

Submission to the Local Government and Environment Select Committee

In the matter of the *Point England
Development Enabling Bill*

Auckland Council, 31 January 2017



Mihimihi

Ka mihi ake ai ki ngā maunga here kōrero,
ki ngā pari whakarongo tai,
ki ngā awa tuku kiri o ōna manawhenua,
ōna mana ā-iwi taketake mai, tauivi atu.
Tāmaki – makau a te rau, murau a te tini,
wenerau a te mano.
Kāhore tō rite i te ao.

I greet the mountains, repository of
all that has been said of this place,
there I greet the cliffs that have
heard the ebb and flow of the tides
of time,
and the rivers that cleansed the
forebears of all who came those
born of this land
and the newcomers among us all.
Auckland – beloved of hundreds,
famed among the multitude, envy
of thousands.
You are unique in the world.

Title: Point England Development Enabling Bill

This submission is from Auckland Council ('the council'). It contains the council's feedback on the *Point England Development Enabling Bill* ('the Bill') for consideration by the Local Government and Environment Select Committee ('the Committee').

The submission represents the views of the council, and has been approved under delegation by the Mayor and chair of the Environment and Community Committee.

Comment from local boards of Auckland Council has been received as input into the development of this submission. The Maungakiekie-Tāmaki Local Board, which is most directly impacted by this Bill, is making a separate submission.

The council wishes to appear before the Committee to discuss this submission. The council asks that hearings are held in Auckland to enable the council and community affected by this Bill to attend. The council also asks to be heard concurrently with the Maungakiekie-Tāmaki Local Board.

Executive Summary

1.1. Auckland Council submits that:

- Point England Reserve is a highly valued public reserve for the Tāmaki community and the wider Auckland community
- Use of special legislation to lift reserve status and provide for housing development outside normal statutory processes sets a concerning precedent
- Assurance must be given that the Crown has considered all other options for reaching a Treaty settlement with Ngāti Paoa, such as the potential release of land owned by the Tāmaki Redevelopment Company
- If the Crown pursues the course of action proposed by the Bill, impacts from the loss of reserve land must be offset by reinvesting the entire proceeds of the sale in improved public open space in the Tāmaki area
- The proposed development land, if sold, should only be sold to Ngāti Paoa as a component of their Treaty settlement or otherwise remain as reserve land.

1.2. The principal purpose of the Bill is to provide a housing development opportunity for Ngāti Paoa at Point England (Kiano) Reserve ('Point England Reserve' / 'the reserve') as a component of a Treaty settlement.

1.3. The council supports Māori social and economic development, and in particular Treaty settlements. It acknowledges that the Tāmaki area, comprising the modern-day suburbs of Panmure, Tamaki, Point England and Glen Innes, is historically and

culturally significant to Ngāti Paoa. The historical grievances of Ngati Paoa should be addressed and remedied and, therefore, the council supports a Treaty settlement with the Crown. The council appreciates Ngāti Paoa will submit on the Bill, and in doing so will set out in greater detail their aspirations for the land.

- 1.4. However, the council submits it is undesirable to see any loss of public open space land in an environment of sustained population growth such as Auckland is experiencing.
- 1.5. The council supports the concerns raised by members of the Tāmaki community about the use of reserve land for housing, including the loss of sports fields and habitat for endangered shore birds, and loss to the integrity of the reserve as expansive open space.
- 1.6. The council submits that cutting across an existing statutory regime, namely the process for permanently revoking the protected area status of land under the Reserves Act 1977, in order to achieve other policy outcomes through special legislation, sets a concerning precedent.
- 1.7. The council is concerned to know whether the Crown has considered all other options, such as the release of Tāmaki Regeneration Company land for the settlement, rather than reserve land.
- 1.8. The council's position on the Bill is therefore as follows:
 - 1) While the land has underlying Crown title, and the Crown has the ability to revoke reserve status through special legislation, if the Bill is to proceed there is a significant impact on public open space which must be offset by reinvesting the entire proceeds of the sale into the provision of improved and, if possible, new public open space within the affected community. The Bill must be amended to provide this if agreement is unable to be reached between the council and the government before this Committee reports back to Parliament.
 - 2) Because the principal rationale for the Bill is, in the council's view, to provide a housing development opportunity for Ngāti Paoa as a component of a Treaty settlement, the Bill must be amended to ensure that only Ngati Paoa has the opportunity to develop the land. If that opportunity is not taken, the land should remain a reserve.
- 1.9. The council is also aware that, at the time of this submission, public statements made by Ngāti Paoa indicate a smaller area of land might be considered for housing.
- 1.10. The council would support as a priority changes to preserve the existing sports-field area. This would not require a change to the Bill, but it would require a change to the Survey Office Plan for the 'development land' referred to in the Bill.
- 1.11. The council has heard public views that the Bill should not proceed at all, and that the Crown should provide alternative Treaty settlement outcomes to Ngāti Paoa. The

council has also heard views which support the social and cultural outcomes Ngāti Paoa seek by re-establishing a community in Tāmaki. The council is therefore concerned that the Crown has considered all options for reaching a settlement in this case to strike the appropriate balance between these views.

1.12. The submission which follows provides contextual information on the Point England Reserve for the benefit of the Committee and expands on the points made above. Sections provided are:

2. Background
3. Treaty settlement proposal for housing development at Point England Reserve
4. Balancing competing priorities – need to offset loss of reserve land
5. Policy considerations underpinning the Bill and council’s response
6. Potential reduction of development area to preserve sports fields
7. Possibility of a non-Ngāti Paoa developer
8. Environmental impacts and mitigation options
9. Local Board views

ATTACHMENTS

Attachment A: Map showing proposed development land

Attachment B: Map showing present configuration of sports fields

Attachment C: Memorandum by Dr Tim Lovegrove on possible impacts on roosting and nesting shorebirds, with suggestions for mitigation

2. Background

Point England Reserve has a sixty year history as public open space land. This section provides information to assist the Committee to understand the reserve and its present uses and management.

Establishment of Point England Reserve

- 2.1. Point England Reserve is located on lands the Crown acquired from Ngāti Paoa in the early 1840s, soon after the signing of the Treaty of Waitangi. The Crown then on-sold these lands to European settlers.
- 2.2. Around a century later, at the end of 1945, the Crown and the Auckland City Council agreed a general development plan for what was called the Tamaki Development Scheme, which was designed to cover the suburbs of Glen Innes, Point England and Tamaki, and parts of Panmure and Glendowie. Most of the land put into the scheme was then privately owned and farmed as rural land, and the Crown was required to acquire it from those owners.
- 2.3. In 1945 the 45.4259 hectare area which now forms the main body of the Point England Reserve (Lot 1 DP 44920) was identified as the 'main recreational area' for the development scheme. Being flat land and situated overlooking the Tāmaki River, the land was seen as possessing unique opportunities as a reserve, and was intended as part of a related whole of reserves throughout the development.
- 2.4. A decade later the legal steps were undertaken to finalise a survey plan and vest the reserve in trust in Auckland Council as a recreation reserve. In this way the land is held today by Auckland Council in trust, and the Crown retains a reversionary interest.
- 2.5. In 1997 the main area of the reserve and two other smaller parcels were gazetted a recreation reserve under the Reserves Act 1977, to be known as the 'Point England (Kiano) Reserve'.¹ In its current configuration the reserve contains 48.1516 hectares.
- 2.6. The 2.3775 hectare portion of the reserve, which is adjacent to the foreshore of the Tāmaki River, is owned in fee simple by Auckland Council by way of a gift in 1927. The 0.3482 hectare portion is also held in fee simple by Auckland Council. Neither of these areas is proposed for housing development under this Bill.
- 2.7. Since its establishment, the Point England Reserve has been enjoyed by generations of residents in the Tāmaki area, and by the wider Auckland Community.

