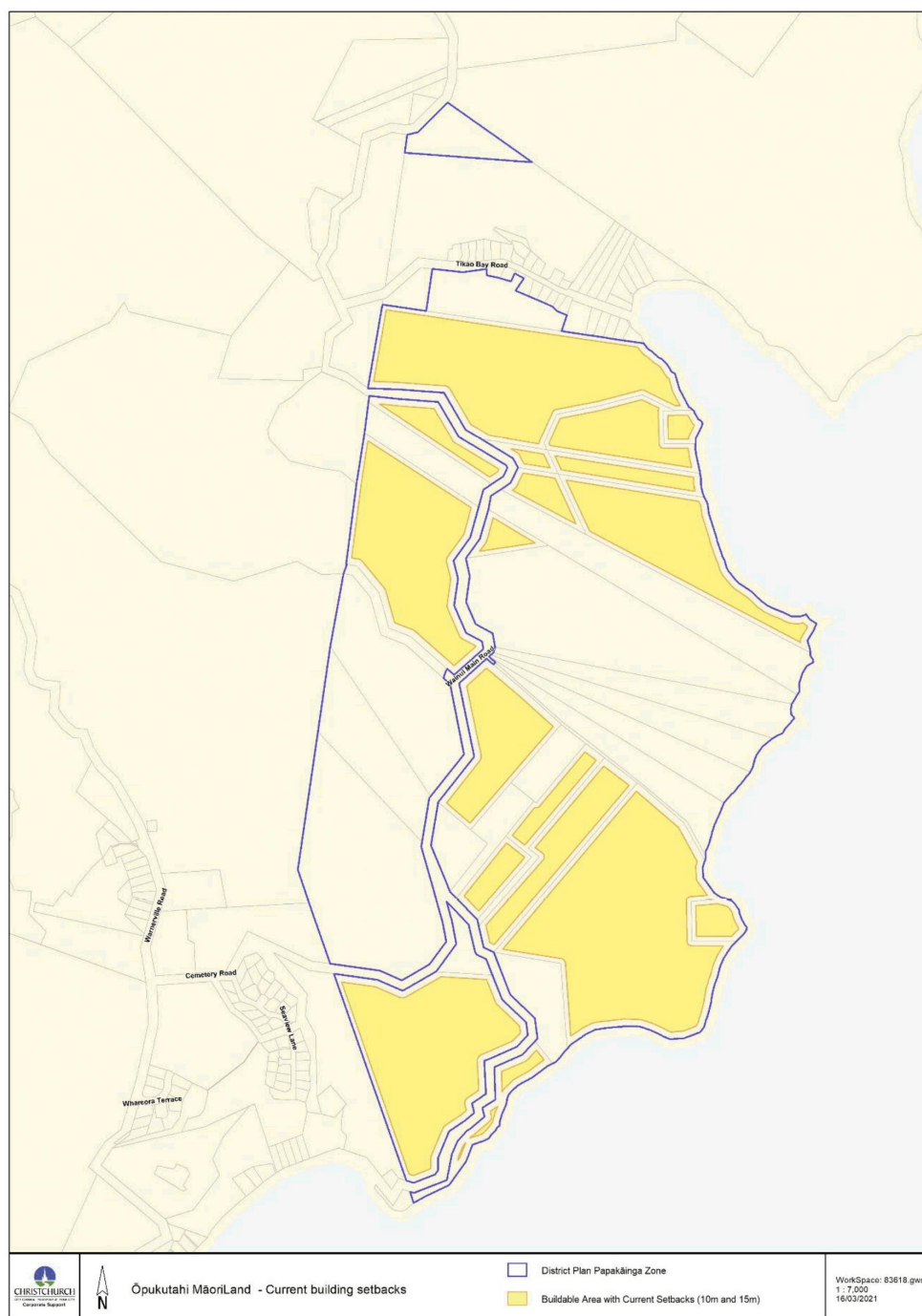
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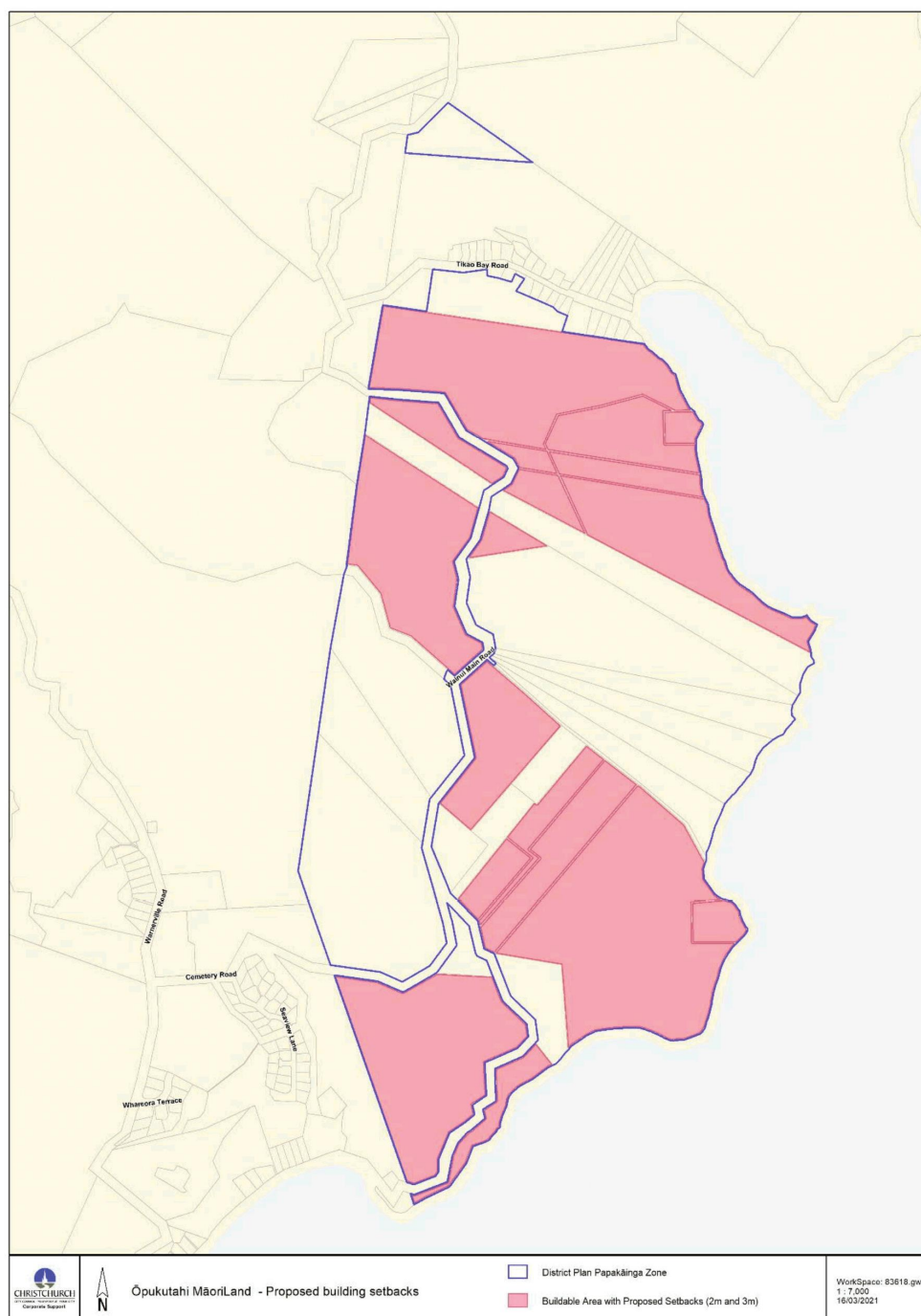
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