Attachment G: Support for Māori land development

Context

Recent legislative changes now require the contributions policy to support the principles set out in the Preamble to Te Ture Whenua Māori Act 1993. The principles are set out below:

> *Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu , and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu : And whereas it is desirable to maintain a Court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles.*

What does support mean?

Support means that positive action is required by the council towards assisting in achieving the desired outcome, namely removing or reducing the barriers to development and full utilisation of the land. The council's approach to support must be more than "doing no harm" or taking a neutral view. The support provided must be to strengthen the position of Māori land owners to retain ownership of the land and to use the land for the benefit of themselves, their whānau, and their hapū. However, in providing support the council does not become responsible for achieving these outcomes.

The level of support that must be provided is not defined or constrained by legislation. This means a broad range of options is available to council within the scope of promoting accountability to the community, promoting well-being, and sustainable development.

It is appropriate to consider the type and level of support provided in the wider context of all council's policies and activities that support the development and full utilisation of Māori land. In this context, the contributions policy does not need to provide a remission or discount to developers of Māori land. However, the policy must be clear about what level of support is available and how it is provided.

Contributions policy impacts on Māori land

The purpose of development contributions is to recover from those persons undertaking development a fair, equitable, and proportionate share of the total cost of capital expenditure necessary to service growth over the long term. Development contributions are only charged when land is being developed.

In the context of the principles set out in Te Ture Whenua Māori Act 1993, development contributions:

- may act as a barrier to development and full utilisation of Māori land
- do not promote the alienation of Māori land
- do not stop Māori from occupying their land.

The level of development contribution charged depends on the:

- growth share of the infrastructure required to support development in the area where the development is taking place
- relative demand that the type of development being undertaken places on the need to provide infrastructure to support development
- the scale of development being undertaken resulting in additional units of demand (HUEs) that will utilise the infrastructure.

The relative demand is determined based on evidence that different types of development generate different levels of demand for infrastructure. The contributions policy does not currently identify separate specific Māori development types.

Māori developments fall within broader development types based on the demand they generate. For example, kaumātua housing is treated the same as retirement villages, and marae are considered under community facilities. As more Māori developments occur, evidence of demand generation can be used to reclassify developments or create new development types.

What is Māori land?

The Te Ture Whenua Māori Act 1993 sets out the following six statuses of land:

- Māori customary land
- Māori freehold land
- General land owned by Māori
- General land
- Crown land
- Crown land reserved for Māori.

Māori land is defined as comprising of Māori customary land and Māori freehold land. Under the Act, general land owned by Māori is not captured within the definition of general land or Māori land. While it is clear that the legislative changes apply to Māori customary land and Māori freehold land, it is unclear whether they also apply to general land owned by Māori.

Treaty settlement land can include land returned under “cultural redress” (generally reserves) and land returned under “commercial redress”. Land returned for cultural redress is less likely to be developed. However, land returned under commercial redress may have the status of general land owned by Māori while facing many of the same issues that Māori freehold land does due to the nature of its ownership, or how it is being used. Additionally, cash payments as part of commercial redress may have been used to purchase general land which would result in it having the same status as general land owned by Māori.

The Maori Affairs Amendment Act 1967 introduced compulsory conversion of Māori freehold land with four or fewer owners into general land. It also increased the powers of Māori Trustees to compulsorily acquire and sell so-called uneconomic interests in Māori land. Some of this land may continue to be held by the original owners, or their descendants, while other land resulted in further alienation from Māori.

From an outcomes perspective, it would be better to consider Māori land development in the context of how the land is developed and will be used rather than the underlying status of the land itself. For example, developments such as marae, papakāinga, and Māori housing may be undertaken on land that has the status of general land owned by Māori or may even be undertaken on land owned by non-Māori. On the other hand, commercial developments may be undertaken on any Māori land, subject to respective zoning rules. Indeed, as explained below, an approach which is based on the underlying land status is not presently possible given council’s level of knowledge and information in this area and therefore the financial and policy implications,

Māori land in Tāmaki Makaurau

Records of some Māori land in Tāmaki Makaurau are missing or incomplete. The following analysis has therefore been undertaken based on the best information available at the time this report was prepared. This analysis does not include all land returned for cultural or commercial redress. It also does not include all land owned by a Māori Incorporation, or Māori Trust Board. It excludes most general land owned by Māori.

