

Supplementary information - Treaty of Waitangi provisions

Appendix– Explanation of Māori design and development concepts

Policy 2.5.3.2 in the draft Unitary Plan directs:

Provide for papakāinga, marae, customary use, cultural activities and commercial activities to support Māori economic, social, and cultural development.

This appendix compiles information describing each of those activities. Where possible, treatment of these activities in legacy plans is included.

What are marae?

- **Definitions of marae in legacy plans**

Legacy plan definitions of marae commonly mention:

- a 'complex' of land and buildings
- focal point of Māori cultural, spiritual, social, political and economic activity.

Definitions of marae include a broad mix of activities. All definitions include wharehui (meeting house), and wharekai (dining hall). Other definitions include a variety of residential and non-residential activities, often with the broad addition of 'associated/supporting facilities/buildings'. Although the definition of marae frequently includes economic activity, none of the legacy definitions include economic activities.

- **Definition of marae in Maori Policy and Strategy paper for the Auckland Plan**

The Māori Policy and Strategy technical paper prepared for the Auckland Plan provides a comprehensive description of the concept of 'marae', stating:

'There are approximately 57 Marae in the Auckland Region. Marae continue as key institutions that contribute to community development through, providing turangawaewae (a place to stand) for Maori people; nurturing Maori cultural identity and self-determination; fostering social cohesion through the practice of manaaki; and providing communities with facilities in times of civil emergency...

Increasingly Marae are growing as the hub of the community delivering **social, educational, and health services** to whanau, kuia and kaumaatua, and local people. This service provision takes place through Marae whanau delivering services directly to the community (through partnerships with agencies), or by way of Marae providing the venue for external service providers and programmes to reach communities. This service delivery aspect is important for self sustaining Marae.

Marae are looking to further grow their economic function and contribute to communities through running **employment schemes, tourism schemes, cultural events, afterschool programmes, community events, and hosting** locally, nationally and internationally. Many Marae provide the site for **kohanga reo and kura kaupapa Maori**. Manurewa Marae and Hoani Waititi Marae now provide the base for restorative justice programmes.

Marae are the institution at the heart of Tangata Whenua people. Thriving Marae enable cultural sustainability through the practice of tikanga, tangi, te reo, whakapapa, whaikorero, whanaungatanga, manaaki, and rangatiratanga. There are numerous other Marae which are place based and serve the cultural needs of local Maori, while yet other Marae serve as urban footholds for tribes from other areas. Examples include Te Tira Hou affiliated with Tuhoe, Mataatua affiliated with those of the Mataatua waka, and Te Mahurehure affiliated with Te Mahurehure hapu of Ngapuhi. Yet other Marae are church based, or based on institutions like schools, and tertiary campuses. With the cycle of building in the 1970s, 1980s, and 1990s many Marae in Auckland are now due for upgrades, and new facilities to meet increased existing, and future projected demand’
(Auckland Council 2010, *Māori Policy and Strategy in the Auckland Plan* p.71)

The Technical Paper identifies that some marae are on Māori land, and face the similar barriers to development as proposals for papakāinga or other development on Māori land. Other marae are on private or public general land, and can be zoned as Open Space under the District Plan, classified as reserves under the Reserves Act, or as Māori Reservations under Te Ture Whenua Māori.

Legacy plan provisions for marae on general land

Manukau, Waitakere and Auckland legacy plans provided for papakāinga and marae on general land through special purpose zones. North Shore also provided for marae and associated kaumatua housing through a special purpose zone. These zones included specific objectives and policies. Marae (sometimes with associated kaumatua housing) were provided for within some open space zones.

