

BEFORE THE HEARINGS PANEL

In the Matter of: The Resource Management Act 1991

And Proposed Plan Change 47:
Māori Purpose Zone

Application By: Taupō District Council

SECTION 42A (CLOSING STATEMENT) OF THE RMA REPORT BY ROWAN SAPSFORD

Dated: 17 July 2026

1. PURPOSE AND SCOPE OF THIS CLOSING STATEMENT.

- 1 This closing statement has been prepared following the hearing of Plan Change 47 (PC47). The purpose of this closing statement is to address matters arising from the hearing and to provide further recommendations on a limited number of issues identified by the Hearings Panel.
- 2 Since the hearing, I have undertaken further consideration of the evidence presented by submitters, legal submissions, matters raised by the Hearings Panel, and discussions that occurred during the hearing. As a result of that further consideration, I recommend amendments to the recommendations contained in the Section 42A Report and the Section 42A Addendum.
- 3 This closing statement considers two specific matters:
 - a. the recommended approach to the land identified as MPS-01, including its extent and the introduction of provisions to ensure that development cannot occur prior to the land becoming Māori land; and
 - b. amendments to the Māori Purpose Zone objectives and policies to provide greater recognition of iwi and hapu planning documents, including *Te Kaupapa Kaitiaki*, while ensuring that these provisions do not create unnecessary regulatory barriers or additional consenting requirements for future development.
- 4 This statement should be read in conjunction with the Section 42A Report and the Section 42A Addendum. Except where specifically amended by this report, the recommendations and conclusions contained within those reports remain unchanged.

2. MATTERS RAISED IN EVIDENCE

- 5 During the hearing, submitters presented further evidence and legal submissions relating to the future application of the Māori Purpose Zone provisions. The Hearings Panel also sought clarification on several matters, resulting in further consideration of aspects of the recommended provisions.
- 6 Evidence presented by Maia Wikaira provided additional information regarding the future transfer of land identified as MPS-01 through Treaty settlement processes and the appropriateness of retaining this land within the Māori Purpose Zone. Following consideration of this evidence, I consider that retention of MPS-01, together with the inclusion of additional land identified through submissions, is appropriate. However, I also consider it necessary to include a prohibited activity rule to ensure that buildings cannot be established on land within MPS-01 until that land has become Māori land. In my opinion, this approach appropriately balances recognition of the likely future ownership of the land with the purpose and intent of the Māori Purpose Zone.
- 7 During the hearing, further discussion also occurred regarding the relationship between the Māori Purpose Zone and Iwi and hapū planning documents, including *Te Kaupapa Kaitiaki*, in response to submissions made by George Asher. While I remain of the view that the Strategic Directions chapter appropriately recognises the statutory context established under section 181 of the Ngāti

Tūwharetoa Claims Settlement Act 2018, I consider that there is merit in providing a clearer connection within the Māori Purpose Zone provisions themselves.

- 8 The recommended amendments introduce a new objective and amend Policy MPZ-P4 to recognise that iwi and hapu planning documents, including Te Kaupapa Kaitiaki, may assist in informing the design and development of activities within the Māori Purpose Zone. The provisions have been carefully drafted to ensure that these documents inform decision-making where relevant, without requiring proposals to demonstrate consistency with them or creating additional procedural requirements, such as the routine preparation of Cultural Impact Assessments. In my opinion, this approach appropriately recognises the relevance of these documents while remaining consistent with the enabling purpose of PC47.