¹ "Kiano Reserve" has been a name used for the reserve area north of the Omaru Creek, with access provided from the end of Kiano Place. The two additional areas are Part Allotment 1 District of Tamaki and contained in NA970/35 (Limited) of 2.3775 hectares, and Lot 16 DP 99636 of 0.3482 hectares.

Current configuration and management of the reserve

- 2.8. Point England Reserve is the largest tract of public open space on the Tāmaki River foreshore. Under the council's Parks and Open Spaces Provision Guidelines 2016, the reserve could be described as a sub-regional park 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. Much of the reserve offers panoramic coastal views across the Tāmaki River and back to Maungarei (Mt Wellington).
- 2.9. The reserve presently provides important facilities for Auckland as well as important open space for the Tāmaki community:
- Sports fields and associated infrastructure catering for a range of sports, including rugby league and football in the winter, and cricket/kilikiti pitches in the summer (Attachment B). The fields are fully utilised during summer (configured as 4 cricket/kilikiti pitches), and are effectively utilised in winter given the constraints imposed by being clay-based fields. Under the current configuration there are 5 full-sized football / rugby league fields, 2 smaller football fields (70m x 50m), and 4 junior football fields (50m x 30m) for winter play. The fields are also used informally by the adjacent Point England Primary School.
 - The Glen Innes Pool and Leisure Centre, and the Glen Innes Family Centre on Elstree Avenue.
 - Rural-type open space with grass cover managed through grazing (the 1988 grazing licence has expired but is rolled over on a month-by-month basis with the same grazier).
 - 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).
 - Coastal track which is part of a track network along the Tāmaki coast and the Omaru Stream.
 - Car parking and a closed boat ramp on the council-owned portion of the Reserve.
 - Watercare infrastructure.
 - Roosting and nesting habitat for threatened native bird species.
- 2.10. The council regularly uses grazing stock to manage grass length on reserve land. The 1988 grazing agreement for Point England Reserve outlines council's purpose 'to keep the grass reasonably short at all times to obviate the need for mowing and to have the turf useful for the public'. The grazed areas at the reserve are accessed by the public and there are stiles which allow fences to be crossed with ease.

- 2.11. Council submits the presence of stock does not indicate reserve land is of low value or is undervalued by the public. The presence of stock can be enjoyed by the public and can form a feature of a reserve. In winter months, however, significant areas of the reserve can be boggy, which impairs public use of the grazed areas. With the proposed redevelopment of the wider Tamaki area, and the consequential estimated population increase of 20,000 people over the next two decades, council further submits that there is an opportunity for this grazed area to be further developed for recreational use.
- 2.12. Council also notes that more recently the public has been discouraged from walking in some of the grazed areas to help protect bird nesting habitats (see section 8 below).

Operational costs and budgeted expenditure

- 2.13. Current operational costs for Point England amount to around \$203,000 per year, mainly to maintain the sports fields. Approximately \$450,000 has been spent over the last five years on improvements to sports facilities, visitor facilities, tracks and foreshore restoration.
- 2.14. At present \$700,000 has been budgeted for park improvements over the next three years, although expenditure is largely on hold pending the outcome of the proposal facilitated by this Bill. In addition, a portion of the \$3.2 million budgeted for the Tāmaki Estuary path (greenways network) will be expended at the reserve over the next three years, mainly to develop the coastal track.
- 2.15. The lower reaches of the Omaru Creek run through the reserve. Auckland Council has approved budget of \$32 million to 2030 for improvements to functional and ecological values of the wider creek and catchment. Budget of \$2.2 million has been allocated for a significant wetland renewal of the pond near Elstree Avenue, which the creek runs through before passing into the estuarine area, which is covered by the Marine and Coastal Area (Takutai Moana) Act 2011.

Reserve management plan

- 2.16. 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. Preliminary review work was commenced by council staff on the plan in 2015. The review was paused due to the housing development proposal informing this Bill. No community engagement on the review had occurred.
- 2.17. It is anticipated, should this Bill become law, a new reserve management plan for the balance of the area remaining a reserve will be required. Community consultation on a new plan would take place in the usual manner. Given the role Ngāti Paoa would have as developer and future resident within the reserve, it is expected council would consult closely with them.
- 2.18. It should be noted that concept plans provided by Ngāti Paoa for the purpose of consultation with the public on this Bill, which include improvements to the balance of

the reserve not proposed for housing development, could be considered during the development of a new reserve management plan.

Current zoning

- 2.19. The Auckland Unitary Plan zones Point England Reserve as a combination of 'Open Space – Sport and Active Recreation' and 'Open Space – Informal Recreation'. Residential areas adjacent to the reserve are zoned 'Residential – Mixed Housing Urban' and 'Residential – Mixed Housing Suburban'. There is a significant area of 'Residential – Terrace Housing and Apartment Buildings' to the west of the reserve, across Elstree Avenue, and running to the town centre.
- 2.20. Overall, the Unitary Plan provides for an intensification of housing density across the Tāmaki area suburbs.

Tāmaki Redevelopment Company

- 2.21. The Tāmaki Redevelopment Company (TRC) is a joint shareholding company between the Crown and Auckland Council, established by both parties to lead the substantive regeneration of the Tāmaki area in accordance with social, economic, spatial and housing objectives. As such the TRC embodies a significant existing relationship between the Crown and the council, with a shared and long-term commitment to regenerate the Tāmaki community.
- 2.22. The Crown has transferred 2,800 Housing New Zealand Corporation properties to the TRC and provided the company a \$200 million loan facility. Through intensification and a re-build of existing social housing stock a net increase of up to 6,700 dwellings is anticipated over the next ten to fifteen years. At an average of 3 persons per dwelling, that means a potential increase of population across the Tāmaki area of around 20,000.
- 2.23. Auckland Council has committed to invest the equivalent to anticipated development contributions, which may vary depending on the number of houses delivered. Of that sum, around \$30 million has been earmarked at this stage for investment in the open space network.
- 2.24. Point England Reserve is within the Tāmaki regeneration area. The TRC previously considered use of some of Point England Reserve for housing purposes to provide houses for existing tenants elsewhere in the Tāmaki area whose homes are to be redeveloped. As part of this thinking it was proposed land from the reserve could effectively be exchanged for other TRC lands elsewhere in the Tāmaki area, which would become reserves and allow other open space facilities to be expanded.

