

Regulatory Impact Statement – Point England Development Enabling Bill

Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE). The RIS provides an analysis of options to make up 11.69 hectares of land at Point England in Tāmaki, east Auckland, available for housing. The key issue for this RIS is whether to introduce standalone legislation to achieve the government's objectives.

Parameters for development of options and limitations

The available due diligence information suggests the land at Point England is suitable for housing with some limitations and challenges. The RIS assumes the land will support at least 300 houses.

Auckland Council is currently working on an open space network plan that will contain its assessment of the reserve needs in the Tāmaki area due mid-2017. This information would have contributed to the analysis of the impacts of the proposal on local residents' access to reserves. The Auckland Council has completed analysis into the Auckland-wide shortage of sports fields which included plans for investment at Point England.¹

Cabinet has agreed the parameters for the Auckland vacant and underutilised Crown Land Programme (the Crown Land programme) [Cab 15-Min-0297 refers]. The RIS does not revisit these decisions, and the accompanying business case, which set the parameters for all housing developments under the programme and the Crown's role in them. Cabinet has also approved the offer of a development opportunity at Point England to Ngāti Paoa [Cab 16-Min-0399 refers].

Limitations on consultation

Key stakeholders have been consulted although the wider public has not been. The proposal was first raised by Ngāti Paoa in September 2015, who initiated consultation with Auckland Council, the Maungakiekie-Tāmaki Local Board and Tāmaki Redevelopment Company. The Office of Treaty Settlements (OTS) then supplemented this engagement – formally seeking the Auckland Council's views in June 2016. The public was not consulted at this stage as the proposal was in the confidential phase of Treaty settlement negotiations.

¹ http://infocouncil.aucklandcouncil.govt.nz/Open/2015/09/PAR_20150916_AGN_6191_AT.PDF with an update on progress at page 20 of this document:
http://infocouncil.aucklandcouncil.govt.nz/Open/2016/08/PAR_20160831_AGN_6636_AT_SUP.PDF

MBIE has subsequently consulted on the proposal, with a particular focus on the area to be developed, with Ngāti Paoa, Auckland Council, the Chair of Maungakiekie-Tāmaki Local Board and Tāmaki Redevelopment Company. However, MBIE has not discussed the proposal with the full Local Board or the Tāmaki community in the time available. In addition local body elections mean there is now a new Auckland Council and Local Board Chair. Ngāti Paoa and the Office of Treaty Settlements have continued to lead engagement with iwi/hapū with interests in the area.

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21 October 2016

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Status quo

Point England Recreation Reserve: existing uses, values and interests

1. Point England Recreation Reserve is in Tāmaki in east Auckland. The total public reserve land is approximately 48 hectares. The Crown-owned portion of the Reserve is just over 45 hectares in size and is bounded by roads and residential housing on three sides and a Council-owned beach reserve and coastal walkway to the east.² The reserve services the local suburban neighbourhoods of Glen Innes and Point England.
2. This RIS only discusses the Crown portion of the reserve (**the Reserve**) and more specifically the 11.69 hectares of land to be made available for housing (**the development land**). A map of the development land is attached as Appendix 1. Throughout the RIS the term “development land” is used to refer to this area. The process used to identify the development land is discussed further below.
3. The Reserve is vested in trust in Auckland Council as a recreation reserve under the Reserves Act 1977. If reserve status is revoked the Reserve will revert to the Crown.

Formal and informal interests

4. A list of existing and future uses for the Reserve, as compiled by the Auckland Council, is attached as Appendix 2. In summary, about half the Reserve is used for sports fields or informal recreation and the remainder is open rural land which is grazed. Formal and informal interests in the development land comprise:
 - an historic grazing licence. The licence has expired and is now rolled over from month to month.
 - sports fields – the development land encompasses 3.2 hectares of the approximately 8.4 hectares currently dedicated to this purpose.
 - Watercare infrastructure.
 - A right of first refusal (**RFR**) in favour of Ngā Mana Whenua o Tāmaki Makaurau. Note the land may be removed from the RFR by the Minister for Treaty of Waitangi Negotiations if the land is required for Treaty settlement (discussed further below).
5. Other formal and informal interests in the Reserve include:

² The Crown derived land of 45.4259 hectares is Lot 1, DP 44920 and the Council derived land of 2.9205 hectares is both Lot 16, DP 99636 and Lot 366, DP 18635. The reserve has a total area of 48.3464 hectares.

- A licence over 0.8 hectares of the Reserve to the Tāmaki Model Aircraft Club, for a landing strip, which is due to be renewed in 2017 and to expire in 2022.
 - A lease to the Glen Innes Family Centre (for the buildings in one corner of the Reserve).
6. Auckland Council’s operational reserve management plan for the Reserve is dated 1997. A concept plan review was initiated in 2015 but this has not been finalised. No community engagement has occurred in respect of the concept plan.
 7. The Auckland Council provisionally budgeted some improvements, over and above its existing annual spend, as described in Appendix 2. In 2014/15 an upgrade was budgeted for one of the sports fields but this spending was deferred in favour of higher priority projects and no further investments are planned pending the decisions addressed in this RIS.
 8. The portion of the Reserve dedicated to sports fields is fully utilised in summer and winter, although in winter the clay-base and lack of lighting means playing hours are sometimes limited to a maximum of 7 hours each week. In summer the only limitation on use within daylight hours is the available area.
 9. Aside from existing recreational uses, the site adjoins a primary school (Pt England School) and the Glenn Innes Pool and Leisure Centre, as well as providing access to the Omaru Creek and the Tāmaki River.
 10. Parts of the Reserve hold significant ecological and cultural values. The Reserve contains part of a coastal walkway with a formed and fenced walkway along the seaward margin. Volunteer pest control occurs, in particular, to protect shorebirds such as nesting dotterels which can also be found in the grazed area of the Reserve.
 11. The lower reaches of the Omaru Creek flow through the Reserve. There are community efforts underway to improve the Creek’s water quality. Auckland Council reports that Omaru Creek has the worst quality of all thirty-six monitored sites in the Auckland region.³

