

**I MUA I TE KAUNIHERA A ROHE O TAUPŌ
NGĀ KAIKŌMIHANA**

**BEFORE THE TAUPŌ DISTRICT COUNCIL
HEARING COMMISSIONERS**

UNDER the Resource Management Act 1991

IN THE MATTER of Proposed Plan Change 47 (Māori Purpose Zone) –
Taupō District Plan

LEGAL SUBMISSIONS FOR TĪTARI, REA AND RANGIPOIA WHĀNAU

19 JUNE 2026



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RĀRANGI TAKE | TABLE OF CONTENTS

HE KUPU WHAKATAKI	2
PROCEDURAL MATTERS	4
SCOPE OF CHALLENGE TO MPS-1	5
Mr Mushet	5
Campbells	5
Ms Lambert	5
CLARIFYING INTENDED APPLICATION OF MPZ TO MPS-1 LAND.....	6
MERITS OF MPS-1	7
SCOPE ISSUES.....	8
Notified MPS-1	8
Original Submissions	8
Scope categories	9
The Law	9
Scope for inclusion of MPS-1 parcels.....	11
Delay of operative effect until reserve status lifted	13
HE KUPU WHAKAKAPI.....	14

TĒNĀ, E NGĀ KAIKŌMIHANA:

HE KUPU WHAKATAKI

1. These submissions are filed on behalf of the Titari, Rea and Rangipoia Whānau (the **Whānau**) in respect of proposed MPS-1¹ to Plan Change 47 (**PC47**).²
2. The Whānau are in negotiation with Te Arawhiti | The Office for Māori Crown Relations (**Te Arawhiti**) in respect of the transfer of land at '**Kōhineheke Reserve**', also referred to as '**Crescent Reserve**'.
3. The Crown's commitment to transfer this land is recorded in the 1998 Ngāti Turangitukua Deed of Settlement and Ancillary Claims Deed.³ The Whānau have waited almost 30 years for the transfer of this whenua in accordance with the Deed commitments. Through the dedicated efforts of their representatives, implementation of the commitment to transfer the land is progressing steadily. The Whānau and Te Tari Whakatau are aiming to give effect to the transfer in 2027.⁴
4. As future owners of the land, the Whānau have sought its inclusion in PC47. The Whānau have a number of aspirations for this ancillary redress settlement land that accord with the purpose of the Māori Purpose Zoning, to "assist Māori communities to provide for their unique social, cultural, environmental and economic needs within the Taupō District".
5. While the land currently has reserve status under the Reserves Act 1977, pursuant to the Deed of Settlement and Ancillary Claims Deed, reserve status will be removed by enabling legislation when the land transfers to the Whānau,⁵ and will become Māori land within the meaning of PC47.
6. The Whānau engaged with Taupō District Council on proposed PC47 in the May 2025 pre-consultation phase, recognising the land to be transferred as appropriate for MPZ zoning. Regrettably, despite good faith pre-consultation engagement by all involved, a mapping error and the fact that land is still yet to be transferred has caused scope issues to be raised as to the inclusion of MPS-1 in PC47.
7. The inclusion of MPS-1 is also opposed by original submitters John

¹ Also referred to as MPZ-1 in the notified plan change.

² In the interest of avoiding the filing of multiple documents with the Panel, at the relevant point the submission also addresses a related matter as to scope for the proposal raised by Planner Ms Jade Wikaira in respect of a bespoke papakāinga provision.

³ These are available at <https://whakatau.govt.nz/te-tirakurapounamu-treaty-settlements/find-a-treaty-settlement/ngati-turangitukua>

⁴ Further submission of Te Tari Whakatau.