Legacy plan provisions for marae - activities

<i>Legacy plan</i>	<i>Residential activities</i>	<i>Non-residential activities</i>
Auckland City	Residential accommodation associated with the marae	Educational and associated facilities
Franklin	Papakāinga housing	Open area for ceremonial occasions Traditional community facilities Kokiri centres
Manukau	None	Whanau, community, cultural, social and educational gatherings (including tangihanga) Wharenui, wharekai and ablution facilities
North Shore	Kaumatua (elders) housing	Kohanga reo (language nest) Kokiri units (skills training centres) Other supporting facilities
Papakura	None	Ablution facilities
Rodney	None	Any associated buildings Kitchen facilities
Waitakere	'Marae activities' not defined	
Auckland Regional Policy Statement	Kaumatua (elders) housing	Kohanga reo (language nest) Kokiri units (skills training centres) Other supporting facilities
Auckland Regional Plan – Coastal	Kaumatua (elders) housing	Kohanga reo (language nest) Kokiri units (skills training centres) Other supporting facilities

The Māori Policy and Strategy technical paper prepared for the Auckland Plan suggests the following activities are desirable in marae complexes:

- Social, educational and health services
- Kohanga reo and kura kaupapa Māori
- Economic activities including employment schemes, tourism schemes, cultural events, afterschool programmes, community events, and hosting groups

The Environment Court decision (Decision No. W 014/2007) regarding an appeal to the *Marae Special Area (Te Atatu)* zone noted that: ‘...we have a concern that there seems to be no requirement to establish core facilities such as the whareniui, the wharekai and that kaauta either before, or at least in conjunction with, the other activities spoken of such as education, health services, employment facilities and housing. The Rule should be amended accordingly. Also we consider that the latter group of activities requires careful definition to avoid possible disputes later about the line between activities with a cultural connection to the marae and culturally unrelated commercial activities’. However, the inclusion of economic activities in the definition of a ‘marae complex’ is supported by Auckland Plan Directive 2.4: Support marae development to achieve social, economic and cultural development.

What are cultural activities?

Māori Values Supplement states:

Part 2, section 6(g) of the RMA requires decision-makers to recognise and provide for the protection of protected customary rights as a matter of national importance. This relates to foreshore and seabed customary rights order granted under the Foreshore and Seabed Act 2004. This section has not yet been the subject of substantive judicial consideration. Customary activities may include a variety of customs and practices undertaken by Māori. For example:

- Schedule 3 to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 provides a list of customary activities relating to the Waikato River, including the launching and use of waka and support craft for ceremonial, customary, recreational, competition and sporting purposes; the collection of river stones, shingle, and sand for customary practices; use of the river for bathing and cleansing; and use of the river for spiritual and cultural health and wellbeing.
- Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 recognises customary food gathering by Māori, and the special relationship between tāngata whenua and places which are of customary food gathering importance (including tauranga ika and mahinga mataitai).

While the range of customary rights and activities do not have express provision in the RMA, they may be recognised and provided for under the relevant Part 2 provisions which recognise Māori values’ (MfE 2010, p. 293)

Examples of cultural activities in Treaty Settlements in Auckland include a list of cultural activities to be considered for inclusion in the Integrated Management Plan for the maunga covered by the collective settlement with Nga Mana Whenua o Tamaki Makaurau.

What are customary uses?

The Proposed National Policy Statement on Biodiversity states:

‘This national policy statement also seeks to recognise the traditional relationship developed over centuries of close interaction by Māori with New Zealand’s indigenous biodiversity. It also acknowledges the role that Māori have as kaitiaki who

are involved in all aspects of biodiversity management including conservation, customary and commercial uses' (MfE 2011, p.2)

The Proposed National Policy Statement on Biodiversity defines 'Customary use' as follows: 'According to tikanga, the extractive use of indigenous plants or animals by tangata whenua for traditional uses including food gathering, carving, weaving, and rongoa (traditional medicine)' (MfE 2011, p.3)

Policy 7d of the Proposed National Policy Statement on Biodiversity states: To recognise and provide for the role of tangata whenua as kaitiaki, when developing and implementing regional policy statements and regional and district plans local authorities shall provide for...:

d. customary use of indigenous biodiversity according to tikanga (MfE 2011, p.7)

The s.32 analysis for the Proposed National Policy Statement on Biodiversity notes that Policy 7d '...aims to mirror commitments of the NZ Biodiversity Strategy by supporting involvement of tangata whenua, recognising their values and interests and providing for customary use of indigenous species in accordance with tikanga' (MfE 2011, pp.17-18). MfE also notes that 'This enablement of customary use is, however, limited by other conservation legislation, under which the taking of indigenous species may specifically controlled (including the Wildlife Act, Conservation Act, National Parks Act, Reserves Act, and Marine Mammals Protection Act)' (MfE 2011, p.69)

What are papakāinga?

