

## **E21. Treaty Settlement Land**

### **E21.1. Background**

These provisions recognise that the principles of the Treaty of Waitangi/Te Tiriti o Waitangi (including the principle of redress and the principle of active protection) require the Council to enable the use and development of land acquired by Mana Whenua through Treaty settlement legislation.

The following provisions apply to land that meets the definition of Treaty Settlement Land. Applicants will need to provide documentation in the form of final deeds of settlement, associated settlement legislation and confirmation that the land is still held with the post-settlement governance entity.

These provisions recognise the importance of the relationship of Mana Whenua with land acquired through the Treaty settlement process, and the desire of Mana Whenua to re-establish ahi kā on lands within their ancestral rohe. The provisions provide a basis for collaboration between Mana Whenua and the Council in managing the resource of Treaty Settlement Land.

Mana Whenua aspire to jointly manage the resource of Treaty Settlement Land with the Council under section 36B of the Resource Management Act 1991. Ultimately, Mana Whenua may seek the transfer of powers from the Council for some aspects of resource management decision-making on Treaty Settlement Land. Transfer of powers is possible under section 33 of the Resource Management Act 1991.

These provisions also apply to land acquired by Mana Whenua through the right of first refusal process.

The provisions of the zone apply to Treaty Settlement Land unless otherwise specified in this section. The rules provide that where the activity table for the relevant zone provides for the same activity, the less restrictive rule applies

#### *Statutory acknowledgements*

Treaty settlement legislation requires Councils to attach information recording statutory acknowledgements to all regional policy statements, regional coastal plans, other regional plans, district plans, and proposed plans. The purpose of statutory acknowledgements is articulated in each claim settlement. In general, this includes:

- (1) a requirement that consent authorities forward to the post-settlement governance entity summaries of resource consent applications for activities within, adjacent to, or impacting directly on statutory areas and providing for the post-settlement governance entity to waive its rights to be notified;
- (2) a requirement that consent authorities must have regard to the statutory acknowledgement relating to a statutory area in forming an opinion in accordance with section 95E of the Resource Management Act 1991 as to whether the post-settlement governance entity is an entity that may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on the statutory area; and

- (3) enabling the post-settlement governance entity and any member to cite statutory acknowledgements as evidence of the association that the entity has with the statutory areas in submissions to, and in proceedings before a consent authority concerning activities within, adjacent to or impacting directly on the statutory area. This is not binding as deemed fact but may be taken into account.

The statutory acknowledgements provided under Treaty settlement legislation for areas within Auckland are summarised in Appendix 21 Treaty Settlement Legislation - statutory acknowledgements. This appendix will be updated and further information attached as further claims settlement acts are passed into law. The information in the appendix is public information and does not form part of the Plan document (unless adopted by the Council) nor is it subject to the provisions of Schedule 1 of the Resource Management Act 1991.

### **E21.2. Objectives**

- (4) Mana Whenua have flexibility to use and develop Treaty settlement land in accordance with mātauranga and tikanga while ensuring appropriate health, safety and amenity standards are met.
- (5) Mana Whenua use and develop land acquired as commercial redress to support their social and economic development.
- (6) Mana Whenua can access, manage, use and develop land acquired as cultural redress.
- (7) Mana Whenua use and develop Treaty settlement land in areas where there are natural and physical resources that have been scheduled in the Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character, provided that adverse effects on those values are avoided, remedied or mitigated.
- (8) The occupation, development and use of Treaty settlement land is not adversely affected by the location of new infrastructure.

### **E21.3. Policies**

- (1) Provide for an appropriate character, scale, intensity and range of development on Treaty settlement land across Auckland, including in coastal areas and outside the Rural Urban Boundary, recognising that the purpose of the Treaty settlement land provisions is to give effect to the outcomes of Treaty settlements to promote the cultural, social and economic development of Mana Whenua.
- (2) Provide for a range of activities, including dwellings for papakāinga, marae and associated facilities, customary use, cultural and commercial activities, on Treaty settlement land.
- (3) Encourage integrated development of Treaty settlement land taking into account the requirements of the activities proposed as well as the requirements for

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access, parking, building design and layout, infrastructure, landscaping, lighting and open space areas.