The table below shows the number of properties and their relative development by land status for Māori land in Tāmaki Makaurau.

Status	Property Count	Land Area (m2)	Improvement level[1] (%)
Crown Land	2	435,432	10%
Crown Land Reserved for Māori	3	96,981	42%
General Land	58	22,866,512	71%
General Land Owned by Māori	2	33,135	1%
Māori Customary Land	29	1,077,752	0%
Māori Freehold Land	264	83,229,539	16%
Part Māori Freehold Land	1	2,806,772	8%
Unknown	1	0	1%

The majority of Māori land (by land area) is classified as Māori freehold land (75 per cent) with most of the rest having general status (around 21 per cent). Māori freehold land is largely undeveloped or under-developed (improvement levels of around 16 per cent) while land with a general status has much higher levels of development (improvement levels around 70 per cent), much closer to regional averages.

The table below shows the number of properties and their relative development by local board area for Māori land in Tāmaki Makaurau.

Local Board	Property Count	Land Area (m2)	Improvement level (%)
Albert-Eden	4	419,802	45%
Franklin	69	12,704,582	12%
Aotea/Great Barrier	48	17,469,328	15%
Henderson-Massey	1	542	66%
Hibiscus and Bays	8	4,375	63%
Howick	1	118,533	5%
Kaipātiki	1	36,702	90%
Māngere-Ōtāhuhu	25	544,798	17%
Manurewa	1	38,413	0%
Maungakiekie-Tāmaki	5	1,157,793	201%
Ōrākei	20	762,891	16%
Ōtara-Papatoetoe	1	859	1%
Papakura	1	610	36%
Puketāpapa	3	168,837	62%
Rodney	137	53,059,388	20%
Upper Harbour	2	6,270	0%
Waiheke	22	24,980,743	3%
Waitākere Ranges	1	574	141%
Waitematā	10	4,062	3%

[1] Determined using the improvement value as a per cent of land value from council valuation database

The significant majority (around 97 per cent) of Māori land, by land area, is located in rural areas (Rodney Local Board, Franklin Local Board, Waiheke Local Board, Aotea/Great Barrier Local Board) of Tāmaki Makaurau.

Development potential	Property Count	Land Area (M2)	Share of total (%)
None	87	25,336,169	22.9%
Very low	186	83,369,603	75.4%
Urban Residential	32	587,215	0.5%
Urban Business	13	7,725	0.0%
CIF eligible – papakāinga and marae	42	1,245,411	1.1%
Total	**360**	**110,546,123**	

Around 98 per cent of Māori land has no or very low development potential. Land with no development potential is either uninhabited Hauraki Gulf Islands, used as a reserve, or for conservation, urupā, or wāhi tapu. Land with a very low development potential is land with a rural zoning designation and includes land used for farming, lifestyle, or bush lots. Development contributions would be charged for developments on this land if any development takes place, however revenue from developments on this land is not expected to be material.

Around 1 per cent of Māori land currently has a zone or use that means the land-owners would likely be eligible to apply for a Cultural Initiatives Fund grant.

Land with an urban business or residential zone currently makes up around 0.5 per cent of Māori land and could easily be developed. This land has various levels of development which would be eligible for credits when development contributions are assessed. Council estimates that this land could be charged up to around $13 million in development contributions under the draft Contributions Policy 2021 if the land was developed, assuming no other policy interventions. This is a very high-level estimate and actual charges would depend on the nature of development undertaken.

Māori views and feedback

Auckland Council has previously engaged with Māori on rating of Māori land as well as charging of development contributions. Below is a summary of some of the key feedback points previously raised:

- Auckland Council and the people of Auckland have benefited from land confiscated by the Crown, taken for public works, or gifted by Māori for parks. Land has also been forcibly sold through rating sales.
- there are many difficulties associated with developing Māori land, including gaining consent of owners and obtaining finance needed for development
- the requirement to pay development contributions is an additional challenge to overcome that presents a further barrier to development and that should be waived or reduced for Māori development, particularly papakāinga and marae
- ways should be sought for the development contributions policy to support Māori development and mitigate further land loss in order to support Māori identity and wellbeing as identified in the Auckland Plan 2050
- the Cultural Initiatives Fund should be sized appropriately for the number of developments coming through.