2.1 EVIDENCE OF MAIA WIKAIRA AND MPS-01

Background

- 9 The Section 42A Report recommended that MPS-01 be removed from the notified plan change. That recommendation was based on legal advice received prior to the hearing regarding the inclusion of land within the Māori Purpose Zone that is not currently Māori land, as well as a scope and mapping issue with regard to one land parcel that was identified in the proposed Schedule of land for MPS-01.
- 10 During the hearing, further evidence was presented by Maia Wikaira regarding the future transfer of the land identified as MPS-01 through Treaty settlement processes. The hearing also included discussion on whether it was appropriate to retain this land within the Māori Purpose Zone in anticipation of its future ownership, provided that the provisions did not enable development before the land became Māori land. I also record that the potential inclusion of an individual land parcel that had not been mapped as being within MPS-01 when notified, being SEC 2 SO 36174, was formally withdrawn by Maia Wikaira at the hearing.
- 11 Having considered that evidence and the matters discussed during the hearing, I have reconsidered my recommendation. In my opinion, retaining MPS-01 within the Māori Purpose Zone, together with amendments to its extent to include the additional land identified through submissions, better reflects the long-term intent of PC47 and provides a coherent planning framework that recognises the anticipated future ownership of the land. I also accept that SEC 2 SO 36174 should not be mapped nor recorded in the Schedule as being within MPS-01.
- 12 Noting my recommendation regarding SEC 2 SO 36174 above, I therefore otherwise recommend that MPS-01 be retained and amended to include the additional land identified in the submission by Maia Wikaira. In my opinion, this provides a more complete and logical application of the Māori Purpose Zone to the land that is intended and highly likely to become Māori land through the settlement process.
- 13 A map of MPS-01 as recommended to be changed is attached as Appendix 1. Proposed changes to SCHED 13.11 – MPZ are shown below:

Site ID	Identifier	Legal Description	Type
MPS-1	Te Rangitautahanga Road Turangi 3334	LOT 41 DP 29782, PT LOT DP 32861, SEC 56 TN OF Turangi, SEC 2 SO 36174, SEC 1 SO 36174, SEC 55 TN OF Turangi, <u>Section 55 TN OF Turangi, Lot 13 DP 23178, Lot 2 DP 26622, Section 1 SO 36174</u>	Urban

Recommended Rule Framework

- 14 While I consider that retention of MPS-01 is appropriate, I do not consider that the enabling provisions of the Māori Purpose Zone should apply until the relevant land has become Māori land and meets the description contained in the introductory text of PC47.
- 15 The purpose of PC47 is to provide an enabling planning framework for the use and development of Māori land. The provisions of the Māori Purpose Zone have been specifically developed to recognise the unique ownership arrangements associated with Māori land and to facilitate the cultural, social, environmental and economic aspirations of Māori landowners. Until the land within MPS-01 has been transferred into Māori ownership, those circumstances do not exist.
- 16 In my opinion, allowing the Māori Purpose Zone provisions to apply before the land has become Māori land would be inconsistent with the purpose and intent of the zone. Conversely, removing MPS-01 from the plan change would fail to recognise the intended and likely future ownership of the land and would likely necessitate a further plan change following completion of the Treaty settlement process.
- 17 To address this issue, I recommend the introduction of the following prohibited activity rule applying to the construction of buildings on land within MPS-01 until such time as that land becomes Māori land. Once the relevant land has become Māori land, the prohibited activity rule would no longer apply and development would instead be assessed under the relevant activity status provided elsewhere within the Māori Purpose Zone.
- 18 The proposed rule is as follows:

MPZ-R4-PR-Buildings (1) Any building within a MPZ on land which is not Māori land within the meaning of Section 129 (1) (a, b or c) of Te Ture Whenua Māori Act 1993

Subsequent changes are also proposed to include referencing to the proposed 'PR' rule in MPZ-R1 (1) and (2).

Activity Status

- 19 The recommended prohibited activity rule would be the first prohibited activity rule included within the Taupō District Plan. In my opinion, the circumstances associated with MPS-01 justify this approach.
- 20 At the Hearing Panel's request, Mr James Winchester has provided legal advice on whether the proposed prohibited activity rule could have unintended or unfair consequences for the Crown

during the period before MPS-01 is transferred to the Whānau. Mr Winchester considers that this risk is relatively low and that the rule would be unlikely to have an unintended or unfair effect on the interim use and management of the land. His advice is attached as Attachment 2 and has informed my assessment below.