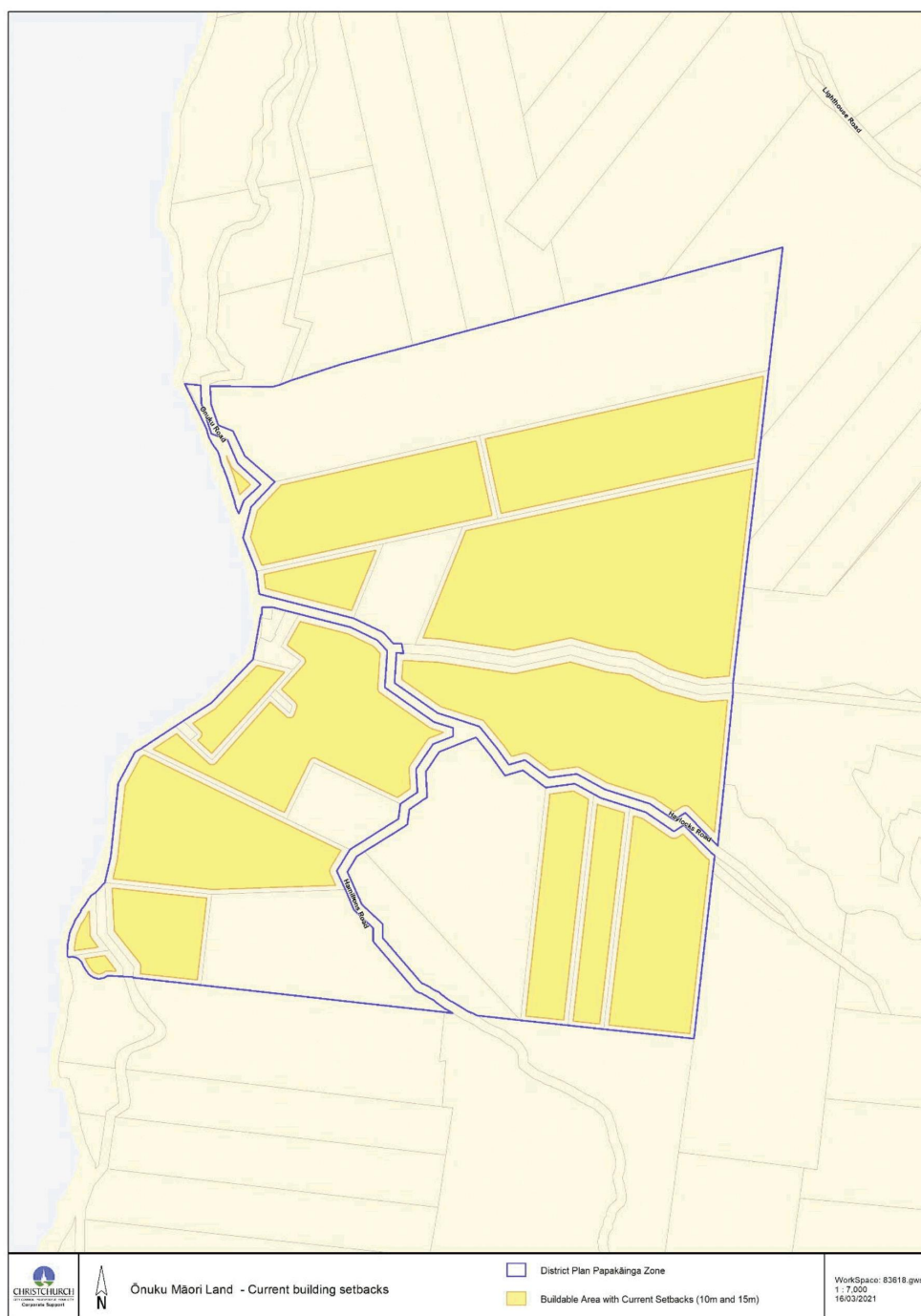
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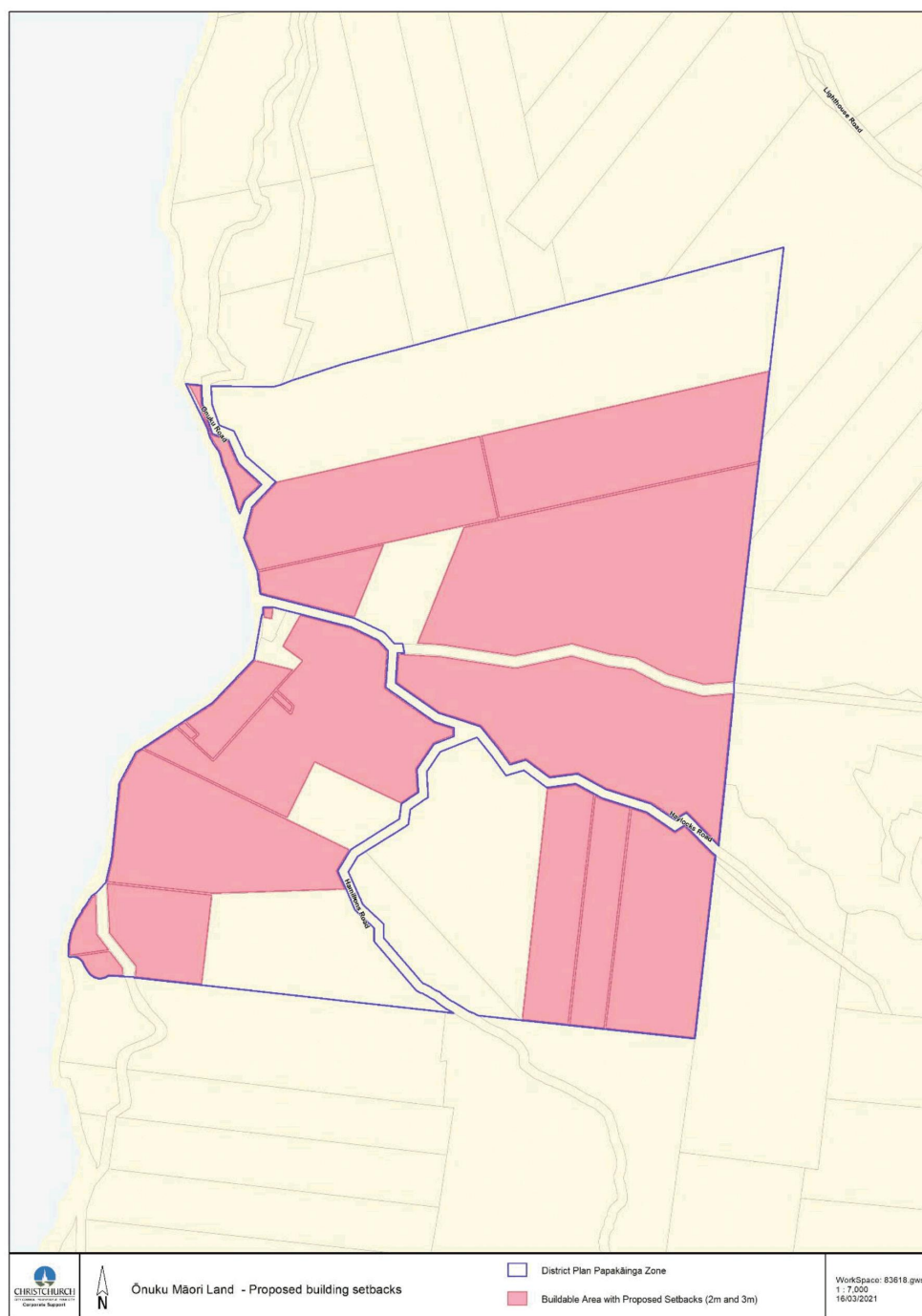