⁵ As Above.

and Beverley Campbell,⁶ Courtney Lambert⁷ and Johnnie Mushet.⁸

8. These legal submissions address the following matters:
 - (a) procedural matters;
 - (b) scope of challenge to MPS-1;
 - (c) clarifying the intended application of the MPZ to the MPS-1 land;
 - (d) the merits of MPS-1; and
 - (e) scope issues, namely the inclusion of land parcels within MPS-1 and the ability to delay operative effect of MPS-1 until the reserve status is lifted.
9. In preparing these submissions, counsel has reviewed and addressed the issues raised in the legal advice at Appendix 3 of the Section 42A Report.⁹
10. As the Section 42A Report acknowledges, the position of the legal advice and the Report authors is not to categorically reject application of the Māori Purpose Zone to MPS-1. Instead, the Report records:
 149. Accordingly, and taking a cautious approach to ensure the legal robustness of PC47, we recommend that the balance of MPS-1 be removed from PC47 at this stage. This recommendation is made primarily as a consequence of the identified legal uncertainty associated with the current land status and tenure arrangements, rather than because the underlying intent or planning rationale for the zoning is considered inappropriate.
 150. We note however that the legal advice also acknowledges the complexity of Māori land law and that there may be additional clarity or evidence presented through the hearing process regarding ownership and land status matters, including the relationship between the ancillary redress process and the application of Te Ture Whenua Māori Act 1993. The evidence before

⁶ Submitter 2. The Campbells have chosen not to speak in support of their submission.
⁷ Submitter 8. Ms Lambert has chosen not to speak in support of her submission.
⁸ Submitter 9.

⁹ Acknowledging the legal advice is more limited than the matters traversed in these submissions, to the scope of unmapped SEC 2 SO 36174 and the issue of whether or not a parcel of land is Māori land for the purposes of its inclusion in the MPZ (see para [3] and the definition on unmapped land at [8]).

Council confirms that the Crown transfer process remains active, that the future whānau owners support the zoning, and that the proposal arose through a considered pre-notification engagement process. We remain open to considering further legal submissions or evidence presented at the hearing that may resolve the identified jurisdictional and land status issues.

11. Counsel submits that, for all the reasons outlined in these submissions, the Panel has the jurisdiction to approve MPS-1 as per the extent sought by the Whānau.

PROCEDURAL MATTERS

12. The Hearing Panel's 4 June 2026 minute addresses the procedural challenges made by Mr Mushet to the Further Submission made on behalf of the Whānau in respect of opposition to MPS-1.
13. For clarity, the Whānau do not rely on the Further Submission for jurisdiction to address the matters raised by those submitters. As the Hearing Panel noted, the matter to which the further submission attaches is already engaged and on the Hearing Panel's table as part of the original submission made by the Whānau. The matters raised by the Whānau are points in response to the submissions made, to be considered in the determination of PC47. The points are relevant and valid irrespective of the section 37 waiver granted by the Panel.
14. Allegations of conflict of interest are also entirely unsubstantiated and should be disregarded. The Whānau and Taupō District Council staff and advisors participated in the May 2025 pre-consultation in good faith and with an openness about the future transfer of the land. For the avoidance of doubt, the Whānau do not seek the application of MPZ zoning to the current reserve. They seek the application of MPZ zoning to the land upon transfer and removal of reserve status. That is an entirely reasonable request. Whether MPS-1 can be enabled on these facts is a matter to be determined by the Panel having regard to the positions advanced.

SCOPE OF CHALLENGE TO MPS-1

15. At the outset, it is important to note that scope for removal of MPS-1 is limited only to those parts identified as SEC 1 SO 36174 and SEC 2 SO 36174.

Mr Mushet

16. The relevant relief sought by Mr Mushet is "SEC 1 & 2 SO 36174 are removed from the proposal to maintain their status as public Recreation Reserves."

Campbells

17. The Campbells' submission is qualified by the reference therein to PC47 including an "incorrect notification", as it states that:

"Kohineheke Crescent Reserve is only the Taupo District Council managed recreation reserve and borders Te Rangitautahanga Rd".¹⁰

18. Nonetheless, the Campbells' submission does not seek specific relief removing MPS-1. Read as a whole it is in the nature of opposing planning controls that would restrict resolution of the Treaty settlement and use of the land by its owners. It states that:

15. The proposed plan change may complicate and exacerbate the resolving of the Waitangi Treaty Settlements Turangi Township Ancillary Claim over the land and that has existed for the last 27 years since 1999. It appears recent reserve plans for Turangi have also ignored historic issues and the resolution of the Turangi Waitangi claims made in 1999 and may promote further claims.

16. The proposed plan change restricts the liberty and existing uses that Maori and other land owners may have in the use of these lands.