- 21 Section 87A(6) of the Resource Management Act 1991¹ provides that a prohibited activity is an activity for which no application for resource consent may be made. Accordingly, a prohibited activity rule is reserved for circumstances where the planning framework is intended to provide complete certainty that an activity cannot occur.
- 22 Separately, and as a matter of planning judgment, I have considered whether non-complying activity status would provide an appropriate alternative.
- 23 A non-complying activity anticipates that applications for resource consent may be lodged and considered on their merits, subject to the gateway tests contained in section 104D of the Act. While those gateway tests establish a high threshold, they nevertheless require Council to consider applications on their merits and do not preclude consent from being granted where the statutory tests are satisfied. For a non-complying activity rule to operate effectively, PC47 would also need to include suitable objectives and policies to guide the application of the rule and reduce the risk of the outcome identified above occurring during the interim period. Those provisions would need to provide clear direction that built development should not proceed until the tenure changes. That outcome would, however, be achieved more directly and efficiently by applying prohibited activity status. The introduction of such provisions may also fall outside the scope of submissions on PC47.
- 24 In my opinion, that outcome would be inconsistent with the purpose of the recommended provisions. The issue is not that development should be discouraged or subject to a high threshold. Rather, it is that the Māori Purpose Zone is not intended to operate until the land has become Māori land. Until that point, there is no planning judgement to be exercised as to whether buildings are appropriate because the fundamental precondition for the application of the zone has not been met.
- 25 The Panel asked about the implications of the proposed rule for the Crown as the current owner of the land, including whether it would prevent the Crown from erecting buildings on the site. I have discussed this matter with staff from Taupō District Council (TDC) and the Department of Conservation (DoC). I note that DoC did not make a submission on PC47. TDC staff have not raised any concerns regarding the proposed rule, and DoC staff have advised that no buildings are currently anticipated on the land. Any works undertaken by DoC are likely to relate to pest control and would not be affected by the proposed rule, which applies only to buildings.
- 26 I also note that section 4(3) of the RMA provides that section 9(3) does not apply to works or activities of the Crown within land held or managed under the Conservation Act 1987 or another

¹ Section 87A(6) of the Resource Management Act 1991 provides that “a prohibited activity is an activity for which no application for a resource consent can be made.”

Act specified in Schedule 1 of that Act, other than land held for administrative purposes, where the works or activities are consistent with an applicable conservation management strategy or plan and do not have a significant adverse effect beyond the boundary of the land. Accordingly, where those requirements are met, Crown works or activities—including the erection of a building—would not be constrained by a district plan land-use rule.

- 27 Otherwise, ongoing management of the land consistent with its current DoC status and ownership is likely to be subject to existing use rights under the RMA in any event, which suggests that the prohibited activity rule is likely to have minimal legal or planning effect in the interim, until the transfer of the land is completed.
- 28 I therefore consider that, in the somewhat unique circumstances of this land, a prohibited activity status is the most appropriate planning response. It provides complete certainty that the enabling provisions of the Māori Purpose Zone cannot be relied upon until the land has become Māori land, while also recognising that, once that occurs, development should be considered under the activity statuses established elsewhere within the zone.
- 29 In addition, a prohibited activity rule provides greater certainty and efficiency for landowners, Council and the community. It removes the potential for unnecessary resource consent applications and associated costs during the interim period, while avoiding the need for unwieldy additions to PC47 to make an alternative planning option (non-complying activity status) effective as well as avoiding future plan changes to apply the Māori Purpose Zone once the settlement process has been completed.

2.2 Section 32AA Evaluation

Effectiveness and Efficiency

- 30 The recommended amendments are an effective and efficient response to the matters raised through the hearing. Retaining MPS-01 within the Māori Purpose Zone recognises the anticipated future transfer of the land into Māori ownership and provides a planning framework capable of supporting the long-term aspirations of the future landowners.
- 31 The introduction of a prohibited activity rule ensures that the enabling provisions of the Māori Purpose Zone cannot be relied upon until the land has become Māori land. This maintains the integrity of the purpose of the Māori Purpose Zone while providing certainty regarding the interim management of the land.
- 32 The amendments are also considered efficient as they provide a single planning framework that can transition with the ownership of the land without requiring a further plan change following completion of the Treaty settlement process.

Costs / Benefits

- 33 The principal benefit of the recommended amendments is that they recognise the future intended ownership and use of MPS-01 while ensuring that development cannot occur prematurely. The amendments therefore support the long-term objectives of PC47 while maintaining consistency with the purpose of the Māori Purpose Zone.