Auckland Council and Te Tiriti o Waitangi

Auckland Council values and recognises Te Tiriti o Waitangi (the Treaty) as the founding document of our nation and is committed to meeting its statutory Treaty responsibilities. The council recognises these responsibilities are distinct from the Crown's Treaty obligations and fall within a local government Tāmaki Makaurau context.

The Treaty is articulated in law through an evolving set of principles. The following principles are relevant to local government:

- partnership (mutual good faith and reasonableness are at the core of the Treaty partnership)
- active protection (of Māori rights and interests, including tino rangatiratanga (Māori sovereignty and self-determination) and taonga)
- rangatiratanga (the duty to recognise Māori rights of independence, autonomy and self-determination)
- reciprocity
- mutual benefit
- options (for Māori to choose their own direction)
- right of development (of Māori property and taonga)
- redress (the obligation to remedy past breaches of the treaty)
- informed decision making (decision-makers need to be well informed of Māori interests and views; for Māori, full information needs to be provided in order to contribute to the decision-making process).

Crown policy is to negotiate with Māori groups to settle long-standing historical grievances relating to Crown breaches of the principles of Te Tiriti o Waitangi. Treaty settlements are resolved directly between the Crown and iwi and require Parliament to pass legislation.

Council is not party to the deeds of settlement, or settlement legislation, but may have formal responsibilities under settlement acts. These include the establishment co-governance entities between council and iwi for the management of natural resources, and for reserve lands transferred to iwi.

Council also has obligations, including through the Local Government Act 2002, to take account of the principles of Te Tiriti o Waitangi and maintain and improve opportunities for Māori to contribute to local government decision-making. In response, council has recognised Māori aspirations through its Auckland Plan, with the development of the Māori Identity and Wellbeing outcome.

Support for development of Māori land

Cultural Initiatives Fund

The council currently supports Māori development of marae and papakāinga and Māori housing[2] by making available a grant through the Cultural Initiatives Fund.

Between 2015 and 2021, $668,000 (35.6 per cent) of the nearly $1.875 million granted has been used to pay development contributions for qualifying projects through the Cultural Initiatives Fund – Papakāinga and Māori housing. In 2020/2021, one grant of $11,532 was provided under the Cultural Initiatives Fund – Marae for development contributions costs. The same marae received a grant for $150,000 in 2019/2020 for other costs associated with the development.

Auckland Council received 16 applications for the 2021/2022 Cultural Initiatives Fund funding round. Eleven of these were for marae development and five were for papakāinga/Māori housing. The total funding requested across all 16 applications was $2,582,196. The available budget of $1.2 million was split between 12 applications, with nine being part funded and three fully funded. Council estimates that a further $500,000 would have been required to fully fund all eligible applications. Demand for the fund is expected to increase over time with an increasing number of eligible candidates with new marae and papakāinga coming on-line most years.

[2] Māori housing grants are only available for housing developments undertaken in conjunction with an urban marae and must fill the same general purpose as papakāinga.

Cultural Initiatives Fund grants are used to fund a range of activities that support qualifying developments including:

- capacity and capability development programmes
- preliminary planning costs eg: technical reports, feasibility studies and planning applications
- council charges including consent processing charges and development contributions
- capital costs for development.

Cultural Initiatives Fund grants are unavailable to:

- individuals
- groups with no formal legal structure.
- groups that are for profit / commercial gain.
- institutional marae specifically associated with a local school, polytechnic, university, church, branch of the armed forces, social service provider, or other institution

Cultural Initiatives Fund grants to cover development contributions3 are unavailable for developments on land in general title.

A review of the Cultural Initiatives Fund is planned for later this year. Changes to the level of support offered can be undertaken at that time. Potential changes could include broadening support to include other types of development and land ownership/status.

Contributions Policy

The contributions policy currently treats the development of kaumātua housing on Māori land by assessing development contributions at the same level as retirement villages (0.3 HUE per dwelling for transport and 0.1 HUE per dwelling for all others except stormwater). Kaumātua housing does not need to be part of a retirement village to be eligible for this support. However, the developments do need to be purpose built such as having features consistent with retirement villages.

Māori Land Rates Remission and Postponement Policy

The Māori Land Rates Remission and Postponement Policy currently provides support for Māori land used for non-commercial purposes for the community benefit of Māori. Partial remissions are available under this policy where there is a non-commercial use that provides community benefits to Māori. Examples include papakāinga housing, community facilities, marae and associated infrastructure. Any land developed for this use will be eligible for a partial remission under this policy once developed.