- **Auckland Plan**

The Auckland Plan states that the term 'papakāinga' 'applies to the development of Maori ancestral land or where appropriate, to land held in general title by Mana Whenua'. Therefore, 'papakāinga' can only be developed by mana whenua. However, the Auckland Plan also notes that 'the papakāinga concept is not limited to the cultural configurations attached to Mana Whenua', and 'can also be applied to Mataawaka interests' through providing for affordable housing with supporting physical and social infrastructure.

- **Definitions of papakāinga in legacy plans**

Legacy district plan definitions of papakāinga identified two criteria – ancestral or Māori land or land owned by Māori; and residential development. Only the Manukau Operative Plan included non-residential activities, stating that papakāinga means 'a traditional Maori settlement area on **ancestral lands** and includes activities associated with residential living such as urupa, agricultural activity, the exchange of goods and a marae complex'. The Manukau Operative Plan also stated that papakāinga housing comprises more than two dwellings provided for 'the tangata whenua who have "te mana o te whenua" status'. [See Appendix One for list of definitions]

- **Definition in Papakāinga Technical Report for Auckland Council**

The introduction to Papakāinga Technical Report states: "Papakāinga' refers to 'papa' or Papatuanuku as the ancestral earth mother and 'kāinga' as the village communal living environment. Today the term is used to define both an ancestral land base as well as *a collection of dwellings occupied [by] Māori connected by common kinship or kaupapa, located in reasonable proximity to*

each other and normally relating to a marae or other communal area or building. While traditionally papakāinga are generally conceived of as being rural in nature, with 83% of Māori now urbanised, increasingly such developments will desirably be developed in urban and peri-urban areas'

- **Definition in *Tu Whare Ora - Building Capacity for Maori Driven Design in Sustainable Settlement Development (2008)***

A report prepared for LandCare New Zealand by five leading Māori architects and designers defines papakāinga as:

'Papakāinga, a traditional settlement that encourages community identity, participation, and membership, is an attempt to reclaim, repossess, and reoccupy traditional lands. Common descent from an ancestor affirmed individual rights and privileges to occupy and build on common property; these rights also extended to the use of natural resources. Common rights and privileges thus underpin the concept of papakāinga (Metge, 1995). Papakāinga is a term used to describe *Maori communal and cluster type settlements*. The term papakāinga comes from Papa – meaning land, earth, ground; and kāinga – meaning settlement, community, dwelling or village (Ryan 1989; Williams 2000). In traditional times, settlements were designed on the clustering of dwellings and other buildings utilities within the use of common open space between. The central focal point of the community was usually the largest dwelling and the marae – or the open courtyard in front (Best, 2005). The use of papakāinga community models continues today by many Maori communities.

Contemporary papakāinga are usually dwellings, buildings and other structures constructed on communally owned family landholdings. Share or occupational rights are allocated to individual members of a family to build, live or occupy a portion of space on family land (Durie, 1998; Mead 2003). A range of papakāinga structures are apparent in New Zealand and they are commonly based on a Maori governance structure – under [the Maori Land] Act 1993 – and influenced by the Resource Management Act and local government rules and regulations'¹

Awatere et al. list a number of common characteristics of papakāinga settlements besides housing, including proximity to a marae or community complex, and the presence of facilities such as 'schools, Kohanga reo, kaumatua flats, a medical centre, farms, orchards, and sporting facilities'²

The diversity of activities that may occur in a papakāinga settlement is reflected in other definitions, which range from the simple:

- 'building on ancestral land' (Ngati Kahungunu Roopu Pakeke quoted in Wixon 2008, p.1); to the comprehensive:
- '[d]evelopment by Tangata Whenua of an area on any land in the traditional rohe [area] of Tangata Whenua that is developed for live, work and play

¹ Awatere, Pauling et al. 2008, p.18

² Awatere, Pauling et al. 2008, p.18

including but not limited to residential, social, cultural, conservation and recreation activities' (SmartGrowth 2007, p.192)

- **Definition in New Zealand Coastal Policy Statement**

The New Zealand Coastal Policy Statement defines papakāinga as:

Development of a communal nature on ancestral land owned by Māori.