3. Treaty settlement proposal for housing development at Point England Reserve

- 3.1. The council's principal concern about the Bill is the impact on reserve land for both the Tāmaki community and the wider Auckland community. This section describes use of reserve land in Treaty settlements, and outlines how the Treaty settlement proposal to use some of the reserve as housing land came about.
- 3.2. The section also describes how the proposal was considered and engaged on by the council, and how the area of 'development land' was identified.
- 3.3. This is important context for the council's submission that the impact of the loss of reserve land from this Bill must be fully offset.

Use under Treaty settlements of reserve land vested in Auckland Council

- 3.4. The Crown, as party to the Treaty of Waitangi, makes decisions on Treaty settlements. Parliament has the sovereign right to pass legislation to settle historical Treaty settlement claims and change the use and purpose of land.
- 3.5. The Crown has previously used reserve land vested in trust in Auckland Council in Treaty settlements. Outside the normal process under the Reserves Act 1977, settlement legislation is used to lift reserve status and revert ownership to the Crown, then transfer the land to iwi/hapū. In almost all instances, reserve status is then re-imposed on the land, meaning public use and enjoyment of the land continues. This means the settlement legislation remains consistent with principles underpinning the Reserves Act to preserve and manage land for the benefit and enjoyment of the public.
- 3.6. This Bill takes a different approach. As drafted, the reserve status of the development land will be revoked, and the land will be available for housing development. Public use and enjoyment of the land as open space will cease.

Proposal by Ngāti Paoa for housing development at Point England Reserve

- 3.7. The council is not a party to Treaty settlement negotiations and is not a signatory to deeds of settlement. The Crown nevertheless consults the council when it considers offering Treaty settlement redress over Crown land, or land with a reversionary interest to the Crown, which is administered by the council. Cabinet takes those views into account when agreeing to offer redress. Such consultation normally takes place under the confidentiality afforded Treaty settlement negotiations.
- 3.8. In late 2013 the Office of Treaty Settlements (OTS) conveyed the Crown's intention to transfer part of Point England Reserve to Ngāti Paoa as a local purpose (marae) reserve, with the iwi appointed the administering body.² In early 2014 the Governing Body passed resolutions supporting the marae proposal, as did the Maungakiekie-Tāmaki Local Board. It was understood Ngāti Paoa were keen to begin a process of

² Media statements by both Ngāti Paoa and the government have referred to the provision of a marae site.

reconnecting their community with the wider Tāmaki area. Establishment of a marae would be a significant step to achieve this.

- 3.9. The council was advised that in 2015 Ngāti Paoa came to understand the TRC had considered using some of Point England Reserve to rehouse existing TRC tenants as the properties they occupied were redeveloped. Ngāti Paoa raised their aspiration to develop part of the reserve for housing with OTS and the Ministry of Business, Innovation and Employment (MBIE). Ngāti Paoa also raised their aspirations with some council members and staff, as well as the council subsidiary Panuku Development Auckland.

Communication with the Minister for Treaty of Waitangi Negotiations

- 3.10. In June 2016 the government sought the council's views on the possible provision to Ngāti Paoa of a right to purchase up to 13 hectares from Point England Reserve through their Treaty settlement. The council's Governing Body considered the proposal and provided a response which recognised the Crown makes decisions on Treaty settlement redress, that underlying title to the reserve is held by the Crown, and that there is a sovereign right to dispose of land through legislation. The council also noted Ngāti Paoa's aspirations and the potential benefits of the proposal to the iwi, and related benefits of achieving social housing objectives and an increase to housing stock for the Auckland market.
- 3.11. However, the council stated the proposal would mean a net loss of public open space for the Tāmaki community. If the government decided to proceed with the proposal, and because of that impact, the council indicated it wished to engage with the government to determine an appropriate package of measures to offset the loss. Such a package, it was suggested, could include both the acquisition and development of land for open space purposes elsewhere in the Tāmaki area, and the further enhancement of lands retained. An appropriate way to fund a mitigation package was sought.
- 3.12. Other matters raised by the council included a desire to be consulted to ensure the configuration of land proposed to be removed from the reserve was done in a way that enhanced public use of the balance of the reserve, protected environmental values, and was integrated with open space planning in the wider Tāmaki area.

Determining the area to be set aside for housing

- 3.13. In August 2016 the government confirmed to the council it had agreed to offer Ngāti Paoa the opportunity to purchase up to 13 hectares of Point England Reserve for housing. In September discussions were held on a possible configuration of the land proposed to be set aside from the reserve.
- 3.14. Government representatives made it clear the discussion was not an opportunity for the council to seek to lower the total area required for housing, and that final decisions on the area set aside for housing would be made by the government.

3.15. On that basis, council staff, with guidance from the Maungakiekie-Tāmaki Local Board chair, sought to strike a balance with government and Ngāti Paoa representatives on the provision of an area for housing, and priorities identified by the Local Board, viz:

- a quality neighbourhood park with road frontage on Elstree Avenue of an appropriate scale and with sufficient infrastructure to support local community needs and complement the Glen Innes Pool and Leisure Centre
- a quality suburb scale park at Point England Road of an appropriate scale and with sufficient infrastructure to support a range of sports and active recreation activities
- a quality suburb scale park on the Point England headland with appropriate scale and infrastructure to support a range of ecological, cultural, passive and informal recreation, and landscape values
- connections within the remaining open space, and through any proposed development, including:
 - ecological and recreational connections (walking/cycling) along Omaru Creek;
 - ecological and recreational connections (walking/cycling) along the Tāmaki River foreshore;
 - recreational and active transport connections (walking/cycling) from the surrounding area, including but not limited to:
 - Glen Innes town centre and railway station via Maybury Reserve;
 - Point England Road and Riverside Avenue;
 - Residential streets to the north, including Taniwha Street and Concord Place, Kestral Place, Kiano Place and Kotae Road;

3.16. The Local Board had also resolved that future development should be located in a way that protected, as far as possible, the existing landscape values, namely:

- the expansive coastal headland south of Omaru Creek
- the elevated and headland and vegetated banks to the north of Omaru Creek
- the foreshore to Tāmaki River.

3.17. A factor considered was the need to provide access to the housing development area from both Elstree Avenue and Point England Road, to avoid the development becoming a cul-de-sac, and to minimise the impact of a single exit on traffic flows. This meant some loss of sports fields was inevitable (i.e., to take a road from Point

England Road to the grazed area north of the sports fields, which was the most obvious area for housing development).

- 3.18. It proved impossible to identify 13 hectares for housing and meet the priorities identified by the Local Board, without either placing housing on the raised coastal headland area, or on a significant portion of the existing sports-fields (or both). Any reduction in sports-fields other than around one hectare to provide road access from Point England Road (and a single line of houses backing onto Point England School), would impact significantly on the summer usage of the reserve, and particularly the number of cricket / kirikiti pitches.
- 3.19. As a trade-off to keep housing off the elevated headland and maintain ecological and landscape values there, a reduced sports-field area sufficient to cater for four full-sized rugby league / soccer fields was identified to be retained. This amounted to a reduction in the current playing fields area of around 40%. Future development of the retained fields with sand bases would help mitigate the loss of playing capacity over winter months. For summer months, however, this would mean a reduction of the current 4 cricket / kirikiti pitches to 2 pitches.
- 3.20. Even then, identifying a full 13 hectares for housing development meant either use of a limited part of the headland area, or use of land at the Elstree Avenue end of the reserve. The latter had been identified for a neighbourhood park to complement the Glen Innes Pool and Leisure Centre, and to facilitate connectivity with the Maybury Reserve.
- 3.21. On that basis, the government decided to set the 'development area' at 11.69 hectares, as identified in survey plan SO 503726 referenced in the Bill.