Ms Lambert

19. The decision sought by Ms Lambert is that the land be "Retained as DOC conservation land". That is not a matter within scope of PC47.

¹⁰ Counsel notes that the legal description for this land is SEC 2 SO 36174.

CLARIFYING INTENDED APPLICATION OF MPZ TO MPS-1 LAND

20. As noted above, the Whānau do not seek the application of MPZ zoning to Kōhineheke (or Crescent) Reserve as it is now.
21. They seek the application of MPZ zoning to the land upon transfer, once the reserve status is removed. In this context, counsel notes that the *merits* of removal of the reserve status on transfer of the land is beyond the scope of matters to be considered by the Panel. What is relevant to the Panel is the *fact* of change of status upon transfer.
22. As signalled by Te Tari Whakatau in its Further Submission, “the reserve status will be removed when the land transfers to the whānau”.¹¹
23. In this regard, we note for completeness and by way of context, the Ngāti Turangitukua Deed of Settlement specifically provides that the Ancillary Claims Deed will:¹²

provide that the resolution for the Crescent Reserve Claim will include an obligation by the Crown to introduce legislation which **revokes the reserve status** of the land subject to the Crescent Reserve Claim and **vest that land free of that status in the relevant Ancillary Claimants**.

[Emphasis added]

24. The Ancillary Claims deed further provides that:¹³

Notwithstanding any other provision in this Deed, the Redress for the Crescent Reserve Claim will include an obligation by the Crown to introduce legislation which **revokes the reserve status** of the land subject to the Crescent Reserve Claim and **vest that land free of that status in the relevant former owner(s)**.

[Emphasis added]

25. In this regard, removal of reserve land status is an inevitability, pursuant to the Deed of Settlement and Ancillary Claims Deed.¹⁴

¹¹ See Further Submissions, page 22 .

¹² Attachment 8.2 of the deed of settlement, at clause (I).

¹³ Clause 8.7.4, Ancillary Claims Deed.

¹⁴ For completeness and context, and in response to matters raised by Mr Mushet and the Campbells, we record that a 1998 Heads of Agreement between the Taupō District Council, the Whānau and the Department of Conservation proposed to retain the land as a reserve. It is accepted by the parties to the Treaty Settlement negotiations that the Crown is required to deliver on the obligations under the Deed of Settlement and Ancillary Claims Deed, including the return of the Kōhineheke Reserve free of reserve status. That part of the Heads of Agreement is therefore *ultra vires* the Deeds.

26. Against that background, what remains for the Panel's consideration are the following legal issues:
- (a) scope for inclusion of the MPS-1 parcels;
 - (b) the ability to address the reserve status issue by delaying the operative effect of MPS-1 until the reserve status is lifted.

MERITS OF MPS-1

27. Before addressing issues as to scope, it is important to note that the section 42A Report acknowledges that:¹⁵

- (a) there is strong policy rationale supporting the proposed MPZ framework for the MPS-1 land; and
- (b) opposition submissions did not raise substantive planning matters that independently justify removal of the zone.¹⁶

28. Consistent with the position taken by the Whānau in their Further Submission, the Section 42A Report authors consider that:

138. Importantly, While several submitters oppose the zoning, in our view, the submissions do not raise substantive planning matters that would independently justify removal of MPS-1. Many of the concerns raised relate to existing natural hazard constraints, reserve status, ownership matters, ecological considerations, or future development feasibility. Those matters are either already managed through other statutory frameworks, including the Waikato Regional Plan, natural hazard overlays, and reserve management processes, or would continue to apply regardless of the underlying district plan zoning. In particular, the submissions do not demonstrate that the proposed MPZ framework is inherently inappropriate in planning terms for the land concerned.

29. Accordingly, the authors' recommendation that "the balance of MPS-1 be removed from PC47 at this stage" is expressly qualified as follows:

147. Having considered the submissions received, the further submissions, and the legal advice obtained by Council, we consider that the principal issue with the balance of MPS-1 is not whether a Māori Purpose Zone is inappropriate in planning terms,

¹⁵ Section 42A Report at [148].

¹⁶ Section 42A Report at [148].

but rather whether there is sufficient legal and procedural certainty to retain the zoning given the current land tenure and status of the land.

...