Existing zoning and infrastructure

12. The proposed Auckland Unitary Plan (the PAUP) zoning currently provides Open Space – Sport and Active Recreation and Open Space – Informal Recreation zones for the site. The surrounding suburbs have been zoned Mixed Housing Urban and Mixed Housing Suburban under the PAUP. The PAUP overlays/controls include Volcanic Viewshafts, the Stormwater Management Area Control and the Coastal Inundation Control.

³ Auckland Council, State of the Environment Monitoring, River Water Quality Annual Report 2014, published November 2015, Technical report 2015/028

13. An existing designation for wastewater management purposes is located within the Reserve and overlaps part of the development land. Watercare has advised Ngāti Paoa planned upgrades to service the population growth anticipated in the area mean not all this infrastructure will be required in future.
14. Roading and water infrastructure upgrades have been planned in Tāmaki as part of the regeneration. In addition the Reserve is close to public transport being 1.8km from the Glen Innes Train Station. The rail connection to the Auckland CBD will benefit from the upgrades being made to the Auckland rail network.

Ngāti Paoa interests

15. Historically Point England was an important Ngāti Paoa kainga or settlement. Missionary reports written prior to 1840 record extensive settlement and agriculture in the area. A large number of Ngāti Paoa rangatira signed te Tiriti o Waitangi/the Treaty of Waitangi at nearby Karaka Bay.
16. Ngāti Paoa entered historical Treaty of Waitangi negotiations with the Crown in 2009. As part of their negotiations Ngāti Paoa has been seeking redress to enhance their presence in the Tāmaki area. Ngāti Paoa originally engaged with the Crown seeking cultural redress on the Reserve [REDACTED] s 9(2)(j) [REDACTED].
17. In 2015 Ngāti Paoa became aware the Tāmaki Redevelopment Company was planning housing development at the Reserve. The Iwi advised the Crown and Tāmaki Redevelopment Company it sought the opportunity to undertake the housing development as part of its Treaty settlement.
18. Cabinet subsequently approved Ngāti Paoa involvement in a housing development as Treaty settlement redress, but the proposal remains outside settlement policy. If the proposal was progressed by the Minister for Treaty of Waitangi Negotiations it would require an exception to be made and Treaty settlement legislation to be enacted.

Reserves Act 1977: overview

19. Reserve land is held for the general purpose of the preservation and management of that land for the benefit and enjoyment of the public. In certain limited circumstances, the Reserves Act 1977 enables the Minister of Conservation to revoke the reserve status of all or part of a reserve. There are several stringent statutory tests which must be met and a statutory process the Minister of Conservation must follow.
20. The primary objective of the statutory process is to enable the administering body for the land, and the public, to have input into the revocation decision. The decision maker is obliged to take into account the objections of affected persons and that decision can be reviewed by the courts.

21. Councils actively consider reserve provision as part of their open space network planning, and occasionally revoke reserve status of reserves they own and sell the land. Under the Reserves Act 1977 these proceeds must be reinvested in reserves.

Tāmaki Redevelopment Company: overview

22. A housing development on the Reserve would be one piece of a much bigger project. Tāmaki Redevelopment Company has been established to lead a suburb-wide regeneration of the Tāmaki area. The Crown and Auckland Council are both shareholders in the Company which will redevelop the existing 2500 social houses in Tāmaki into 7500 houses over the next ten to fifteen years.
23. The Tāmaki Redevelopment Company's redevelopment primarily involves the intensification of existing housing. Tenants who wish to stay in Tāmaki will need new housing. As part of its early master planning Tāmaki Redevelopment Company identified part of the Reserve as a potential housing development site to provide these houses and facilitate its redevelopment.
24. Reserve changes, including realignment and improvements, are being considered as part of the redevelopment and intensification of the Tāmaki suburbs. The regulatory barriers to these reserve changes have been recognised by the Government.⁴
25. Auckland Council and the Tāmaki Redevelopment Company intend to improve the amenity of reserves in Tāmaki as housing is increased in the area. A portion of the development contributions for the area will be put towards reserves.
26. Auckland Council's open space strategy for the Tāmaki area, which will assess the reserve needs of the existing and future residents and inform the Tāmaki Redevelopment Company's plans, is currently in development and is due to be finalised in mid-2017. However, as noted above, new investment in the Reserve is on hold pending the decisions covered by this RIS.

MBIE's Auckland vacant and underutilised Crown land programme: overview

27. Any housing development at the Reserve would be undertaken under the development parameters established for the Auckland vacant and underutilised Crown land programme (the Crown land programme).

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s 9(2)(f)(iv)

28. The Crown land programme is one of several government measures to increase housing supply. Crown Land within the Auckland region which is suitable for housing and not required for another purpose is progressively being identified for development. A developer is then contracted to take on the risks of delivering new housing to the market, at pace, and with a proportion of social and affordable housing. The Productivity Commission identified a programme such as this as one of the ways in which more affordable housing can be brought to market.⁵
29. The Crown land programme involves iwi/hapū of Auckland as developers, consistent with their rights under Treaty settlement, including the Ngā Mana Whenua o Tāmaki Makaurau Redress Deed and Act 2014.
30. The Ministry of Business, Innovation and Employment (**MBIE**) has also signed a Mahi Ngātahi agreement with 13 iwi/hapū.⁶ This agreement anticipates joint MBIE and iwi involvement in a wide range of development projects, such as those initiated by iwi/hapū on their own land. MBIE also has a role in Māori economic development under He Kai Kei Aku Ringa (the Crown- Māori Economic Growth Partnership) and He Whare Āhuru He Oranga Tāngata (the Māori Housing Strategy).