- 34 The prohibited activity rule also provides benefits by creating certainty for landowners, Council and the wider community. Unlike a non-complying activity, a prohibited activity removes the potential for applications to be lodged or considered before the land has become Māori land. This avoids unnecessary consenting costs and provides a clear and transparent planning framework during the interim period. Unlike a non-complying activity, a prohibited activity does not require the Council to exercise planning judgement on the appropriateness of development. This is appropriate because the recommendation is not based on the scale or effects of development, but on the absence of the fundamental prerequisite for the operation of the Māori Purpose Zone—that the land be Māori land.
- 35 The principal cost associated with the amendments is that buildings cannot be established on the land until it has become Māori land. In my opinion, and considering the impact on current landowners, this cost is appropriate and directly reflects the purpose of the Māori Purpose Zone, which is intended to enable the use and development of Māori land rather than general land.
- 36 Overall, I consider that the benefits of the recommended amendments significantly outweigh any associated costs.

Risk of Acting or Not Acting

- 37 The risk of acting is considered low. The recommended amendments provide a clear and certain planning framework that recognises the anticipated future ownership of the land while ensuring that development cannot occur until the defining characteristics of the Māori Purpose Zone are present.
- 38 The risk of not acting is considered greater. Removing MPS-01 from PC47 would fail to recognise the intended future ownership of the land and would likely require a further plan change once the settlement process has been completed. Alternatively, applying a less restrictive activity status, such as non-complying, would create uncertainty by enabling resource consent applications to be made and considered before the land had become Māori land, contrary to the purpose and intent of the zone.

Decision About the Most Appropriate Action

- 39 The recommended amendments are the most appropriate response to the matters raised through the hearing. Retaining MPS-01 within the Māori Purpose Zone appropriately recognises the anticipated future ownership of the land while the prohibited activity rule ensures that the enabling provisions of the zone cannot be exercised until that ownership has occurred.
- 40 The amendments maintain the integrity of the Māori Purpose Zone, provide certainty for all parties, and avoid the need for a future plan change once the Treaty settlement process has been completed.
- 41 Overall, the amendments are the most appropriate way to achieve the purpose of the Resource Management Act 1991 and the objectives of the Māori Purpose Zone chapter.

3. MPZ-O2 and MPZ-P4 – Recognition of Iwi Management Plans

Background

- 42 The Section 42A Report considered several submissions seeking greater recognition of iwi management plans and cultural planning documents within the Māori Purpose Zone provisions. Submissions sought specific reference to *Te Kaupapa Kaitiaki* and the statutory obligations arising under section 181 of the Ngāti Tūwharetoa Claims Settlement Act 2018.
- 43 The Section 42A Report concluded that these matters were already appropriately recognised through the Strategic Directions chapter of the District Plan, particularly Policy TW-P1, and that unnecessary duplication of higher order strategic direction within the Māori Purpose Zone chapter should generally be avoided.
- 44 During the hearing, George Asher presented further evidence regarding the role of *Te Kaupapa Kaitiaki* within the District Plan framework and explained the specific changes he considered necessary to better recognise the statutory direction established by section 181 of the Ngāti Tūwharetoa Claims Settlement Act 2018. Mr Asher's evidence clearly identified both the planning issue and the specific amendments he considered necessary to address that issue. This provided a useful basis for further discussion during the hearing and subsequent consideration of the provisions.

Recommended Amendments

- 45 Having considered the evidence presented during the hearing and the exchanges between Mr Asher and the Hearings Panel as part of his evidence, I consider there is merit in strengthening the recognition of iwi and hapu planning documents within the Māori Purpose Zone through the introduction of a new objective (MPZ-O2) and amendments to Policy MPZ-P4 as follows:

MPZ-O2 Recognise the role of iwi and hapū planning documents, including Te Kaupapa Kaitiaki, in supporting the use and development of Māori Purpose Zones by their owners.

MPZ-P4.8 activities are supported by any relevant iwi or hapū planning documents.