Public consultation as the proposal was developed

- 3.22. Due to the confidentiality afforded Treaty settlement negotiations, the council has undertaken no consultation with the wider public on the proposal.
- 3.23. Since the Bill was introduced, members of the public have approached Auckland Council elected members, and particularly members of the Maungakiekie-Tāmaki Local Board. The Mayor has met with all parties involved and communicated the council position set out in this submission to all local boards across Auckland. Public meetings have also been held.

4. Balancing competing priorities – need to offset loss of reserve land

- 4.1. As stated, the principal concern the council has about the Bill is the impact on reserve land for both the Tāmaki community and the wider Auckland community. This section describes the competing priorities sitting behind the Bill and the council's attempt to agree with the government a way to offset impacts through reinvestment.

Competing priorities

- 4.2. Auckland Council supports Māori aspirations through recognition of the Treaty of Waitangi and customary rights, as priorities under the Auckland Plan, and has sought at all times to engage constructively when consulted by the Crown on Treaty settlement matters. However, it is undesirable to see any loss of public open space land, especially in an environment of sustained population growth such as Auckland is experiencing.
- 4.3. In discussions with the government, the council has stressed that the proposed loss of reserve land must be offset by reinvesting all proceeds of sale into the open space network in the Tāmaki area. At the date of this submission, no agreement has been reached on this.

Discussions on reinvestment

- 4.4. From late August 2016 discussions have been held with the government on how a loss of reserve space at Point England might be offset.
- 4.5. At the time of drafting this submission, the Minister for Building and Construction has confirmed the government is committed to reinvesting 100 per cent of the proceeds of the land in the Tāmaki community.³ Although the Minister agrees a 'significant portion' of the funds will be committed to recreation facilities and improvements to facilities at Point England Reserve, he has stated any balance will be reinvested in the adjacent Tāmaki redevelopment, which the council understands is a reference to enhancing social housing outcomes.
- 4.6. The council submits that impacts from the loss of reserve land must be offset, at minimum, by ensuring the entire proceeds of the sale are reinvested back into the affected community to provide both new and improved public open spaces. Such reinvestment should be focused on, but not confined to, the remaining area of Point England Reserve. The wider open space network in the Tāmaki area will also need to be considered.
- 4.7. The council submits that, should a way to fully reinvest the proceeds of sale into the open space network not be agreed by the time the Committee reports back to the House, the Bill must be amended to provide for this.

³ Press release 6 December 2016, The Hon Dr Nick Smith, 'Point England housing development announced'

Need for reinvestment into the Tāmaki area

- 4.8. The loss of land from the Point England Reserve impacts both the reserve itself, and the wider open space network through the Tāmaki area. The first impact is to further increase the population looking to utilise open space. That population is expected to increase by around 20,000 people in the next two decades.
- 4.9. The impact on the network itself takes two forms: loss of existing playing fields, and loss of rural-type parkland which currently provides for community recreation and which has ecological values. The lost land has potential to cater for future population growth by providing community park space for passive recreation and potentially, in the longer term, additional playing fields.
- 4.10. Prior to the proposal for up to 13 hectares of the Point England Reserve to be developed by Ngāti Paoa, the council had assessed reserve land in the Tāmaki area as being adequate to support the proposed TRC re-development and projected increase in population. On that basis an in-principle agreement was reached with the TRC that any reconfiguration of open space, such as through land exchanges, would result in no significant net loss or gain. Planning work by the council and TRC established indicative schedules for land exchanges and open space development to improve the current configuration of reserves, believed appropriate to meet the open space needs of the future community.
- 4.11. The proposal under the Bill to remove 11.7 hectares from the Point England Reserve constitutes a significant change to the open space impacts of redevelopment across the wider Tāmaki area.
- 4.12. It had been a long-standing intention of the council and TRC to reconsider requirements for the Tāmaki regeneration process and jointly prepare an Open Space Network Plan. This would include coordinating a review of proposed new open space in Tāmaki. That work is presently underway and should be available for consultation after the end of the first quarter of 2017, with the aim to complete the work in the second quarter.
- 4.13. The council provided a memo to MBIE on 3 November 2016 with information on options to mitigate impacts from housing development at Point England. At the request of the Minister, the council is undertaking further work to determine how the impact of a reduction in reserve land arising from this Bill can be offset through reinvestment, should the latter be provided.

Options for reinvestment

- 4.14. In council's view, reinvestment should not simply look to replace or bring forward expenditure the council has planned, or would likely make in the normal course of events over the next 5 to 20 years. Rather, reinvestment should enable the council to make alternative or enhanced open space provision for the future Tāmaki community, to replace the provision which could otherwise have been provided at Point England Reserve.

4.15. Potential areas for reinvestment identified by the council include:

Sports / active recreation

- increase the playing capacity of remaining fields at Point England Reserve by enhancing playing surfaces and potentially lighting
- partner with local schools in the Tāmaki area to improve school-owned playing fields, allowing public use outside school hours
- acquire new land with low reverse-sensitivity concerns (i.e., in a commercial zone) to provide at least the same capacity playing surfaces, with the potential for enhanced capacity through artificial surfaces or similar investment, and potentially an indoor facility

Passive and informal recreation

- provide additional investment for passive recreation within the existing network of reserves, including at Point England Reserve (pathways, planting, enhanced playground facilities, etc.)

Ecological / environmental

- provide additional investment to improve environmental outcomes, including at Point England Reserve – i.e., improvements to waterways, riparian buffers, coastal environments, and the enhancement of roosting and breeding habitat for threatened native shorebirds
- expand the ecological footprint in Tāmaki by purchase of additional suitable land at strategic locations.

4.16. A reinvestment package should capitalise the ability through the Tāmaki redevelopment project to reconfigure the existing open space network to enhance already available and under-utilised reserve land within the Tāmaki area.

4.17. One opportunity for reinvestment is to secure TRC land at strategic locations in the wider open space network. These sites could be selected to enhance existing parks, establish new neighbourhood parks, open up choke points, and provide greater connectivity between existing parks. Such land would likely be more expensive than the land at Point England Reserve proposed for housing, and consequently less land would be provided. However, the impact of this investment could have a multiplying effect on the existing open space, which would make the investment worthwhile. New reserve land acquired could replace, in part, reserve land lost.

5. Policy considerations underpinning the Bill and council's response

- 5.1. The council is concerned that a policy of prioritising housing, above open space provision, will lead to long-term negative impacts in Auckland. When reserve land is lost, it is typically gone forever – in most circumstances, replacing reserves in urban environments is prohibitively expensive.
- 5.2. The council is also concerned about the use of special legislation to achieve policy outcomes that could be achieved through existing statutory processes. This section discusses these and related policy issues.