- (4) Avoid, remedy or mitigate adverse effects on neighbouring properties while recognising that the Treaty settlement land provisions facilitate a scale, intensity and range of activities that may not be anticipated in the zone of the site.
- (5) Provide for the integration of appropriate mātauranga and tikanga in determining the scale, intensity, range of activities, layout and location of development.
- (6) Require appropriate provision for the treatment and disposal of stormwater, wastewater and the provision of water and electricity supply.
- (7) Enable alternative approaches to site access and infrastructure provision where the occupation, use and development of Treaty settlement land is constrained by access or the availability of infrastructure.
- (8) Enable the occupation, use and development of Treaty settlement land where there are natural and physical resources that have been scheduled in the Plan in relation to natural heritage, Mana Whenua, natural resources, coastal environment, historic heritage and special character, by considering:
  - (a) the need to enable occupation, management, use and development of Treaty settlement land in accordance with mātauranga and tikanga in those areas to support the social, cultural and economic well-being of Mana Whenua;
  - (b) alternative approaches to or locations for development that avoid adverse effects on the characteristics and qualities that contribute to the values for which the area was scheduled; and
  - (c) that there may be no or limited alternative locations for whanau, hapū or iwi to occupy, manage and use their ancestral lands.
- (9) Take into account the benefits for the wider community and environment provided by any existing property specific protection mechanism established through the Treaty settlement process, where Mana Whenua propose an activity on Treaty settlement land.
- (10) Encourage utility operators to consider alternative routes and locations for infrastructure outside the Treaty settlement land, where new infrastructure development may adversely affect the occupation, development and use of Treaty settlement land.

### **E21.4. Activity table**

Table E21.4.1 Activity table specifies the activity status of land use and development activities on Treaty settlement land pursuant to section 9(3) of the Resource Management Act 1991.

The provisions of the zone apply to Treaty settlement land unless otherwise specified in this section. The rules provide that where the activity table for the relevant zone provides for the same activity, the less restrictive rule applies

**Table E21.4.1 Activity table**

Activity		Activity status
(A1)	Activities associated with marae or papakāinga up to 250m <sup>2</sup> gross floor area	P
(A2)	Activities associated with marae or papakāinga greater than 250m <sup>2</sup> gross floor area	RD
(A3)	One dwelling per hectare with no more than 10 dwellings per site in the rural zones	P
(A4)	One dwelling per 4000m <sup>2</sup> with no more than 20 dwellings per site in the rural zones	RD
(A5)	Integrated Māori development	D
(A6)	Dwellings not otherwise provided for in a rural zone	NC
(A7)	Māori cultural activities	P
(A8)	Marae up to 700m <sup>2</sup> gross floor area	P
(A9)	Marae greater than 700m <sup>2</sup> gross floor area	RD
(A10)	Rural commercial services	D
(A11)	Rural industries	RD
(A12)	Urupā	C
(A13)	Buildings associated with the above activities	P

### E21.5. Notification

- (1) An application for resource consent for a controlled activity listed in Table E21.4.1 Activity table above will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.
- (2) Any application for resource consent for any of the following activities will be considered without public or limited notification or the need to obtain the written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991:
  - (a) integrated Māori development; or
  - (b) rural commercial services.

- (3) Any application for resource consent for an activity listed in Table E21.4.1 Activity table and which is not listed in E21.5(1) or E21.5(2) above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (4) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

### **E21.6. Standards**

The provisions of the zone apply to Treaty settlement land unless otherwise specified below.

The following permitted activities must comply with the specified permitted activity standards.

#### **E21.6.1. Marae up to 700m<sup>2</sup> gross floor area or Marae greater than 700m<sup>2</sup> gross floor area**

- (1) Marae must be on a one hectare or greater site.

#### **E21.6.2. Building and structure height for marae and Māori cultural activities**

- (1) Marae (including wharenuī and wharekai) and structures or buildings associated with Māori cultural activities (including but not limited to waharoa, pekerangi/taiapa, whare waka) must not exceed 10m in height.
- (2) Pou haki are excluded from Standard E21.6.2(1) if they:
  - (a) do not exceed an additional one third of the permitted activity height for the site; and
  - (b) are not more than 300mm in diameter.