- 46 I do not consider that this recognition should be achieved by requiring development proposals to demonstrate consistency with iwi management plans or by introducing additional assessment requirements. Throughout the development of PC47, a key objective has been to reduce unnecessary barriers to the use and development of Māori land. In my opinion, it would be contrary to that objective if the recognition of iwi management plans resulted in additional consenting requirements or increased costs for Māori landowners seeking to develop their whenua.
- 47 During the hearing, concern was expressed that provisions requiring consistency with iwi management plans or routinely requiring Cultural Impact Assessments to demonstrate such consistency, could inadvertently make it more difficult for Māori landowners to undertake development within the Māori Purpose Zone. I share that concern. While iwi and hapu management plans are an important expression of their aspirations and should be recognised

within the planning framework, they should not become an additional regulatory hurdle for Māori landowners, unless the District Plan clearly intends that outcome.

- 48 The Panel also questioned whether provisions intended to enable iwi and hapū planning documents to support development within the Māori Purpose Zone could, conversely, restrict recognition of those documents when considering development that may not be consistent with them. Having reviewed the proposed provisions, I do not consider that they would have that effect. The provisions identify circumstances in which these documents may be relied on to support use and development within the Māori Purpose Zone; they do not provide that the documents may only be recognised in those circumstances. The provisions are silent as to the wider relevance of these documents and do not restrict their consideration where relevant under other provisions of the District Plan or applicable statutory requirements.

Purpose of MPZ-O2

- 49 The proposed MPZ-O2 recognises the role that iwi and hapu management plans, including *Te Kaupapa Kaitiaki*, can play in informing decision-making under the chapter.
- 50 For this reason, I consider it appropriate that MPZ-O2 follows, rather than precedes, Objective MPZ-O1. MPZ-O1 continues to articulate the primary purpose of the Māori Purpose Zone by enabling activities that specifically meet Māori cultural needs and support the social, cultural, environmental and economic aspirations of Māori communities. MPZ-O2 is intended to support the implementation of that purpose by recognising the relevance of iwi management plans in informing development and decision-making where appropriate.
- 51 Similarly, the recommended amendment to Policy MPZ-P4 recognises that these plans may assist in informing the design and development of activities within the Māori Purpose Zone. The policy has been deliberately drafted to recognise the value of these documents without requiring development proposals to demonstrate compliance or consistency with them. This distinction is important. It enables decision-makers to have regard to iwi management plans where relevant while avoiding the creation of mandatory assessment criteria that could increase the complexity and cost for Māori owners in developing their land.
- 52 In my opinion, this approach appropriately balances the matters raised through Mr Asher's submission with the broader purpose of PC47. It strengthens recognition of iwi aspirations and statutory settlement documents while maintaining an enabling planning framework that avoids creating unintended barriers for Māori landowners.

3.1 Section 32AA Evaluation

Effectiveness and Efficiency

- 53 The recommended introduction of Objective MPZ-O2 and amendments to Policy MPZ-P4 are an effective and efficient response to the matters raised during the hearing. The amendments improve the Māori Purpose Zone provisions by providing clearer recognition of iwi management plans, including *Te Kaupapa Kaitiaki*, within the planning framework while maintaining the enabling intent of PC47.

- 54 The amendments also improve the effectiveness of the provisions by recognising the relevance of iwi management plans in informing decision-making under the Māori Purpose Zone. Importantly, they do so without changing the strategic purpose of the chapter, which continues to be established through Objective MPZ-O1. Instead, MPZ-O2 provides supporting direction regarding matters that may assist in implementing that purpose.
- 55 The amendments are also considered efficient. They recognise the statutory and cultural significance of iwi management plans while avoiding provisions that would require applicants to demonstrate compliance or consistency with those documents. In doing so, the amendments avoid introducing additional consenting requirements or regulatory complexity that would be inconsistent with the purpose of PC47 to facilitate the use and development of Māori land.

Costs and Benefits

- 56 The principal benefit of the recommended amendments is that they strengthen recognition of iwi and Hapu management plans etc. within the Māori Purpose Zone while maintaining an enabling framework established by PC47. This provides greater clarity for applicants and decision-makers regarding the role that these documents may play in informing the design and assessment of development proposals.
- 57 In my opinion, the recommended drafting avoids the principal risk identified during the hearing—that recognition of iwi management plans could unintentionally make it more difficult for Māori landowners to develop their land. By recognising these documents as informing decision-making, rather than requiring proposals to demonstrate compliance or consistency with them, the amendments avoid creating additional consenting costs, procedural requirements, or expectations that Cultural Impact Assessments or similar supporting information be routinely prepared.
- 58 The costs associated with the amendments are low. The provisions do not introduce additional regulatory processes or mandatory assessment requirements and therefore are not expected to increase compliance costs for applicants or Council.
- 59 Overall, I consider that the benefits of the recommended amendments significantly outweigh any associated costs.