149. ... This recommendation is made primarily as a consequence of the identified legal uncertainty associated with the current land status and tenure arrangements, rather than because the underlying intent or planning rationale for the zoning is considered inappropriate.

30. In short, the merits of applying the proposed MPZ framework for the MPS-1 land are not in question.

SCOPE ISSUES

Notified MPS-1

31. The following areas of MPS-1 were included in the legal description of the notified version of PC47, but unmapped:

- (a) SEC 1 SO 36174;
- (b) SEC 2 SO 36174
- (c) LOT 41 DP 2978;
- (d) SEC 55 TN OF Turangi;

Original Submissions

Whānau Submission

32. The Whānau original submission picked up on the mapping omission in respect of all listed parcels above except for SEC 2 SO 36174, and sought correction of the MPS-1 map accordingly.

33. New areas were also sought for inclusion in MPS-1 by the Whānau original submission as follows:

- (a) Esplanade Reserve (DP 26622);
- (b) Esplanade Reserve (DP 23178).

34. The Whānau original submission did not notice the failure of the map in respect of SEC 2 SO 36174.

Other Submitters

35. As above, the mapping omission did not affect the understanding of the intended application of MPS-1 for original submitters Mr Mushet and the Campbells. Both discerned that MPS-1 applied to that part of the reserve known as SEC 2 SO 36174, and made submissions accordingly.

Scope categories

36. The issue for determination is scope in respect of:
- (a) Notified, but unmapped, SEC 1 SO 36174, SEC 2 SO 36174, LOT 41 DP 2978 and SEC 55 TN OF Turangi, acknowledging these parcels fall into two categories:
 - (i) Those parcels for which a Whānau original submission was made;
 - (ii) Section 2 SO 36174, for which a Whānau original submission was not made, but original submissions were made by Mr Mushet and the Campbells (the **Section 2 SO 36174 unmapped land**).
 - (b) New areas for inclusion in MPS-1 (Esplanade Reserve (DP 26622 and Esplanade Reserve (DP 23178), which were the subject of the Whānau original submission.
37. In respect of the categories identified, only the Section 2 SO 36174 unmapped land was squarely addressed by the legal advice and Section 42A Report in terms of scope concerns. Counsel takes that to mean that it is accepted the other categories are within scope, but nonetheless makes submissions on this point below for completeness.

The Law

38. As identified by Judge Kirkpatrick in *Environmental Defence Society Inc v Otorohanga District Council* [2014] NZEnvC 70 (***Environmental Defence Society***), the central question to be determined is whether the relief sought by the Whānau is within the scope of PC47 “as publicly notified or as sought to be amended by ... submission on it”.¹⁷

¹⁷ *Environmental Defence Society Inc v Otorohanga District Council* [2014] NZEnvC 70

39. Of additional relevance are His Honour's remarks in *Environmental Defence Society* as follows:¹⁸

[42] ... Fundamentally, in determining a matter of jurisdiction, this is **an objective assessment based on the text of the relevant documents** rather than on the personalities of any participant or the circumstances of tenure or use of the land."

[43] **An objective approach, however, must yet allow a degree of latitude in its application so as to be realistic and workable rather than a matter of legal nicety.** If it were obviously the case that the additional areas were of a scale and extent that could reasonably be considered to be incidental and consequential extensions, not requiring further substantial analysis of their likely effects or comparative merits, then that could be within the scope of amendments permissible in terms of the tests identified in *Countdown Properties (Northland)* and *Clearwater*.

[Emphasis added]

40. The reference in *Environmental Defence Society* to "**public notification or amendment by submission**" is important in this case, as the issue here is not simply about submissions alone.
41. Nonetheless, counsel records that the two-part *Clearwater* test for whether a submission is "on" or "about" a plan change is:¹⁹
- (a) the submission addresses the extent to which the plan change would alter the status quo; and
 - (b) the submission does not cause the plan change to be appreciably amended without real opportunity for participation by those potentially affected.
42. In *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 the High Court confirmed that the paramount test is whether or not the amendments are ones which are raised by and within the ambit of what is reasonably and fairly raised in submissions on the plan change.
43. In this regard, counsel diverts briefly to address scope in relation to the proposal of a bespoke papakāinga provision raised in evidence by

¹⁸ Ibid, at [42].