Housing provision should not be seen as the primary driver for the Bill

- 5.3. The Regulatory Impact Statement (RIS) accompanying this Bill contains an analysis of the best way to meet four government objectives:⁴
- Protection of reserve values
 - Increasing the supply of housing, at pace in Auckland, including social and affordable housing
 - Assist 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.
- 5.4. The RIS records: 'MBIE weights the supply of housing, at pace, as the most important objective'.⁵
- 5.5. There is no question that housing supply in Auckland needs to be increased. However, this increase should be provided without unduly impacting on public open space, and it should not be achieved through special legislation to circumvent existing legislative and regulatory frameworks.
- 5.6. The council submits the Unitary Plan is the proper vehicle to regulate development in Auckland. A consideration of the balance of open space, housing and industrial land has recently taken place through the Unitary Plan process.
- 5.7. The council therefore submits the use of reserve land solely to achieve a housing outcome does not, by itself, justify a reduction in the reserve. That is not to deny the provision of further housing stock for the Auckland market is a positive outcome, but it is to question the way that outcome is achieved.

⁴ para 48, p10

⁵ para 49, p10; see also para 79

The Reserves Act 1977

- 5.8. Since 1957 the land proposed for housing development under this Bill has been a protected area under the Reserves Act 1977 (and prior to that under the Reserves and Domains Act 1953).
- 5.9. Reserves are held for the general purpose of preserving and managing the land for the benefit and enjoyment of the public. The Point England Reserve is vested in Auckland Council as a recreation reserve for the purpose of 'providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and outdoor recreation activities, including recreational tracks in the countryside.' (Reserves Act 1977, section 17(1).)
- 5.10. It is also important to note that where scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife are present on the reserve, those features, flora, fauna and wildlife must also be managed and protected, to the extent compatible with the principal purpose of the reserve. (Reserves Act 1977, section 17 (2)(b).)
- 5.11. The Reserves Act sets out stringent steps that the Minister of Conservation must follow before revoking the reserve status of part or all of a reserve. If that process had been followed in this instance, the Minister would have been required to set out the reasons for the proposed revocation and invite comment from Auckland Council. Public notification of the proposed revocation would have been required. Affected members of the public would have had a right of objection. The Minister of Conservation would have been obliged to take any such objections into account and would also have been subject to the principles of administrative law – the decision could have been reviewed by the courts.
- 5.12. This Bill, through powers conferred on parliament, circumvents all these statutory protections and common law rights. It is also for these reasons the council submits to the Committee that the full proceeds from the sale of the land must be returned to the affected community to ensure that the Bill results in no loss of recreational amenity, or any other reserve values, as currently protected under the Reserves Act 1977.

Unitary Plan process and changes to zoning

- 5.13. The Bill amends the zoning of the development land under the Auckland Plan from a combination of Open Space – Sport and Active Recreation and Open Space – Informal Recreation, to Residential – Mixed Housing Urban. This circumvents normal statutory processes under the Resource Management Act 1991.
- 5.14. If this Bill was not used to change the zone, the process required for the development land would be to seek a Plan Change (or Plan Variation if the Plan is not fully operative). The process of a plan change is governed by the first schedule of the Resource Management Act 1991. Plan changes typically require consultation with

affected parties prior to being prepared, and the preparation of a section 32 report, which is a cost/benefit analysis from a planning perspective.

- 5.15. Plan changes are publicly notified and are open to submissions. The submissions are then summarised and there is opportunity for further submissions to either support or oppose the original submissions. Either the Council or Independent Hearing Commissioners on behalf of the council hear the submissions and prepare a decision. That decision is appealable to the Environment Court. Typically a plan change process can take anywhere from one year to 2-3 years, depending on the level of interest and whether appeals are lodged.
- 5.16. The Crown advises that a zone change is necessary in order to achieve the objective of providing housing development at pace. It is council's submission that use of special legislation to provide for housing development outside of normal Resource Management Act 1991 statutory processes sets a concerning precedent.
- 5.17. The impacts on the plan change process in principle should be considered. Plan changes provide a process for issue identification and enable, through submission and decision making, for refinement in the allocation of resources (in this case land use rights). This process is one which institutionally needs to be protected as an interface of devolved democracy with resource allocation. Council remains concerned that this core method of town planning within New Zealand does not lose its integrity as a fair and open process for resource allocation.
- 5.18. In the absence of a formal plan change process there are limitations on the ability of the council to comment on the proposed intention of the Bill to zone the land Residential – Mixed Housing Urban. However, given the zoning of adjacent areas and the apparent intention to provide a large relatively unconstrained development site, the proposed zoning appears to be appropriate to achieve this intent. An argument could be made that a portion could be zoned Mixed Housing Suburban, but on balance Mixed Housing Urban would appear to be consistent with the Unitary Plan's objectives and policies relating to urban growth and form and the Residential – Mixed Housing Urban zone.
- 5.19. The council notes that, with the new zoning, the development will still need to go through a resource consent process.

Response to argument given to change Point England Reserve because of grazing

- 5.20. Although capital investment in parts of Point England Reserve is presently low, the reserve has significant value to the community as both active and passive recreation space. The reserve also serves as an area that can receive greater investment in time to meet the future needs of the Tāmaki community.
- 5.21. The council emphatically rejects arguments that the current practice of grazing stock to manage grass length on part of the reserve is, of itself, a justification for the use of that land for housing.

- 5.22. The council, along with the Cornwall Park Trust, manages a number of farm parks in the Auckland region. Farming provides a practical means of maintaining larger areas of open space and enables city residents to interact with farm animals, an important part of New Zealand's economy and heritage, which is not readily accessible to many Aucklanders. Point England Reserve was unlikely to be maintained as a farm park in the long term, due largely to the opportunity to enhance the ecological services in the area and to meet the changing recreational needs of a growing population.
- 5.23. The argument that grazing indicates low demand for parkland is therefore flawed. If taken to its logical conclusion, large areas of much-loved reserve land across Auckland would be sought for housing, which is entirely unacceptable.
- 5.24. The council is also aware the reserve is a home to threatened native bird species and that there are a range of other environmental values.

Reserve land not land that could normally be used in the Crown land programme

- 5.25. The council notes that the Point England Reserve is not land that could normally be included in the government's Auckland vacant land and under-utilised Crown land programme ('the Crown land programme'). For the land to be considered for use under that programme, this Bill is required to remove reserve status and revert the land to Crown ownership.

No precedent is set by this Bill

- 5.26. As stated, this Bill must not be seen as creating a precedent for the future use of special legislation to circumvent statutory processes for reserves and provide substantial areas for housing development. The circumstances at Point England, involving Ngāti Paoa, a Treaty settlement outcome, and the wider regeneration programme undertaken by the TRC, are wholly unique.