#### **E21.6.3. Dwellings**

- (1) Dwellings and buildings used for dwellings on Treaty settlement land must comply with the development controls in the zone.

#### **E21.6.4. Maximum impervious area and building coverage**

- (1) In rural zones building coverage must not exceed 20 per cent of the site area.
- (2) In all other zones the standards for building coverage and maximum impervious area are as provided for in the zone relevant to the site.

### **E21.7. Assessment – controlled activities**

#### **E21.7.1. Matters of control**

The Council will reserve its control to all the following matters when assessing a controlled activity resource consent application:

- (1) urupā:
  - (a) effects on groundwater; and
  - (b) visual effects on neighbouring dwellings.

#### **E21.7.2. Assessment criteria**

The Council will consider the relevant assessment criteria for controlled activities from the list below:

- (1) urupā:
  - (a) whether an urupā would cause leachate emergence or contamination to groundwater; and
  - (b) measures to mitigate visual effects on neighbouring dwellings.

#### **E21.8. Assessment – restricted discretionary activities**

##### **E21.8.1. Matters of discretion**

The Council will restrict its discretion to all the following matters when assessing a restricted discretionary resource consent application:

- (1) for rural industries, buildings associated with a marae or papakainga greater than 250m<sup>2</sup> gross floor area, and marae greater than 700m<sup>2</sup> gross floor area:
  - (a) the effect on rural character and amenity values;
  - (b) the effect on noise;
  - (c) the effect on traffic volume and safety;
  - (d) the effect on stormwater;
  - (e) the effect on land containing elite soils; and
  - (f) the effect on wastewater.
- (2) for dwellings in rural zones:
  - (a) reverse sensitivity effects on existing rural activities and infrastructure;
  - (b) the effect on stormwater; and
  - (c) the effect on wastewater.

##### **E21.8.2. Assessment criteria**

The Council will consider the relevant assessment criteria for restricted discretionary activities from the list below:

(1) for rural industries, buildings associated with a marae or papakainga greater than 250m<sup>2</sup> gross floor area and marae greater than 700m<sup>2</sup> gross floor area:

(a) rural character and amenity values:

(i) whether the design and location of the buildings, and site landscaping avoids, remedies or mitigates the adverse visual effects of the buildings and related site works on rural and rural coastal character and amenity values of the surrounding environment. The following aspects are particularly relevant:

- building bulk;
- glare or reflections from the exterior cladding;
- landform modification needed for building platforms;
- screening from neighbouring sites;
- views of the buildings from any public road or open space used for recreation, including any beach, coastal marine area, coastline, or regional park; and
- related signage.

(b) noise:

(i) whether noise from fans, ventilators, heaters, or other machines, or from on-site activities can be adequately mitigated.

(c) traffic volume and safety:

(i) whether the design and location of the buildings, and associated traffic, avoids, remedies or mitigates adverse effects on the road network or traffic safety.

(d) stormwater:

(i) whether the control, treatment, storage, or disposal of stormwater is appropriately managed.

(e) land containing elite soils:

(i) whether the adverse effects of buildings, structures, and site development on the productive potential of land containing elite soils is minimised.

(f) wastewater:

(i) wastewater is appropriately managed.

(2) for dwellings in rural zones:

(a) reverse sensitivity effects on existing rural activities and infrastructure:

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- (i) whether dwellings are located and designed to minimise the adverse effects on existing rural activities and existing infrastructure.
- (b) stormwater:
  - (i) the extent to which the control, treatment, storage, or disposal of stormwater is appropriately managed.
- (c) wastewater:
  - (i) wastewater is appropriately managed.

### **E21.9. Special information requirements**

- (1) An application for an activity under the Treaty settlement land provisions must be accompanied by documentation, including final signed deeds of settlement, corresponding enacted legislation and evidence that the land is vested with the claimant group, to confirm the land is Treaty settlement land.