The development land identification

31. The Tamaki Redevelopment Company identified approximately 10 hectares of the Reserve for housing development as part of the initial phase of master planning for the regeneration. The 10 hectares was intended to provide sufficient new supply to assist with the rehousing of its tenants while retaining a balance of open space.
32. The Government approached the 10 hectares as a starting point and was open to the Ngāti Paoa proposal the development land be up to 13 hectares to increase total housing supply. In consultation with Auckland Council and the Chair of the Maungakiekie-Tāmaki Local Board the proposal was refined and the area reduced to 11.69 hectares as this area would still support a development at scale but would mean:
 - no housing, and therefore low impact, on the elevated headland and the area proposed for a marae where there are views across the Tāmaki River and back towards Maungarei / Mt Wellington;
 - a set back from the Omaru Creek which maintains the existing ecological corridor and may also be suitable for a new recreation route to the Point England headland;
 - space for a community park in the west close to the Glen Innes Indoor Community Pool and Recreation Centre;
 - the retention of two full sports fields which, with an upgrade, could support a higher number of winter playing hours than the existing six fields.

⁵ New Zealand Productivity Commission, Using Land for Housing, September 2015.

⁶ The thirteen iwi/hapū who are party to the Ngā Mana Whenua o Tāmaki Makaurau Redress Deed.

Problem definition

Problem 1: Reserve land is not generally available for housing

33. The regulatory regime which applies to this proposal primarily comprises the Reserves Act 1977 and the Resource Management Act 1991 (as given effect to through the Auckland Council's plans, in particular for the purposes of this RIS, the PAUP).
34. As above, reserve lands are held for the benefit and enjoyment of the public. Even where the land does not have any significant reserve values, revocation will not necessarily follow. It must be clearly established the land is no longer required for its present purpose or any other reserve purpose. As in this case, Councils also apply complementary zoning such as "open space" to reserves which do not permit housing development and would require a fully notified private plan change to amend.

Problem 2: Tāmaki Redevelopment Company requires new housing for existing tenants

35. As above, Tāmaki Redevelopment Company has promised those of its residents who wish to stay in Tāmaki will have the opportunity to do so. This requires new land to be converted into housing for these residents before redevelopment of existing housing can proceed.
36. The redevelopment of the Maybury Block, adjacent to the Reserve, is one of the Blocks included in Phase One of the Large Scale Redevelopment which involves 1000 houses. The expectation is around 200 - 300 of these existing houses will be redeveloped in each year but the key constraint is new housing for existing tenants.

Problem 3: The Auckland housing market requires new supply

37. Statistics New Zealand projects that Auckland's population will grow by a further 939,600 people by 2043 based on its high-growth scenario, or 750,000 based on medium-growth, with an average household size of 2.7 persons.
38. The existing housing under-supply in Auckland is complex to estimate. The Independent panel for the PAUP estimated the unmet demand to be 40,000 dwellings⁷. The PAUP provides for an additional 400,000⁸ additional dwellings over 30 years — over 13,000 houses per year — to provide for the projected demand.
39. The PAUP will also create more space for housing by accelerating the supply of greenfields land and by zoning existing areas for higher intensity development. However the PAUP is only enabling: for new houses to be built developers need to respond to the demand.

⁷<http://www.aucklandcity.govt.nz/council/documents/unitaryplan/ihpoverviewofrecommendationsann1.pdf>, page 23.

⁸ This final number depends on the outcome of appeals, which could take up to 12 months to resolve.

40. Although the Auckland Unitary Plan has modelled the additional dwelling capacity based on market feasibility capacity of over 400,000 additional dwellings over the life of the Plan not all – or perhaps even a majority of — feasible development capacity will be utilised.
41. In addition, the model’s output shows that capacity is mostly being provided in peripheral suburbs and not in the more market-attractive central areas. It will be necessary to provide a lot more opportunities than demand requires in order to have a well-functioning market.
42. Several factors will reduce the achieved reality of model results:
- development chance – i.e. most current owners are happy with a site’s current use and are unlikely to increase the density, at least in the short-medium term.
 - capacity utilisation – many developers won’t develop a site up to its maximum feasible capacity, for a variety of internal and external reasons.
 - infrastructure constraints – for example, until the Central Interceptor project is completed after 2023 parts of the city cannot be significantly densified, and developers have also anecdotally identified infrastructure barriers to projects.
43. The 300 dwellings it is estimated the development land may support are 2.3% of the new housing the Auckland Council estimates will be required in Auckland in any one year. However, under the Crown Land programme the government will contract for a rapid development which speeds the provision of new housing to maximise its impact on the current level of demand. In addition, the development will act as a catalyst for the redevelopment and intensification of adjacent housing by providing new places for existing Tāmaki Redevelopment Company tenants.

Problem 4: The Crown wishes to achieve a Treaty settlement with Ngāti Paoa

44. The Crown and Ngāti Paoa have been in historical Treaty of Waitangi settlement negotiations since 2009. The Iwi have sought redress at Point England and Cabinet has subsequently approved their involvement in a housing development on this land. [REDACTED]
[REDACTED] s 9(2)(j) [REDACTED]
[REDACTED]

Summary of problem and objectives

45. The Reserve is in the Auckland region which is experiencing a well-documented undersupply in housing, a building backlog, high demand and escalating prices.
46. Two of the government responses to this undersupply are the Tāmaki Redevelopment Company, which has plans to regenerate the entire Tāmaki area, and the Crown Land programme, which is focused on facilitating developments on specific parcels of vacant and underutilised land.