6. Potential reduction of development area to preserve sports fields

- 6.1. The Committee is likely to hear submissions opposing the Bill from members of the public who have particular concerns about the loss of sports fields.
- 6.2. As described above, in discussions on the configuration of the development land with the government and Ngāti Paoa, the council sought to balance a range of priorities. When doing so the potential loss of around one third of the existing fields, while retaining an area sufficient for 4 full sized rugby league / soccer fields, was identified. This configuration proved the only way to keep the raised headland free from housing development and preserve park space around Elstree Avenue, while meeting the government's objective to set aside close to 13 hectares for housing.
- 6.3. Sports fields are not evenly distributed around the Auckland region and nor does the distribution of fields match the distribution of demand. Fields are thus managed as a network, and it is accepted that a capacity shortfall in one area can be accommodated by a capacity surplus in another area, if travel distance or time is not too great.

- 6.4. The council assesses that the loss of sports fields at the Point England Reserve will have a direct impact on the Tāmaki community, as well as on the wider community which travels to use them.
- 6.5. As noted, there are four cricket / kilikiti wickets at the reserve. Over summer the wickets are used extensively both during the week and at weekends, mainly for cricket and kilikiti.
- 6.6. Kilikiti is an important element of Pacific Island culture with many teams and competitions being church based. Tournaments usually run all day for several days and attract very large crowds. A feature of tournaments is the need for more than one field in the same location. This is increasingly difficult to provide in Auckland and Point England Reserve is one of the few sites with more than one kilikiti field available and an associated area for social gathering. The nature of the game and how it is played means that many sports parks are either too small or unsuitable due to the close proximity of residential neighbours.
- 6.7. With the growth of summer sport it is becoming increasingly difficult to accommodate kilikiti needs elsewhere in Auckland. At present all sports parks large enough to cater for kilikiti are already being fully utilised for cricket and/or kilikiti or other summer codes. There is, therefore, no potential within existing sports parks for wickets displaced from the reserve.
- 6.8. In winter the fields at Point England Reserve are fully used, but playing capacity is limited by their clay base. The council had planned to upgrade one of the fields to a sand base, but this work is on hold as the matters covered by this Bill are resolved.
- 6.9. Winter playing capacity can be addressed across the sports network by upgrading fields to a sand base, or providing lighting and artificial turf. The council assesses that if the Point England Reserve fields are no longer available, additional winter capacity in other sports parks (including improvements planned for those parks) within central east Auckland will meet projected winter demand until around 2033/34, with a projected shortfall growing to around -130 playing hours per week by 2045.
- 6.10. An additional six artificial turf fields could be developed to accommodate the projected shortfall. At present the council would expect to pay around \$2.5 million to upgrade two adjacent fields to artificial surfaces. Such surfaces have a higher maintenance cost than regular fields. They also have the effect of reducing informal use of playing surfaces, including passive recreation uses.

Option to retain majority of sports-fields

- 6.11. Since this Bill was introduced, one option raised by Ngāti Paoa in public statements is to reduce the total area used for development.⁶ The council supports such a

⁶ For example: <http://www.radionz.co.nz/news/national/322874/auckland-residents-oppose-iwi-housing-plan>

reduction to preserve the ability of the Point England Reserve playing fields to provide the 4 existing cricket / kilikiti pitches.

7. Possibility of a non-Ngāti Paoa developer

- 7.1. The Bill does not require the Crown to sell the development land exclusively to Ngāti Paoa. The council understands the reason for this is to enable the Crown to negotiate in good faith a fair market price (and accompanying development conditions), without being compelled to accept a low offer. The council accepts the Crown needs to retain the ability to walk away from the commercial negotiation aspects of the proposal.
- 7.2. The likelihood that Ngāti Paoa and the government would fail to agree a price for the land appears low.
- 7.3. However, a theoretical possibility exists that another iwi could become the developer of the Point England Reserve lands, by the land being offered through the Crown land programme. Alternatively, if iwi chose not to take up the opportunity, the land could be offered to the private sector.
- 7.4. The council does not agree the land should be offered to any other party than Ngāti Paoa. The council's view is that in the event the government and Ngāti Paoa fail to agree a purchase price and development conditions, the land must either remain or return to being a reserve vested in Auckland Council.
- 7.5. This view is consistent with the argument that the use of reserve land at Point England solely to achieve a housing outcome does not, by itself, justify a reduction in the reserve. The Crown's determinative reason for using any of the Point England Reserve for housing is to assist settling the long-standing historical grievances of Ngāti Paoa, and to facilitate the re-establishment of a living Ngāti Paoa community in the Tāmaki area. Even then that outcome must be offset.
- 7.6. In addition, it should be noted that:
 - the housing development proposal was formally presented by government to Auckland Council as a Treaty settlement outcome for Ngāti Paoa, and the council responded on that basis
 - the council believes it is unlikely any other iwi/hapū in Auckland yet to conclude Treaty settlement negotiations would wish to make the same case as Ngāti Paoa to re-establish a community along the western foreshore of the Tāmaki River. Nor is the council aware that any other iwi/hapū has expressed aspirations to do so
 - an unusual outcome could theoretically occur where Ngāti Paoa was provided a local purpose (marae) reserve on the reserve, but the adjacent housing development was run by another iwi/hapū (or partnership of iwi/hapū), or a private party. The potential for synergy between the marae and the housing development would be lost

- while there is a potential commercial benefit for another iwi to take up the development opportunity, without the use of this Bill that opportunity would not otherwise be available through the right of first refusal provisions of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (other than going through the processes set out in the Reserves Act 1977).

8. Environmental impacts and mitigation options

- 8.1. Council submits that any negative environmental impacts of the proposed housing development must be offset by appropriate investment into ecological and environmental outcomes. For example, in improvements to waterways, riparian buffers, coastal environments, and the enhancement of roosting and breeding habitat for threatened native shorebirds.
- 8.2. The Committee will likely also receive submissions opposing the Bill from members of the public, who have concerns about the impact of housing development on the roosting and breeding habitat of threatened native shorebirds, along with other environmental impacts. The information provided below is meant to assist the Committee.

Roosting and nesting habitats

- 8.3. A brief memorandum by Dr Tim Lovegrove, Senior Regional Advisor (Fauna) from Auckland Council's Biodiversity Unit, is appended to this submission (Attachment C). Dr Lovegrove describes the use by shorebirds of Point England Reserve, including as roosting and breeding habitat for the threatened New Zealand dotterel.
- 8.4. The development proposal will roughly halve the area currently used by New Zealand dotterel and other shorebirds. Dr Lovegrove recommends an environmental impact assessment should be undertaken to describe which bird species are present, the effects of the proposed development on each of these species, and how these effects might be avoided, remedied or mitigated. Possible mitigation measures are included in Dr Lovegrove's report.
- 8.5. Given the absence of viable alternatives in the Tāmaki River area, where shorebird roosting and breeding habitat is very limited, the reserve presently provides important habitat for certain threatened shorebird species. It should be noted that while the grazed areas in the reserve are not prime nesting and roosting habitats for shorebirds (such as coastal shell banks), habitat enhancement measures could be undertaken to improve the value of the area for roosting and nesting shorebirds.
- 8.6. Ngāti Paoa representatives have met with Dr Lovegrove, and have stated they are keen to see the proposed development done in a way that minimises impacts on the shorebirds, and where possible, enhances ecological outcomes. The council endorses these views. Should this Bill proceed, the council can work with Ngāti Paoa and other community groups to undertake practical measures, which enhance shorebird nesting and roosting habitats. These matters should also be considered as

priorities for the reserve when the reserve management plan for Point England Reserve is revised.