Risk of Acting or Not Acting

- 60 The risk of acting is considered low. The recommended amendments provide greater clarity regarding the role of iwi and hapu management plans within the Māori Purpose Zone while maintaining the enabling purpose of the chapter and avoiding unintended regulatory consequences for owners.
- 61 The risk of not acting is considered greater. Without these amendments there remains potential uncertainty regarding the relationship between the Māori Purpose Zone and iwi and hapu management plans and the role these documents may play in informing development and decision-making.
- 62 Equally, adopting provisions that required development proposals to demonstrate consistency with iwi management plans, or that effectively elevated those documents into mandatory

assessment criteria, would introduce additional regulatory complexity and could unintentionally create barriers to the use and development of Māori land. In my opinion, that outcome would be inconsistent with one of the fundamental purposes of PC47, which is to simplify and enable development on Māori land.

Decision About the Most Appropriate Option

- 63 For the reasons set out above, I consider that the recommended amendments represent the most appropriate response to the matters raised during the hearing.
- 64 The amendments appropriately recognise the importance of iwi and Hapu management plans within the Māori Purpose Zone while ensuring that those documents support, rather than constrain, the use and development of Māori land. They improve the clarity of the planning framework and the quality of decision-making without imposing additional compliance obligations or increasing the complexity of the resource consent process.
- 65 Overall, I consider that the recommended amendments are the most appropriate way to achieve the purpose of the Resource Management Act 1991 and the objectives of the Māori Purpose Zone chapter.

4. OVERALL CONCLUSION

- 66 This closing statement has been prepared following the hearing of Proposed Plan Change 47 to address a limited number of matters that arose through the hearing process and subsequent discussions with the Hearings Panel.
- 67 Having considered the additional evidence, legal submissions and matters raised during the hearing, I recommend amendments to the recommendations contained within the Section 42A Report and the Section 42A Addendum. These amendments relate to the retention and revised application of MPS-01, including the introduction of a prohibited activity rule to ensure that development cannot occur until the land becomes Māori land, and amendments to the Māori Purpose Zone objectives and policies to provide greater recognition of iwi and hapu management plans, including Te Kaupapa Kaitiaki.
- 68 In my opinion, the recommended amendments better achieve the purpose and intent of Proposed Plan Change 47 by recognising future opportunities for the use and development of Māori land, while ensuring that the planning framework remains enabling and does not introduce unintended regulatory barriers for Māori landowners.
- 69 For the reasons set out in this statement, I consider the recommended amendments represent the most appropriate response to the matters raised during the hearing and I recommend that the Hearings Panel adopt the amendments set out in Attachment 1 to this report.

Attachment 1 – Proposed Changes to Taupō District Plan Change 47 – Post Hearings

MPZ – Objectives

Addition of new objective as follows:

MPZ-O2 Recognise the role of Iwi and hapū planning documents, including Te Kaupapa Kaitiaki, in supporting the use and development of Māori Purpose Zones by their owners.

MPZ – Policies

Addition of new part of MPZ-P4 as follows:

8. activities are supported by any relevant iwi or hapu planning documents.

MPZ Rules

Addition of reference to new rule in MPZ-R1 (1) and (2) as follows:

(1) d. Is not identified as a CON, RDIS, DIS, NC or PR activity within the MPZ.

(2) e. Is not identified as a CON, RDIS, DIS, NC or PR activity within the MPZ.