47. A portion of the land at Point England is well used and has significant reserve values, however, at least 18 hectares of the reserve, is difficult for the public to access and use and is grazed by cattle and horses. There are other examples of grazed reserve land in Auckland, including iconic sites such as Maungakiekie / One Tree Hill, although usually the grazing is managed so that it is complementary to recreational activity.
48. The analysis which follows considers which proposal will best meet a number of the government's objectives including:
- protection of reserve values;
 - increasing the supply of housing, at pace in Auckland, including social and affordable housing;
 - assisting with the Tāmaki Redevelopment Company's redevelopment project by providing new housing to facilitate the redevelopment of existing housing; and
 - achieving a Treaty settlement with Ngāti Paoa and providing for iwi economic development.
49. MBIE weights the supply of new housing, at pace, as the most important objective. The analysis is focused only on the revocation of reserve status of the development land within the Reserve.

Options and impact analysis

50. The following options have been identified to achieve the government's objectives:
- **Option 1:** (status quo) no change, so the development land remains a recreation reserve.
 - **Option 2:** making the development land available for housing via the Reserves Act 1977 process, and the Council process for subdivision from the balance of the Reserve and rezoning.
 - **Option 3A :**(preferred) enabling legislation to, revoke the reserve status of the development land, change the zoning of the land, and inclusion within the Crown land programme i.e. providing for its sale on conditions.
 - **Option 3B:** enabling legislation to revoke the reserve status of the development land, change the zoning of the land and sale without conditions to allow any kind of development.
 - **Option 3C:** Ngāti Paoa Treaty settlement legislation to revoke the reserve status of the development land.

Table 1: SUMMARY OF OPTIONS ANALYSIS							
Options		Protect reserve values	Increase housing supply at pace	Assist with TRC's redevelopment	Ngāti Paoa Treaty settlement	Likely timeframe for housing development to start	Summary
Option 1	Status quo: No change	√	X	X	X	N/A	Protects reserve values
Option 2	Existing statutory and plan change process	Likely, due to the threshold in the Reserves Act 1977	X	X	X	Unlikely, but 10 – 24+ months	If existing statutory tests are met development will proceed
Option 3A	Enabling legislation (controlled development)	Possibly	√	√	√	6- 10 months	Achieves housing objectives and Treaty settlement
Option 3B	Enabling legislation (open development)	Possibly	X	X	√	6 – 10 months	Some housing objectives not met as Crown loses control of development outcomes
Option 3C	Enabling legislation (Treaty)	Possibly	X	Maybe	√	12 – 18 months	Likely too slow to meet some objectives

51. The RIS also contains an overview of the extent of public input into the process under each option given the significance attached to this within the existing regulatory scheme.

Option 1 (status quo) no legislative change so the land remains a reserve

Discussion on objectives

Increase housing supply at pace and assist with TRC's redevelopment

52. The status quo does not achieve any of the identified housing objectives. Instead the status quo preferences the maintenance of the existing reserve values in the land.

53. If the land remains a reserve the Crown will need to find alternative ways to meet its other objectives. As with the rest of the Tāmaki area the location is very well suited for housing as it is close to transport networks and employment.

Protect reserve values

54. This Option fully protects the reserve values of the development land including any future potential for investment in the area to improve its attractiveness as a destination. The demand for open space in Tāmaki is likely to increase over time. The Tāmaki Redevelopment Company's project will increase the number of people living in the Tāmaki area, which will increase pressure on the existing reserves. The Tāmaki Redevelopment Company and Auckland Council are likely to increase investment in the Reserve at Point England to increase its amenity and functionality.
55. However, reserve land is valued by the public both for its utility and amenity as open space; total size is not the only relevant measure of value.

Achieve Ngāti Paoa Treaty settlement

s 9(2)(j)

Impacts and mitigations

57. Under Option 1 there is no impact on the existing reserve values or the users and uses of the development land such as sports fields and grazing. There is a potential impact on people waiting for housing in Auckland as they will have to rely on other new supply coming to market.
58. There is a potential impact on Tāmaki Redevelopment Company as alternative locations for new housing will be required before it can begin the redevelopment of housing for existing tenants. However, due to uncertainty as to whether this proposal would proceed, Tāmaki Redevelopment Company has been actively investigating these alternatives.

Option 2 - making the land available via the existing Reserves Act 1977 process, and Auckland Council process for rezoning

Summary of Option 2

59. Option 2 involves the government taking each of the existing statutory and regulatory steps under the Reserves Act 1977 and the Resource Management Act 1991 to make the land available for housing. Following this process could result in a housing development starting within 10 – 17 months if the statutory tests are met and there are no appeals. The timeframe could extend beyond 24 months if there are challenges and appeals.

60. As the challenges and appeals may be successful this Option does not guarantee a housing outcome. It is not possible to assess this Option accurately without the benefit of public consultation; however, we believe some challenges or appeals would be likely if decisions were in favour of development. A housing outcome could be in doubt for some time.
61. This Option enables Ministers to receive the best possible information on the value placed by the public on the development land and therefore receive a full assessment of potential impacts.