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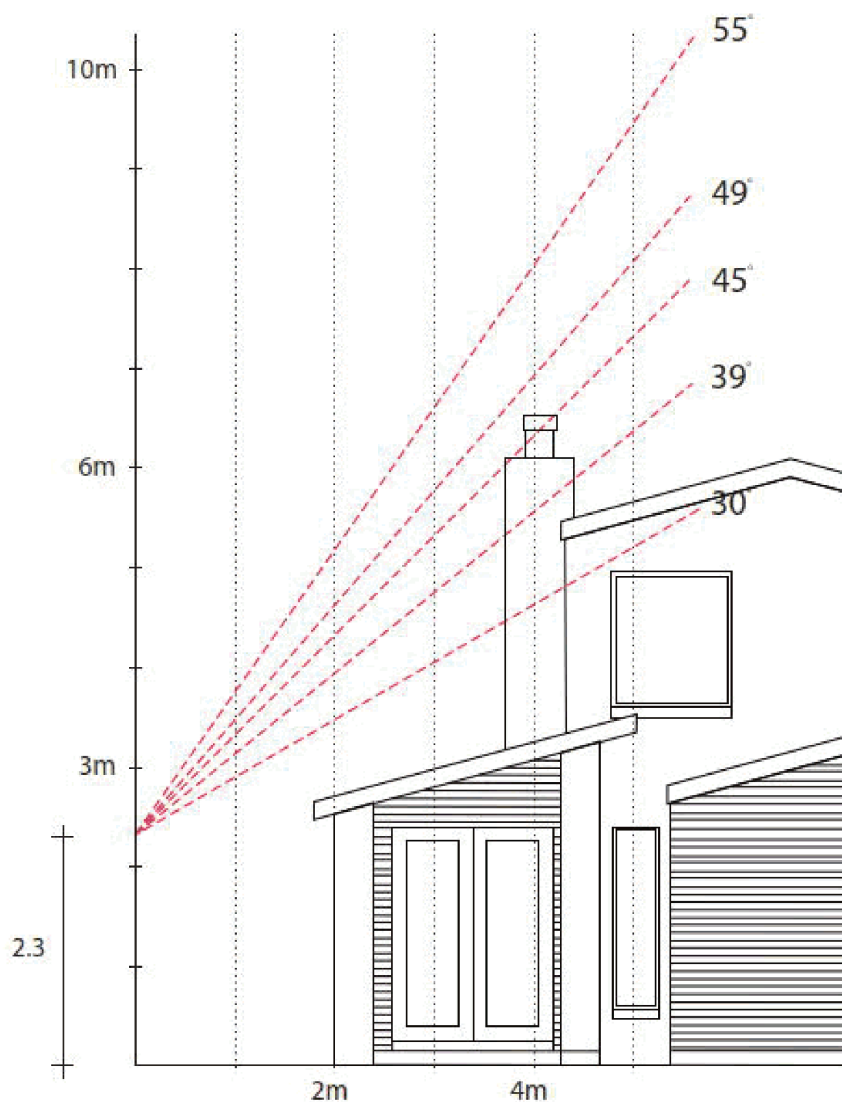


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Appendix B – Proposed Recession Plane

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Residential Hills/ Papakāinga Zone
Note: all dimensions in metres

Scale 1:50 @ A4
0 1 1.5m