Omaru Creek

- 8.7. The environmental status of both the Omaru Creek and Tāmaki River is considered very poor, with the State of the Environment monitoring reports consistently grading both systems as F and E ratings (which are at the very poorest end of the grading). To assist with improving the quality of the Omaru Creek, and to support the intensive redevelopment in the catchment, the council is currently projecting capital expenditure of \$40 million to \$60 million over the next 25 years to build new and upgrade existing stormwater infrastructure and management devices.
- 8.8. Currently in the Point England Reserve the council has approval and budget to renew the existing south-west management pond to address a number of existing environmental and ecological issues, as well as support the redevelopment of part of the Omaru Creek catchment. The projected construction cost of the enhanced wetland is \$2.2 million.
- 8.9. Council staff advise the environmental impacts on Omaru Creek and Tāmaki River from the proposed development on Point England Reserve can be managed through integrating Water Sensitive Design concepts within the development.

9. Local Board views

- 9.1. Views of six local boards of Auckland Council are recorded here. The local boards express concerns with the Bill, and particularly the risk a precedent may be set by it. A number of the boards state they are opposed to the Bill for these and related reasons.
- 9.2. The Maungakiekie-Tāmaki Local Board, which is most directly impacted by this Bill, is making a separate submission that stresses the specific views of that board. Their submission attaches notes from a community meeting the board facilitated on Friday 27 January.

Devonport-Takapuna Local Board

- 9.3. The Devonport-Takapuna Local Board notes its concern with the limited timeframe for the public, council and local boards to consider and understand the impacts and implications of the Bill. The local board recommend the submission timeframe be extended to allow for meaningful and effective public engagement on the Bill.
- 9.4. The board submits it opposes the intent and purpose of the Bill, as this approach to land acquisition for development purposes sets a concerning precedent to future developments across the Auckland region.
- 9.5. The board submits it opposes central government using the approach taken in the Bill to amend the recently adopted Unitary Plan, as it circumvents the regulatory process

for rezoning land and avoids important aspects such as public consultation and hearings.

- 9.6. The board recognise that the Point England area is going to experience both significant population growth and intensification in the next ten years, and therefore retaining the land is critical to providing high-quality open spaces for them.
- 9.7. The board recommends that, should the Bill becomes legislation, all proceeds of the sale are reinvested into providing public open space in the Point England area. This process should include working with the Maungakiekie-Tāmaki Local Board to identify the appropriate site, and also provide open space amenities that reflect community need.
- 9.8. The board expresses disappointment at the lack of consultation undertaken prior to the release of the Bill for public submissions.
- 9.9. The board notes that there is no supplementary documentation to provide the necessary due-diligence and analysis to support the rationale for the Bill.

Hibiscus and Bays Local Board

- 9.10. The Hibiscus and Bays Local Board opposes the Bill as it stands for the following reasons:
 - The precedent the Bill could set
 - The loss of a large tract of public coastal ‘wilderness’ open space which would be irreplaceable in Auckland
 - Loss of environmentally sensitive land.
- 9.11. Specifically, the Hibiscus and Bays Local Board submits that the Bill could set a precedent whereby other Crown reserve land vested as recreational reserves could be sold for other purposes in an ad hoc way on the whim of Government. The local board holds that such land must continue to have the afforded protection it has under the Reserves Act 1977.
- 9.12. The Hibiscus and Bays Local Board acknowledges:
 - the need for more affordable housing in Auckland
 - the need for Government to redress and remedy Treaty grievances with Ngāti Paoa
 - the need for Ngāti Paoa to have land in which to re-establish their living community in the vicinity of the land set aside for their marae.
- 9.13. However, the board is concerned that the land proposed for these purposes is part of a large tract of public coastal ‘wilderness’ open space, which will be irreplaceable if

the proposed development were to proceed. Such land is essential to be retained, especially given Auckland's anticipated large population growth.

- 9.14. The board submits that the government should seek other suitable land in the vicinity of the marae with which to meet the purposes of this Bill. The Unitary Plan already provides further housing opportunities within the Tāmaki area. The board also submits there are other Treaty settlement options that do not require the acquisition of reserve land for housing.
- 9.15. The board is concerned about the loss of environmentally sensitive land which sustains habitat for a number of rare or endangered shore birds. There is a need to for an Environmental Impact Report to be undertaken to shape further decision making.
- 9.16. The board submits there is no guarantee that a precedent would not be created by circumventing the statutory process under the Reserves Act 1977. The local board has two significant tracts of reserve land (Centennial Park, Campbells Bay and Western Reserve, Orewa) similar to the Point England Reserve, each of which has a valid Reserve Management Plan, and finds the process proposed in the Bill alarming.
- 9.17. In regard to these two reserves, the board notes:

Centennial Park

- Crown land vested in Auckland Council but managed and maintained by Hibiscus and Bays Local Board
- Gazetted as a recreational reserve in 1884 (originally called the Takapuna Domain)
- 73.9 hectares mainly covered by regenerating native bush with walking tracks accessible to the public
- Campbell Bay Tennis Club and the Mairangi Bay Playcentre

Western Reserve

- Crown land gazetted as a recreation reserve in 1923
- Contains Te Ara Tahuna Walk and Cycle Way, Estuary Arts Centre, Orewa Motor Camp, Orewa Bowling Club, Hibiscus Coast Youth Centre, HBC Community Centre, Orewa Skateboard Park, and Hibiscus Dog Obedience Club
- All the Western Reserve facilities have been developed with the assistance from local board and community funding. The board continues to provide financial and other support to these groups.

Howick Local Board

- 9.18. The Howick Local Board area is an area where significant growth is occurring and will continue to occur. The Howick Local Board has a strong view that when intensification takes place, it is vitally important that the demand for housing is balanced with the inclusion of public open spaces to protect and enhance the living experience enjoyed by the people residing in the Howick Ward.
- 9.19. The board has some significant areas of public space (e.g. Musick Point and Macleans Reserve) and is concerned that the disposal of public open space at Point England could set a precedent across the wider Auckland area.
- 9.20. Irrespective of these concerns, the Howick Local Board submits it does not support the revocation of reserve status over such a substantial part of the Point England Reserve, and believes it is inappropriate.

Manurewa Local Board and Papakura Local Board

- 9.21. The Manurewa Local Board and Papakura Local Board jointly considered the Bill and submit that:
- The Bill should not become the precedent for the sale of reserve land in other parts of the Auckland region
 - The entire proceeds of the sale of the Point England reserve land should be reinvested back into the local community to provide for additional or improved public open spaces.
- 9.22. The boards acknowledge their support of the position taken by the Mayor on the Bill, and emphasise the following:
- That it is important that Aucklanders have access to outdoor spaces they can enjoy with their families and that public open space is not compromised due to intensification under the Unitary Plan.
 - That when intensification takes place, it is vitally important that we balance the demand for housing with good urban design and the inclusion of public open spaces to protect and enhance the living experience enjoyed by Aucklanders.