62. s 9(2)(j)

Discussion on objectives

Protect reserve values

63. This Option first involves taking the steps under the Reserves Act 1977 to enable the Minister of Conservation to revoke the reserve status of the development land. The Department of Conservation has indicated even this first step is unlikely to proceed due to the high bar represented by the requirement to establish the land is no longer required for its present purpose or any other reserve purpose. The statutory scheme does not include an assessment as to whether an alternative purpose for the land might be reasonably preferred.
64. The Minister of Conservation must then give the public the opportunity to provide submissions on the revoking of reserve status in recognition reserve land is held for the benefit of the public.
65. The public consultation under this Option enables the Minister of Conservation, and therefore the government, to have good information on the value of the development land affected by the proposal. Not all of these values may be apparent, or be able to be assumed. If the Minister of Conservation was satisfied the statutory tests were met he or she could then decide to revoke the reserve status of the development land. The timeframe for decisions by the Minister process, without appeals, is estimated to be three to six months.
66. The views of the Auckland Council, as the administering body of the land, would be an important consideration for the decision-maker under the Reserves Act 1977. The Auckland Council's views are provided in more detail below in the Consultation section. In summary, the Auckland Council seeks mitigations for the proposal that result in no net loss of open space within the Tāmaki area, and that result in reserve improvements in the area. The Council also seeks protections for the balance of the Reserve.

67. As the most certain way to achieve these mitigations is to accommodate them within the Tāmaki Redevelopment Company’s plans it is possible the Council would not agree to this proposal proceeding independently of the redevelopment plans for the entire Tāmaki area.

Increase housing supply at pace and assist with TRC’s redevelopment

68. This Option has the potential, should threshold tests be met, to achieve housing outcomes but with considerable delay. Any decision of the Minister to revoke reserve status could be judicially reviewed.

69. If the courts agreed reserve status could be revoked it would then be necessary to complete the Auckland Council’s regulatory steps to enable a development. A fully notified private plan change would need to be sought as the land is currently zoned Open Space under the PAUP which does not permit housing.

70. In the first two years of the PAUP the Auckland Council has the discretion to decide not to consider any private plan changes although it would be material the reserve status had been revoked. The plan change would first be notified, would generally go to a hearing and would also be able to be appealed. The timeframe for this process, without appeals, is estimated to be six to 12 months.

71. One possible example – included in this RIS as a comparator on timeframes only – is the Three Kings development in Auckland. The Three Kings proposal also involves impacts on open space and reserve provision. The matter remains unresolved after 24 months. Fletcher Residential initiated a private plan change to the Operative Auckland District Council Plan on 13 October 2014. The plan change went before Hearings Commissioners who issued a decision on 2 November 2015. The subsequent appeal to the Environment Court was decided on 3 August 2016 but further appeals have been signalled in the media.

72. As above, under Option 1, if the land remains a reserve the Crown will need to find alternative ways to meet its housing objectives.

Ngāti Paoa Treaty settlement

s 9(2)(j)

Impacts and mitigations

74. Under this Option there may be impacts from a housing development but, as above, this is assessed to be unlikely. Analysis under Option 3A on the potential impact of a housing development also apply to this Option should a development proceed.

Public input into decisions

75. If threshold tests for the revocation of reserve status are met there is then a significant opportunity for stakeholders who seek to maintain the status quo at the Reserve to ensure their views on the proposal are taken into account. Further, if decisions are in their favour, the housing development will not proceed.
76. The impact on those waiting for housing in Auckland and the Tāmaki Redevelopment Company depends on how quickly all processes are completed and whether or not a development progresses as a result.

Option 3A (preferred) enabling legislation introduced to revoke reserve status and change the zoning of the land

Summary of Option 3A

77. Option 3A achieves the majority of the government's objectives but does not necessarily achieve the highest and best use of the land.
78. This Option results in land becoming available for a new housing development in 6 – 10 months. The Riccarton Racecourse Development Enabling Bill provides an example of the possible statutory timeframes, with introduction on 19 October 2015 and enactment on 21 June 2016.
79. By promoting legislation, the government is deciding the development land should be enabled for housing, preferring the interests of those who will benefit from this new housing, including social and affordable housing, over those who would benefit from the retention of open space.
80. Option 3A achieves certainty where Option 2 does not, and is also likely to be quicker than Option 3C with a higher possibility a development on the land will begin in 2017. Therefore, it is more likely to meet the objectives of increasing the supply of housing at pace, assisting the government to achieve a Treaty settlement with Ngāti Paoa and providing houses for Tāmaki Redevelopment Company tenants.
81. This Option has impacts on the existing and future uses of the Reserve although it may be there is scope within the wider reserve network to absorb some of the impacts of the loss of the development land. Auckland Council's analysis of the open space needs for Tāmaki will provide a full assessment of how likely this is to be achieved.
82. The public would be able to provide submissions through the parliamentary select committee process, but there is no right of appeal. The opportunity for public input on the potential impacts is, therefore, more limited than under Option 2. Auckland Council and Maungakiekie-Tāmaki Local Board will also be able to present their views to select committee over and above the engagement that has occurred to date.

Discussion on objectives

Increase housing supply at pace and assist with TRC's redevelopment

83. In contrast to the status quo, introducing legislation to revoke the reserve status on the development land, and using that legislation to provide an enabling zoning such as 'Residential - Mixed Housing Urban', will provide a comparatively high degree of certainty about the timing and outcomes of the proposal to make the land available for housing development.
84. The Riccarton Racecourse Development Enabling Bill provides an example of the time it may take to enact standalone legislation. This Bill also revoked reserve status on land to enable its development for housing, and took eight months to progress through all stages from introduction in October 2015 to enactment in June 2016.
85. MBIE anticipates this Option is most likely to achieve the Crown objectives of increasing housing supply at pace. This Option is also most likely to assist the Tāmaki Redevelopment Company with rehousing tenants and therefore support the redevelopment of its housing.
86. The development outcomes sought, such as pace and social housing, will be achieved through the conditions of a contractual development agreement with Ngāti Paoa. As noted in the Disclosure Statement, this RIS does not re-examine the parameters of the Crown Land programme. MBIE will seek to secure development outcomes through the obligations contained in the development agreement in the same way it does at other sites. Contracting to achieve outcomes provides a useful degree of flexibility to both parties but also enables the Crown to maintain oversight of the development outcomes.