Remissions are also available for Māori land where historical rate arrears provide barriers to the development of land. Under this policy the previous years' arrears, along with the arrears penalties are remitted. To be eligible for this remission, owners are required to pay the current year's rates for three years.

The policy applies to Māori Freehold Land as well as other types of Māori land in multiple ownership, including land returned under settlement, and land converted from Māori freehold land title under the Māori Affairs Act 1967. However, remissions are unavailable for land that is:

- commercially leased
- not held in accordance with tikanga Māori values
- used for purposes which do not support strategic direction for Māori outcomes set in the council's Auckland Plan.

[3] Support or other development associated costs may be available for land in general title where the land is owned by entities who have established an urban marae as a place for Whānau Māori living in urban settings.

Land returned for commercial redress is not generally eligible for remission under the policy unless it is set aside and protected for cultural, historic or natural conservation purposes, it is wāhi tapu, or used for a marae or urupā.

Provisions for remissions for marae and urupā greater than two hectares are now redundant as a result of the recent legislative changes. Marae and urupā are now fully non-rateable regardless of their size.

The Māori Land Rates Remission and Postponement Policy is due to have its six-yearly review within the next 12 months. The six-yearly review will need to incorporate the new requirements to support the principles set out in the Preamble to Te Ture Whenua Māori Act 1993. There are also new requirements for the council to consider remission of rates for Māori freehold land under development.

Providing additional support for development of Māori land

The review of the contributions policy gives the council an opportunity to consider whether to extend the level of support currently provided for development of Māori land. Payment deferrals and excluding Māori land developments from liability for reserve contributions are two options discussed further on in this report.

Other options include extending support to development based on the underlying land status or extending support based on the type of development being undertaken. For example, support could be extended to all developments on Māori freehold land and Māori Customary land. Alternatively, support could be extended to all development of community infrastructure, housing, or even commercial development.

Rationale for additional support has its basis in Auckland Council's recognition of the principles embedded in the Treaty of Waitangi and a desire to maximise outcomes for Māori. However, this needs to be balanced against the council's ability to fund the additional support and consideration of all the other demands on council spending such as investment in critical infrastructure and services and managing debt at a sustainable level.

As noted earlier, council records of some Māori land in Tāmaki Makaurau are missing or incomplete. Additionally, Māori land development is not generally determined by the underlying status of the land. It is therefore difficult to determine the financial impact of providing wider support for developments on Māori land. Consideration would also need to be given to whether the additional support would be needed in order to ensure the development to proceed. For example, commercial developments will likely proceed regardless of whether development contributions are charged or not. In these cases. any additional support will only have a marginal benefit.

Council is undertaking a review of Māori land in Tāmaki Makaurau, its development potential and the likely impact that additional support options will have on council finances. Options for additional support will be considered as part of this review.

Mechanisms for supporting development of Māori land

From the perspective of development contributions as a cost recovery mechanism, it is fair to charge Māori land developments for the demand they place on the region's infrastructure[4]. That way developments pay development contributions for their share of the cost of growth-related stormwater, transport and parks infrastructure based on the demand they generate. While there is now a legislative requirement to actively support development of Māori land, the council is free to choose the mechanism within the contributions policy that it uses to provide that support.

[4] This is also consistent with the development contribution principles in section 197AB and Schedule 13 clause (2) of the Local Government Act 2002.

Reducing costs of development

The council has two main options for reducing the costs of developing Māori land, these are:

- grants - through a formal grants policy
- remissions – through the contributions policy.

The following table compares grants and remissions against the key factors that differentiate these two mechanisms.