Waiheke Local Board

- 9.23. The Waiheke Local Board comments the Crown intends to sell a 26% portion of the Point England Reserve to Ngāti Paoa and to invest in housing on this land, which is consistent with the Crown's Treaty obligations.
- 9.24. The board agrees that the legitimate grievances of Ngāti Paoa, which also has mana whenua status on Waiheke Island, should be addressed and remedied. However the board wishes to express its deep concern that this action should not create a precedent for the loss of reserve land for housing. As Auckland and Waiheke come

under increasing pressure for residential intensification, open space will become more important as a place for recreation and replenishment.

- 9.25. The board submits that Treaty settlements must be respected but beyond that, the Crown and Auckland Council should not be selling land unless it is to develop assets for the public good such as: community facilities, swimming pools and schools. Future health care needs may also require space.
- 9.26. The board notes that Department of Conservation reserves on Waiheke Island serve not only to act as spaces for public recreation but also act to protect the coastline and marine environment from harmful land-based activities. This is also the case at Point England where the reserve provides a buffer between the urban environment and the Tāmaki Estuary.
- 9.27. The Waiheke Local Board submits it would not wish to see further loss of reserve land for purposes other than public recreation, community facilities and environmental protection in the Auckland region or in the rest of the country.

ATTACHMENT A – map showing ‘development land’ (from Regulatory Impact Statement)



ATTACHMENT B – Map of current configuration of sports fields



ATTACHMENT C – Memorandum by Dr Tim Lovegrove on possible impacts on roosting and nesting shorebirds, with suggestions for mitigation

Memo

25 January 2017

To: Rachel Kelleher, Biodiversity Manager, Infrastructure and Environmental Services, Auckland Council

cc: Alastair Jamieson, Biodiversity Team Manager (Regional), Infrastructure and Environmental Services, Auckland Council

From: Tim Lovegrove, Senior Regional Advisor (Fauna), Biodiversity Unit, Infrastructure and Environmental Services, Auckland Council

Subject: **Possible impacts of proposed development at Point England Reserve on roosting and nesting shorebirds, with suggestions for mitigation**

Introduction

Point England Reserve currently comprises a mown playing field and open country, which is grazed by cattle. Due to its proximity to the Tāmaki River, Point England Reserve is used by a number of shorebird species as a high tide roost. It is also a breeding site for threatened New Zealand dotterels and pied stilts.

The Tāmaki River

At low tide, the intertidal area of the Tāmaki River adjacent to Point England Reserve, is an important feeding ground for a wide range of resident and migratory shorebird species. At various times of the year, the Waitematā Harbour, Tāmaki River and other intertidal areas along Auckland's east coast support large flocks of bar-tailed godwit, lesser knot, pied and variable oystercatchers, pied stilt, banded and New Zealand dotterels and wrybill plover.

The Auckland isthmus is unique with its 3-hour difference between Tasman and Pacific tides, allowing shorebird flocks commute from side to side working the tidal difference to advantage, and enabling almost continuous feeding, should the birds require it.

Unlike the Manukau and Waitematā Harbours, the Tāmaki River has very few high tide roosts for shorebirds. The carrying capacity of intertidal areas for shorebirds is linked to the proximity of good high tide roosts. If roosts are degraded or lost, the numbers of shorebirds using the adjacent intertidal feeding areas may decline.

Tahuna Torea, located just north of Point England, is one of the more important roosts in the wider Tāmaki River area. However, mangrove growth and plantings have both reduced the extent of open areas where waders formerly roosted.

The grassy open country at Point England is also an important roost in the Tāmaki River area. The large size of the reserve, and the location of the coastal walkway around its perimeter, helps to reduce human disturbance of the roosting flocks. Disturbance is a critical factor for roosting shorebirds and frequent disturbance has a serious negative effect on energy budgets and ultimately the birds' ability to migrate and breed successfully.

New Zealand dotterel

Point England Reserve is a breeding site for the New Zealand dotterel (Conservation status: Threatened, Nationally Vulnerable). Currently 4 pairs breed there. The dotterel breeding territories are spread across the grazed areas of the reserve. The proposed development will displace two of the breeding territories.

The site is also an important autumn-winter roosting site for this species, and up to 27 birds have been reported roosting there. With a global population of just 2200 birds, this flock of 27 represents more than 1% of the total population. Under the Ramsar Convention on wetlands of international importance, to which New Zealand is a signatory, any site which supports more than 1% of the global population of a wetland species is internationally significant for that species.

Other shore and wetland birds

The open paddocks and the sports fields are also used as a high tide roost by around 300 pied oystercatchers and around 70 pied stilts (both At Risk, Declining). Some pied stilts also breed there. Smaller numbers of other wetland birds and shorebirds also occur there, including: royal spoonbill, white-faced heron, pukeko, variable oystercatcher, banded dotterel, shore plover, bar-tailed godwit, spur-winged plover, black-backed and red-billed gulls, Caspian tern, paradise shelduck, and shoveler and mallard ducks. The shore plover (Threatened, Nationally Critical) is an occasional visitor from Motutapu Island, where this highly endangered species is currently being re-established by the Department of Conservation.

Environmental impact assessment

In view of the importance of the site for shorebirds, an environmental impact assessment should be undertaken to describe which bird species are present, the effects of the proposed development on each of these species, and how these effects might be avoided, remedied or mitigated.

Possible mitigation

The area available to breeding and roosting shorebirds will be significantly reduced by the proposed development. It will be necessary to avoid, remedy or mitigate negative effects on the birds. Measures could include:

- Better fencing around the headland shorebird breeding and roosting area to prevent dogs being exercised on the coastal walkway from reaching the grassy open area. There is a good working example of a dog-proof fence on the Mangere foreshore, which separates a coastal walkway from a large shorebird roost.
- Changing the dog access rules for the section of the coastal walkway, which encircles the area of the headland where shorebirds occur, from off-leash under control to on-leash.
- As a condition of consent, making the proposed development a cat-free subdivision.
- Establishing more widespread pest control to reduce the numbers of mammalian predators.

- Managing the open grassy area of the headland with light cattle or sheep to maintain a low sward suitable for shorebird roosting and breeding.
- Creating a more suitable roosting substrate near the tip of the headland where the autumn-winter NZ dotterel roost is located, by mowing or laying bark mulch or shell, to create an open area clear of most vegetation.
- Creating dotterel nesting sites by mowing or laying bark mulch or shell and adding nest camouflage and chick-shelter structures such as small logs, driftwood and small wooden shelters. Working examples of enhanced dotterel nesting habitat can be seen on the artificial mounds established on the City of Cork shell banks in Shoal Bay as a condition of consent during construction of the North Shore Busway.
- Creating alternative or improved roosts nearby, e.g. at Tahuna Torea, possibly through some mangrove clearance, and/or nourishing existing shell banks with additional shell and sand to enhance the existing roosts and to create new roosts for shorebirds. Working examples of both nourished and artificial roosts can be seen in Shoal Bay and on the Mangere foreshore.