Reserve values

87. The impact on reserve values is discussed further under the heading "Impacts and mitigations". In summary Option 3A will not preserve all the existing reserve values in the development land as a decision is being made that housing is preferred on this site.

Ngāti Paoa Treaty settlement

s 9(2)(j)

89. When the development land is confirmed as required for Treaty settlement with Ngāti Paoa it will be removed from the existing right of first refusal by the Minister for Treaty of Waitangi Negotiations under section 120 of the Ngā Mana Whenua o Tāmaki Makaurau Redress Deed and Act 2014.

90. MBIE will be endeavouring in good faith to provide Ngāti Paoa with the opportunity, and expects to be able to negotiate a development agreement, but will retain the right to offer the opportunity to another developer.⁹
91. [REDACTED] s 9(2)(j) [REDACTED]. Commercial opportunities provided in Treaty settlement always come with conditions to ensure transactions are at market value such as the involvement of an independent valuer.
92. The risk of Ngāti Paoa or another developer suffering extraordinary losses or extraordinary profits is not considered to be high. However the parameters of the Crown land programme have been set to ensure the development is as close as possible to a market transaction which means the developer must assume the ordinary commercial risks of property development.
93. The regulatory impact as between Ngāti Paoa undertaking the development versus another developer is assessed to be negligible, so it has not been the subject of separate analysis. In addition, as noted in the Disclosure Statement, Cabinet has already decided Ngāti Paoa should have the opportunity.

Impacts and mitigations

94. This Option will impact on local residents. There are few directly adjoining private neighbours to the Reserve but the housing development can be expected to impact on their peace and enjoyment.
95. This Option will impact on sports as the development land reduces the amount of land dedicated to this purpose from six fields to four. It may be possible to mitigate the impact on winter sports as upgrades would significantly increase the available playing hours. Surface upgrades and lighting can increase the available playing hours on fields from 7 hours per week to 20 hours. Summer sports use will be limited by the reduction in field size so direct mitigations would require other suitable land to be found.
96. This Option also impacts on the future potential of the Reserve. As noted above, reserve lands are likely to come under increasing pressure as the population in the Tāmaki area increases. As the number of residents in the area increase there will be more demand for reserve space both for recreation and passive enjoyment.

⁹ MBIE's expectation is the development opportunity would be offered to the Whenua Haumi Roroa o Tāmaki Makaurau Limited Partnership under the Department of Building and Housing Protocol, as the land would remain subject to their right of first refusal and therefore the Protocol included in the Ngā Mana Whenua o Tāmaki Makaurau Redress Deed will apply.

97. As above, Auckland Council is still completing its assessment of the existing open space provision in Tāmaki, and intends to have this report complete by mid-2017. The 11.69 hectares is a comparatively large area to lose from within the Reserve. However, there are other factors such as the usability and amenity of the existing and future reserves in the Tāmaki network which are also relevant to assessing the impact of this proposal. Investments in the network as a consequence of the Tamaki Regeneration project could mitigate some of the impacts identified such as loss of sports fields area and open space.
98. On the other hand the Auckland Council is already certain it will not be able to mitigate the impacts of the proposal on reserve provision. As detailed in the Consultation section the Auckland Council seeks mitigations such as replacement land for reserves, investment in existing reserves, and enhanced protections for the balance of the Reserve.
99. This Option may impact on the formal interests in the Reserve. The Model Aircraft Club license does not permit the Club to fly model planes close to houses so the area available to members will be reduced. The Option will impact on the informal interests in the Reserve by reducing the amount of grazing land available and therefore requiring the grazier to reduce the number of cattle and horses or remove them altogether.
100. To avoid significant impact on conservation values any housing development will need to preserve as far as possible the areas of the reserve with significant natural values. The development land avoids the headland and is set back from Omaru Creek but there may also need to be mitigations in the development proposal to protect bird habitat. Auckland Council advises dotterels, which nest in the area, do not nest in the same place every year and it should be possible to protect their nests for the month of incubation during adjacent housing development. The Auckland Council does recommend considering whether the introduction to the housing of family pets which are also bird predators can be mitigated.
101. The housing development will also have a direct impact on the environment such as increased run-off into water bodies of soil and potential contaminants. Environmental impacts are a concern for Ngāti Paoa who are likely to seek to limit these impacts in their approach to the development or to mitigate them. The Auckland Council is also able to manage some of these impacts as they are regulated under the Resource Management Act 1991 but cannot eliminate them completely.

Public input into decisions

102. Under this Option there is an impact on the public and other stakeholder's opportunity to have a say on the proposal. There is an opportunity for the public, Auckland Council, the Maungakiekie-Tāmaki Local Board to make submissions to the parliamentary select committee on the proposal, and for changes to be made to the proposal as a result. However, as above, if the select committee does not recommend amendments to the legislation, or if these amendments are not adopted by Parliament, there is no right of appeal.