Factor	Grants	Remissions of development contributions
Impact of expenditure	Support can be directed towards developments that require assistance to succeed. This ensures the maximum benefit can be achieved with the rates funded investment	All qualifying developments whether they require support to develop or not would receive a rates-funded remission
Certainty of expenditure	Yes – have a fixed budget. This can be varied as required by council.	No – budget is unconstrained. Final expenditure depends on value of qualifying applicants so will only be known retrospectively.
Certainty for developers	Less certain, applications will be ranked if funding is oversubscribed.	More certain, remissions are granted automatically to all qualifying developments.
Flexibility	Can be used to fund a range of costs associated with development, not just development contributions	Can only be used to remit the development contributions charges for a development
Transparency	Offer greater transparency as grant applications formally reported and oversight provided by committee	Less transparent as administered directly by development contributions team. The rules governing remission would be agreed by committee
Accountability	Offers greater accountability. Grants administered by relevant operating team; who will also hold the budget. Effectiveness of spending can be weighed against the other opportunities for supporting Māori outcomes and other council priorities	Less accountability, remissions are a cost of revenue and simply reduce total revenue. No direct visibility of outcomes.
Administration	The level of administration will be greater for both developers and the council. Developers would need to submit grant applications which	Remissions may require less administration than grants for both developers and council. However, this may not be significantly less and will depend on the remission policy

Factor	Grants	Remissions of development contributions
	would need to be assessed by the council	
Funding source	Grants and remissions would both ultimately be funded from general rates revenue. Grants are directly funded through rates. Remissions would result in a shortfall on development contributions revenue which would need to be funded from rates. Development contribution prices should not be increased to fund the revenue shortfall as this would unfairly increase costs for other developers.	

Payment deferrals

In addition to providing discounts or remissions, another form of support is to defer payment of the development contributions until construction of the development has been completed. This would reduce the initial cashflow requirement of the developer until after the development is complete or able to start generating revenue.

The current Contributions Policy 2019 requires payment of development contributions for large scale development[5] at the earlier of issuing of code of compliance, issuing a certificate for public use, or 24 months after the building consent is granted. This acknowledges that in some cases the development will take time before revenue is generated. Payment of development contributions for small scale developments are currently required within six months of granting consent. This generally aligns with when the development is likely to be completed.

Changes to payment timing are one of the issues that staff are providing advice on as part of this review of the contributions policy. Payment timing requirements for large and small scale developments may change following consultation. If payment timings do change, then one option available to support development on Māori land is to retain a deferred payment timing for non-commercial Māori land developments. The impact on council cashflow of continuing with payment deferrals on Māori land is unlikely to be material.

Allowing payment deferrals beyond what is currently provided in the Contributions Policy 2019 would incur additional interest costs and require security over the land. This makes deferrals beyond this point unsuited for supporting Māori land development.

Park land and reserve contributions

The Local Government Act 2002 permits land to be given in lieu of development contributions, but specifically excludes Māori land from this provision.

All council park land was formerly Māori land, much of which was acquired in a manner that has led to iwi seeking redress through the Waitangi Tribunal. While much of Auckland was alienated by the Crown directly, there were instances of land alienated by the predecessors to Auckland Council.

A number of treaty settlements have resulted in Crown reserve land being transferred to iwi. Typically, this land remains reserve land, protecting public rights of access and enjoyment. These reserves are managed as public parks by iwi directly, or through co-governance arrangements consisting of council and iwi.

Council investment in parks is targeted to growth areas, particularly for flat land that can be used for active recreation. Gifted land rarely aligns with strategic priorities due to location and the nature of the

[5] Five or more residential dwellings in one consent

land (terrain, natural and historic heritage features). While co-governance arrangements may restrict council's ability use the land in a way that supports growth.

In 2017 Ngāti Manuhiri vested 180 hectares of open space at Te Arai South in the council to extend the Te Arai Regional Park. This land formed part of the Ngāti Manuhiri settlement from the Crown. The land was gifted as a mitigation for a residential development, and not in exchange for development contributions. Ngāti Whātua are exempt from contributions for reserves under the Ngāti Whātua Ōrākei Claims Settlement Act for land identified within the Orakei Settlement.

One option to recognise park land issues is to exclude not for profit Māori land developments from being liable for reserve contributions. Reserve contributions are not charged to commercial or industrial developments[6].

Excluding not for profit Māori land developments from the liability for reserve contributions will leave a funding shortfall which will need to be met by general ratepayers.

As noted above, support is currently provided for marae and papakāinga through the Cultural Initiatives Fund. This includes reserve contributions. Extending support to other types of development would incur additional costs which are unable to be fully estimated at this stage due to the limited information available on Māori land ownership. Staff recommend that any consideration of extending support beyond current settings be undertaken once a more robust data set of Māori land information is available[7].

[6] Reserve contributions are charged for commercial accommodation developments.

[7] Work is presently underway to develop a detailed data set of Māori land in Auckland.