Addition of new Prohibited Activity rule as follows:

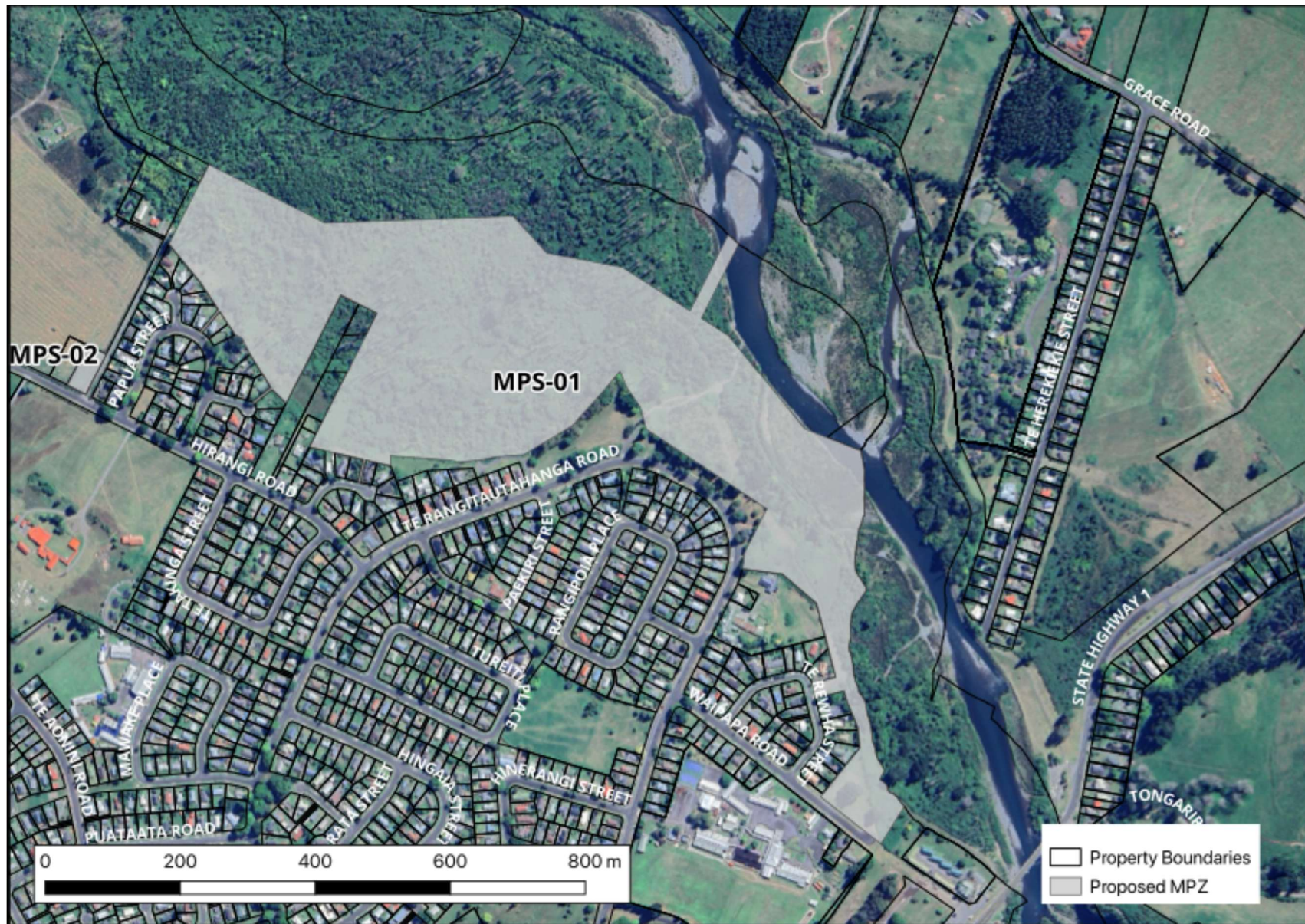
MPZ-R4- PR-Buildings - (1) Any building within a MPZ on land which is not Māori land within the meaning of Section 129 (1) (a, b or c) of Te Ture Whenua Māori Act 1993.