Assessment of precedent effect

103. Policy work on Urban Development Authorities is currently underway. s 9(2)(f)(iv)
- [REDACTED]
- [REDACTED]
- [REDACTED] This work responds to previous investigations into New Zealand's planning system, including most recently by the Productivity Commission, which concluded it was cumbersome and unresponsive to development.
104. A systematic response is more preferable to address the identified regulatory barriers than standalone legislation. In cases such as the Riccarton Racecourse Development Enabling Bill, due to the presence of a Local Act which could not be amended without Parliament, standalone legislation will always be required. However, if policy for Urban Development Authorities broadly follows the Productivity Commission recommendations standalone legislation such as that discussed in this RIS is much less likely to be contemplated in future.
105. If there is no national response then standalone legislation may occasionally be considered again. However, the circumstances of this case, which brings together a number of different government objectives, are considered unique.

Option 3B: enabling legislation to revoke reserve status, and allow any kind of development

Discussion on objectives

106. This Option is identical to Option 2 except that, instead of seeking pace, and affordable and social housing, the government would not place any restrictions on the development.
107. This Option does not provide certainty as to development outcomes and therefore may not meet the government's housing objectives. The land could be land banked, or the developer could delay stages of the housing to increase the market value of completed lots. It is also unlikely the developer will voluntarily build social housing so the development will not assist the Tāmaki Redevelopment Company with new housing for its tenants. Therefore, despite enabling the highest and best use of the land, this Option does not meet the government's housing objectives and is not preferred.

Impacts and mitigations

108. The discussion on Option 3 for impacts and mitigations and public input into decisions applies here also.

Option 3C: enabling legislation, as part of Treaty of Waitangi settlement

Discussion on objectives

109. Ngāti Paoa has sought this opportunity through Treaty settlement which provides an alternative legislative vehicle for the lifting of reserve status over the development land. The Ngāti Paoa settlement legislation is due to be enacted, at the earliest, in 2017. This will result in the land becoming available for housing development in approximately 12 to 18 months.
110. This Option has several of the benefits of Option 2 in that it increases the certainty of an outcome which meets the majority of the government objectives.
111. [REDACTED] s 9(2)(j)
[REDACTED]
[REDACTED]. Enactment in 2017 is the most optimistic scenario with 2018 also assessed to be likely. This will slow the bringing of new houses to market, which impacts the government's objective on pace, and also the potential for the development to assist the Tāmaki Redevelopment Company with new housing for its tenants. For these reasons it is not preferred.

Impacts and mitigations

112. The discussion on Option 3 for impacts and mitigations and public input into decisions applies here also.

Public input into decisions

113. The legislative process for Treaty settlement, as with standalone legislation, provides an opportunity for public submissions on the proposal. However the legislation's sole purpose is to give effect to the Treaty settlement deed which is where the proposal for revoking of reserve status will be contained.

Consultation

114. The consultation on this proposal has been led by Ngāti Paoa and OTS, both within government, with the Tāmaki Redevelopment Company, Auckland Council and the Maungakiekie-Tāmaki Local Board. Consultation was initiated in the fourth quarter of 2015 and has been continued by MBIE from mid-2016.

115. The former Mayor of Auckland Council wrote to the Minister for Treaty of Waitangi Negotiations providing the Council's views and the views of the Maungakiekie-Tāmaki Local Board on the proposal. Without the benefit of public consultation the views of Auckland Council and the Maungakiekie-Tāmaki Local Board provide the closest approximation to community views. The Auckland Council notes the land is Crown land, so decisions are for the Crown, but advises that it seeks:
- mitigations that result in no net loss of open space within the Tāmaki area, through the acquisition and development of land for open space elsewhere in Tāmaki;
 - mitigations that result in the further enhancement of open space elsewhere in the Tāmaki area;
 - enhanced protections for the balance of the reserve.
116. The Maungakiekie-Tāmaki Local Board also seeks mitigations for the loss of open space at Point England, in particular:
- investment in smaller and larger park spaces adjacent to Elstree Avenue, Point England Road and on the Point England headland;
 - open space connections including ecological and recreational connections (walking/cycling) along Omaru Creek and the Tāmaki River Foreshore, into the Glen Innes Town centre and rail station and along surrounding streets;
 - a quality suburb scale park at Point England which supports sport and active recreation.
117. The Local Board also asks that the planned development reduce the impact on the recreational spaces and landscape, in particular, the expansive coastal headland south of Omaru Creek, the elevated headland and vegetated banks to the north of Omaru Creek and the foreshore of the Tāmaki River, and to avoid reverse sensitivity effects on the sports fields from near neighbours.
118. Some of these potential impacts, as discussed above under Option 3, have been mitigated through the choice of the development land which was discussed with Auckland Council and the Chair of the Local Board. The reverse sensitivity concern can be addressed directly with the developer as part of MBIE's negotiations.
119. Ngāti Paoa and OTS have engaged with iwi/hapū with interests in the reserve in respect of the proposal, as part of the OTS process on overlapping claims. The Minister for Treaty of Waitangi Negotiations will consider the views of these groups in making any decision to maintain an offer of redress to Ngāti Paoa.

120. As above, there will be an opportunity for public input into the proposal via parliamentary select committee. However the Government is still likely to be criticised for reducing the opportunity for public input into the reserve revocation in light of the statutory scheme and the public interest in reserve space.
121. The following departments and agencies have been consulted on the proposal either through consultation on Cabinet papers, the draft legislation, or directly on the RIS: Treasury, Department of Conservation, Land Information New Zealand, the Office of Treaty Settlements, Ministry for the Environment and Te Puni Kōkiri. The Department of Prime Minister and Cabinet and Crown Law Office have been informed.