¹⁹ *Clearwater Resort Ltd v Christchurch City Council* (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J) at para [66]; reaffirmed in *Re Otago Regional Council* [2021] NZEnvC 164.

Ms Jade Wikaira. Consistent with the *Clearwater* and *Countdown Properties* tests, the proposal is within the scope of the Whānau and Waitetoko Marae submissions that sought, in respect of MPZ-Rural:

- (a) S1 maximum combined coverage of 40% of the total area of that MPS; and
- (b) S5 minimum building setbacks from MPS boundary of 5m.

Scope for inclusion of MPS-1 parcels

Areas other than the Section 2 SO 36174 unmapped land

- 44. Counsel deals first with the notified, unmapped parcels and the new areas, for which a Whānau original submission **was** made.
- 45. These parts clearly meet the *Countdown Properties* test as having been fairly and reasonably raised. They also meet the *Clearwater* two-part test:
 - (a) As to Part 1, the submission addresses PC47, not matters within the status quo of the existing Taupō District Plan.
 - (b) As to Part 2, SEC 1 SO 36174, LOT 41 DP 2978 and SEC 55 TN OF Turangi were all part of the notified plan, and the submission was about correcting the error in the mapping. Persons potentially affected were given an opportunity for participation. The summary of submissions refers to the decision sought as “amend boundaries of MPZ-1”, with the submission summary described as:

The full extent of land proposed for transfer has been inadvertently omitted from the MPS-1 in PC47. Additional land blocks are identified for inclusion and the boundaries of MPZ-1 need to be amended accordingly. MPS-1 needs to be divided into three separate MPZ zones to reflect the individual allotments for three whanau, supporting their unique social, cultural, environmental, and economic needs. The submitters are open to further discussion with the Council and seek any necessary consequential amendments to clarify the Plan.

Section 2 SO 36174 unmapped land

- 46. Despite its omission from the notified MPS-1 planning map, counsel submits that Section 2 SO 36174 is within the scope of PC47 as publicly notified. Indeed, removal of Section 2 SO 36174 from PC47

would require amendment to Schedule 13.11 as publicly notified.

47. Further, the submissions from Mr Mushet and the Campbells (persons who consider themselves affected) demonstrate that they read PC47 as affecting the land parcel and have taken the opportunity to participate.
48. Mr Mushet's submission refers expressly to Section 2 SO 36174 and the Campbells' submission refers to it locationally.
49. The legal description in the notified version, and original submissions in the PC47 context, make it distinguishable from the outcome in *Environmental Defence Society* that unmapped outstanding landscape land was beyond scope in that case. There the parties sought to resolve an appeal by draft consent order, which included new outstanding landscapes areas outside the decisions' version of the proposed district plan.
50. His Honour's expressed opinion that "adding areas of outstanding landscapes that have not previously been shown either on the planning maps as notified nor identified or otherwise referred to in submissions is not within the scope of the submission" is not a generic decision as to the primacy of planning maps in these scenarios. Rather, it is qualified by the facts of that case, which involved a consent order where the parties had reassessed the landscapes of the entire district and were proposing new outstanding landscapes where landowners had not been consulted.

Relevance of National Environmental Standards for Papakāinga

51. The Whānau are also alive to the National Environmental Standards for Papakāinga (**NES-P**) that will come into force on 2 July 2026, which were not a feature of the planning landscape when MPS-1 was sought in respect of Section 2 SO 36174.
52. The NES-P makes a papakāinga development²⁰ a permitted activity within district Māori purpose, residential or rural zones if certain standards identified in the NES are met.
53. The Section 2 SO 36174 unmapped land is zoned rural under the Taupō District Plan. The Whānau aspirations for the Section 2 SO 36174 unmapped land largely relate to papakāinga.

²⁰ Defined as housing, ancillary non-residential activities, and Māori cultural activities on Māori ancestral land or post-settlement governance entity land that enables the owners to use their land and live in accordance with their culture, in perpetuity, and includes the following terms used in district or combined plans: Māori housing development; marae community; papakāinga scheduled sites.

54. In light of the enabling effect of the NES-P, the Whānau are considering not pursuing Māori Purpose Zone status for the Section 2 SO 36174 unmapped land.
55. At the time of filing the Whānau has not come to a firm decision. Counsel will address the Panel on this matter at the hearing.