SCHED 13.11 – MPZ

Amendment of the legal description of MPS-1 to include reference to the additional parcels as follows:

Site ID	Identifier	Legal Description	Type
MPS-1	Te Rangitautahanga Road Turangi 3334	LOT 41 DP 29782, PT LOT DP 32861, SEC 56 TN OF Turangi, SEC 2 SO 36174, SEC 1 SO 36174, SEC 55 TN OF Turangi, <u>Section 55 TN OF Turangi, Lot 13 DP 23178, Lot 2 DP 26622, Section 1 SO 36174</u>	Urban

Change the extent of MPS-01 to that shown on the map below:



Attachment 2 – Advice on the Use of Prohibited Activity Status in PC47

16 July 2026

Taupō District Council
Private Bag 2005
Taupō Mail Centre
Taupō 3352

For: Hilary Samuel, Senior Policy Advisor (by e-mail)

Proposed Plan Change 47 – Māori Purpose Zone – Use of Prohibited Activity Status

1. During the course of the hearing before the independent commissioners appointed by Taupō District Council (**Council**) with regard to the establishment of a Māori Purpose Zone (**MPZ**) through Proposed Plan Change 47 (**PC47**), the possible use of prohibited activity status for new buildings on land within the MPZ was identified.
2. The limited purpose identified for the use of this activity status related to land identified as MPZ-1 in PC47, due to the fact that the land is not yet Māori land. This is relevant because the purpose of PC47 is to create a planning framework for management of land owned by tangata whenua and it expressly references section 129(1)(a), (b) or (c) of Te Ture Whenua Māori Act 1993 (**TTWMA**) in that regard.
3. A potential solution identified at the hearing was for a prohibited activity rule to apply to new buildings on land within the MPZ that is not yet Māori land for the purposes of TTWMA. This rule would therefore apply to MPZ-1 until the land was transferred to the Titari, Rea and Rangipoia Whānau (**Whānau**) by the Crown to give effect to a Treaty settlement. Based on evidence for the Whānau and advice from the Office of Treaty Settlements, the transfer is anticipated to occur in 2027.
4. The independent commissioners have however sought legal advice on the appropriateness of this activity status and proposed rule, based on a concern that it could have unintended or unfair consequences for the current landowner/occupier in the interim (being the Crown and the Director-General of Conservation in light of the current legal status of the land), by preventing new buildings on the land unless and until the land was transferred to the Whānau and became Māori land as defined in TTWMA.
5. The concern of the hearing commissioners is understandable, given that the transfer of the MPZ-1 land to the Whānau has been delayed for some years and remains subject to a separate decision beyond the control of the Council. It is therefore possible that prohibited activity status in the interim could have the effect of preventing reasonable use of the MPZ-1 land if there was further delay in effecting the transfer.
6. For the reasons set out below however, I consider that this risk is relatively low given that the proposed rule relates only to new buildings. In addition, the current status of the land would likely mean that the prohibited activity rule would not be binding on the Crown in the meantime.

7. The land is currently classified as a reserve known as Kohineheke Reserve (formerly the Crescent Reserve) which is owned by the Crown and managed by the Department of Conservation (**DoC**). It is understood that the land is primarily used for recreation and scenic purposes and there is no current intention for new buildings to be erected on it.
8. In any event, if a prohibited activity rule was applied to the land as an interim measure, it is unlikely to prevent use of the land by the Crown in accordance with its reserve status. In that regard, the section 4(3) of the Resource Management Act 1991 (**RMA**) provides as follows:
 - (3) Section 9(3) does not apply to any work or activity of the Crown within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act (other than land held for administrative purposes) that—
 - (a) is consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act; and
 - (b) does not have a significant adverse effect beyond the boundary of the area of land.
9. Section 9(3) of the RMA relates to use of land which contravenes a district rule, which would apply if the prohibited activity rule was confirmed. The effect of section 4(3) would however provide a statutory exemption from that rule having effect in the interim provided that the use of the land by the Crown met the requirements of paragraphs (a)¹ and (b). In most instances, it would be expected that management and use of the land by DoC in accordance with its current status (potentially including establishment of buildings) would likely not be regulated by the rule in the meantime.
10. In addition, ongoing management of the land by DoC consistent with its current status and ownership would also likely to be subject to existing use rights under the RMA thereby largely overcoming the effect of such a rule, albeit that existing use rights may not of itself enable the erection of a new building.
11. In my view, these factors suggest that a prohibited activity rule would be unlikely to have an unintended or unfair effect on the use and management of land in the interim, should the independent commissioners be inclined to accept the recommendation of Council officers.
12. I trust that this advice has been of assistance. Please let me know if any clarification or further advice is required.

Yours sincerely



James Winchester

¹ For completeness, the Reserves Act 1977 is an Act specified in Schedule 1 of the Conservation Act 1987