Conclusions and recommendations

122. The primary regulatory impact of this proposal is the loss of open space to the residents of Point England and Glen Innes and the wider Tāmaki community including land currently used for sports fields.
123. It is likely over time, as the number of residents in the area increases, there will be more demand for reserve space both for recreation and passive enjoyment.
124. This loss of reserve land is balanced against the ability for the land to provide much needed additional housing supply in Auckland including for the Tamaki Redevelopment Company to assist its regeneration project. The preferred option enables the Government to have a reasonable degree of certainty about a housing outcome and its timing, which the alternative options do not provide.

Implementation plan

125. The implementation steps will involve:
- legislation to revoke the reserve status and provide the land with a zoning enabling for housing;
 - the negotiation of a development agreement between Ngāti Paoa and MBIE which will result in a contractual agreement for the delivery of housing to meet the government's objectives. Under the contract, the Crown has remedies in the event a development does not proceed as agreed. Ngāti Paoa will be responsible for financing the development, resource and building consents, and all other aspects of delivering on the agreed development.

Monitoring, evaluation and review

126. There are MBIE checks on whether housing developments, including any development on the Reserve, are meeting the Crown's objectives as part of the monitoring and evaluation of the Crown Land programme. There are also government checks on the Crown Land programme.
127. As part of the Crown land programme MBIE is required to monitor progress against all its development agreements and report to delegated Ministers. MBIE maintains an ongoing relationship with developers and schedules regular meetings to provide it with assurances the land is being developed as agreed under contract.
128. At the initial stages of development these meetings can be held monthly. MBIE also visits the land to check on progress. If the developer does not make as much progress as agreed, or could be reasonably expected, the contractual agreements give MBIE the option to end the agreement and invite another developer to deliver the housing.
129. The Government oversees the Crown land programme via Treasury, Ministers and Cabinet. The programme is authorised by Cabinet [Cab-15-Min-0297 and Cab 16-Min-0189.03 refer]. The programme operates under a multi-year appropriation based on an estimate of how much Crown land will be acquired for development for up to five years.
130. At the end of each financial year the Crown, via Treasury, assesses whether the appropriation is being spent to meet the objectives of the Crown land programme. MBIE provides information on how much land is being purchased for the programme and an assessment of how many houses are being delivered and whether objectives are being met.
131. If the Crown land programme does not deliver housing as intended by the Government it will not be continued. These checks and balances, while not specific to any development at Reserve, provides an additional assurance that there is oversight and review of the Crown land programmes outcomes and regular evaluation of its effectiveness.

APPENDIX 1: MAP OF DEVELOPMENT LAND



Internal briefing: Configuration and Use of Point England Recreation Reserve

1. Under Council's Parks and Open Spaces Interim Provision Guidelines 2014, the Point England Recreation Reserve provides a sub-regional park function for the wider Tāmaki-Maungakiekie area. Sub-regional parks are often large (over 30 hectares) and provide a variety of environments and a range of informal recreational experiences.
2. The Reserve has an operational reserve management plan dated 1997. Amendments were undertaken in 2012 to accommodate the Tamaki Model Aircraft Club under a licence. A concept plan review was commenced in 2015 but has not been finalised and no community engagement has occurred.
3. The reserve currently contains:
 - i) 6 sports fields and associated infrastructure catering for rugby league and football in the winter and 4 cricket/kilikiti pitches used in the summer – the fields are fully utilised during summer, and are effectively utilised in winter given the constraints imposed by being clay-based fields. They are also used informally by the adjacent Point England Primary School;
 - i) The Glen Innes Indoor Community Pool and Recreation Centre and early childhood facility on Elstree Avenue;
 - ii) Approximately 18 hectares of grazing for cattle and some horses under an expired grazing licence which continues to operate on a month-by-month basis;
 - iii) A runway for model aircraft within the grazed area, which is used by the Tamaki Model Aircraft Club Incorporated under an unregistered licence (final expiry 2022);
 - iv) A coastal track which is part of a track network along the Tāmaki coast and the Omaru Stream;
 - v) Carparking and a dilapidated and closed boat ramp on the Council-owned portion of the Reserve.
4. The Reserve has an annual operational cost of approximately \$203,000 per year, mainly for maintaining the sports fields. An additional approximately \$450,000 has been spent over the last five years on improvements to sports facilities, visitor facilities, tracks and foreshore restoration. Future budget for the Reserve includes:
 - i) \$400,000 for a splash pad near the Recreation Centre in the next three years;
 - ii) \$300,000 for park improvements in the next two years (choosing priorities from the 2015 concept plan);
 - iii) A portion of the \$3.2 million for the Tāmaki Estuary path (greenways network) over the next three financial years.

APPENDIX 2: AUCKLAND COUNCIL SUMMARY OF POINT ENGLAND PLANS

5. The Omaru Stream is an important ecological corridor from the Tāmaki River coast through the Glenn Innes urban area, and linking westward to Purewa Creek and Orakei Basin. The stream is part of a catchment with planned stormwater improvements that will involve the exchange of local reserve land to accommodate stormwater retention areas. A foreshore restoration scheme has also been planned for the Point England Reserve and amenity planting and wetland restoration programmes involving community volunteers have been undertaken.

6. A number of proposals have been or are currently under consideration on the Point England Reserve. These include:
 - i) Upgrade the sports fields to a sand base to enable greater winter use, and install training lights (currently on hold);
 - ii) Site for relocation of Mt Wellington Rugby League club;
 - iii) Location for displaced pony clubs;
 - iv) Upgraded neighbourhood playground;
 - v) Stormwater and stream restoration areas, daylighting and fish passage to help improve water quality and habitats;
 - vi) Retaining the existing open spaces for passive recreational activities;
 - vii) Route for a new cycle and pedestrian trails;
 - viii) Basketball courts (sponsored);
 - ix) Community gardens;
 - x) Additional tree planting;
 - xi) Additional car parking.