- **Example from Manukau Operative Plan - The Concept of Papakainga**

'The term 'Papakainga' is often used to describe a village settlement. However, the concept of papakainga has a deeper meaning. While 'kainga' refers to '*place of abode*', 'papa' refers to '*the earth floor/site of a native house*' indicating the strong association that each community has with the land. Traditional papakainga embrace and immortalise tipuna (ancestors) and give tangata whenua, *turangawaewae*, a place of belonging. They connect tangata whenua in a long chain of being back to the beginning of time. Traditional papakainga are therefore a spiritual home for the iwi and hapu with ancestral links to that area'.

- **Example from Manukau Operative Plan**

Objective 17.2.4.1– 'Papakainga should be able to be developed in a way that allows a range of activities associated with papakainga to be established'

- Policy 17.2.4.2 – Any adverse effects of activities associated with Papakainga or Maori Purpose areas on adjoining properties, in particular on:
 - a) access to sunlight and daylight;
 - b) privacy; and
 - c) the acoustic environment;should be avoided, remedied, or mitigated'
- Explanation/Reasons: 'The choice of activities is dependent on the requirements and desires of tangata whenua and should not be unnecessarily curtailed or restricted. To provide for the needs of tangata whenua, a number of activities need to be permitted that may not otherwise be permitted under the policies of the surrounding zone(s), which is primarily either Rural or Residential. This is an appropriate policy in the context of the requirements of papakainga, and given that papakainga are blocks of land within which a range of activities could occur generally without creating detrimental effects beyond the perimeter of the zone'

What are commercial activities?

Research released by Te Puni Kokiri in April 2011 reported a range of aspirations relating to economic development on Māori land:

- To retain the land that had been handed down from tipuna thereby maintaining owners' association with it
- To utilise the land within the context of exercising values associated with land as a tāonga tuku iho such as kaitiakitanga and manaakitanga
- To provide the opportunity for owners to directly utilise undeveloped land (e.g. for hunting and fishing, papakāinga, cultural observance)
- To achieve a balance between managing the land as a viable business but still maintaining the owners' cultural connection
- To retain and improve existing long term businesses associated with the land, especially farming, and for owners to use the land directly rather than through lease

- To achieve the maximum financial return for the owners, provide employment for the owners where possible and to build a financial base for coming generations
- To achieve the best economic potential through exploring the possibility of diversification into new commercial opportunities (examples given were often comparatively low capital ventures including bee keeping, development of tracks and huts on undeveloped land for tourism ventures, and offering hunting and fishing tours).

Research released by the Ministry of Agriculture and Forestry in March 2011 estimated that:

- 20% of Māori freehold landholdings are well-developed businesses with the potential for further growth
- 40% of Māori freehold landholdings are currently developed for productive use but are clearly under-performing compared to similar enterprise benchmarks
- 40% of Māori freehold landholdings are under-utilised and under-contribute to the financial wellbeing of the ownership group

(MAF 2011, p.iv)

Legacy plans did not include specific objectives to support the use of Maori land as an economic resource. However, second-generation district plans around the country have included objectives relating to the economic use of Maori land.

The Kaipara District Plan (Appeals version, March 2012) contains the following objectives:

- 15A.5.1 To enable the Maori of the District to maintain and enhance their culture, traditions, economy and society, in order that their wellbeing (mauri), health (waiora), and ability to implement the Principles of the Treaty of Waitangi.
- 15A.5.3 To enable the use and development of Maori land in a manner which allows Tangata Whenua to provide for their social, economic, and cultural wellbeing while safeguarding resources and sustaining important sites and resources.

The Whangarei District Plan contains the following objectives relating to Maori land (finalised December 2011?):

- PKH3.4 Enable Maori to establish and maintain traditional settlement patterns, activities and development opportunities.

The Tauranga City Plan focuses on primary production on Maori land, including the following objective:

16A.4.4 Papakainga developments within the Rural and Future Urban Zones on multiple-owned Maori land provide housing opportunities for tangata whenua, are designed and set out on the subject site so as to be compatible with the existing and anticipated rural character and amenity of the zone, and allow primary production activities to continue on the balance of the site and surrounding sites.