Delay of operative effect until reserve status lifted

56. As above, the Whānau do not seek the application of MPZ zoning to the current reserve. They seek the application of MPZ zoning to the land upon transfer and removal of reserve status.
57. Transfer from reserve land to land eligible for MPZ status²¹ is an inevitability, pursuant to the Deed of Settlement and Ancillary Claims Deed.²² The only matter preventing the Māori land status from applying is enabling legislation giving effect to the Deeds. Te Arawhiti has identified 2027 as the target for legislation giving effect to the transfer. The Whānau are committed to working toward this date.
58. In this regard, counsel submits that concerns about application of the MPS-1 to the current reserve can be addressed by delaying the operative effect of MPS-1 until reserve status is lifted.
59. The Panel has the jurisdiction to delay the operative effect of MPS-1 pursuant to clauses 17 and 20 of Schedule 1 of the RMA.
60. Clause 17(2) states that “a local authority may approve part of a policy statement or plan, if all submissions or appeals relating to that part have been disposed of”.
61. Clause 20 states:

20 Operative date

- (1) Subject to subclause (2), an approved policy statement or plan shall become an operative policy statement or plan on a date which is to be publicly notified.
- (2) The local authority shall publicly notify the date on which the policy statement or plan becomes

²¹ Either Māori freehold land or general land owned by Māori.

²² For completeness and context, and in response to matters raised by Mr Mushet and the Campbells, we record that a 1998 Heads of Agreement between the Taupō District Council, the Whānau and the Department of Conservation proposed to retain the land as a reserve. It is accepted by the parties to the Treaty Settlement negotiations that the Crown is required to deliver on the obligations under the Deed of Settlement and Ancillary Claims Deed, including the return of the Kohineheke Reserve free of reserve status. That part of the Heads of Agreement is therefore *ultra vires* the Deeds.

operative at least 5 working days before the date on which it becomes operative.

62. Specifically, counsel recommends language accompanying the public notice of the operative date for PC47 more generally along the following lines:

Part MPS-1 to Plan Change 47 shall become operative on the date specified in legislation enacted pursuant to the 1998 Ngāti Turangitukua Deed of Settlement and Ancillary Claims Deed vesting that land subject to MPS-1 in the relevant Ancillary Claimants.

Taupō District Council shall publicly notify the date on which Part MPS-1 to Plan Change 47 becomes operative at least 5 working days before the date on which it becomes operative.

63. This approach is consistent with:
- (a) Section 6(e) of the RMA, recognising the relationship of the Whānau and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
 - (b) Section 7(a) of the RMA, having particular regard to kaitiakitanga; and
 - (c) Section 8 of the RMA, taking into account the principles of the Treaty of Waitangi, recognising the Treaty settlement context at play.

HE KUPU WHAKAKAPI

64. The Whānau have waited almost 30 years for the transfer of the whenua the subject of MPS-1, and they have engaged in PC47 with the view to enabling their aspirations for the whenua upon its return.
65. Their aspirations for the whenua are entirely consistent with the purpose of the zone, “to enable a range of activities on Māori Land that specifically meet Māori cultural needs on land owned by tangata whenua and to assist Māori communities to provide for their unique social, cultural, environmental and economic needs within the Taupō District”.
66. In this context counsel has put forward a pragmatic solution to support approval of Māori Purpose Zone status to MPS-1 that ensures the simple issue of timing does not become an unnecessary and unreasonable impediment to approval.

67. If, notwithstanding these submissions, the Panel is not minded to approve MPS-1 as per the extent sought by the Whānau for reasons only of scope, counsel expressly requests that the Panel's Decision addresses the merits of the application of MPZ status to the land on transfer. Such documentation will support the need to engage in future MPZ processes.
68. To this end, the Titari, Rea and Rangipoia Whānau are a small whānau group who have the benefit of counsel at this time given concurrent Treaty settlement negotiations. At the very least, a reasonable outcome of participation in this process is a strong foundation and rationale inclusion in future planning processes, without the need for the Whānau to engage legal representation.

DATED this 19th day of June 2026



M M E Wikaira

Counsel for the Titari, Rea and Rangipoia Whānau