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Planning for Papakainga Housing

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Abstract

The relationship that Māori have with their land is unique. Historically, this unique relationship caused Māori land to be administered under a different land title regime than European land in freehold title. This regime has also resulted in vast areas of Māori land becoming multiple-owned, often with many hundreds of owners. In other cases trusts were established to administer the land on behalf of its multiple owners, but the trustees have long since passed on with the trusts themselves falling into disorder.

While the *Te Ture Whenua Māori Act 1993* and *Resource Management Act 1991* both promote the sustainable management of development of Māori land, in practice there are numerous barriers which make this difficult and often unattainable. The lengthy and often convoluted administrative processes that have been established under the respective legislation by their administering agencies are often enough to deter even the most enthusiastic, committed and capable owners from building on their own land.

This paper identifies some of the land ownership and administrative barriers that presently exist for Māori, and discusses possible ways in which local government can remove some of those barriers and assist with the sustainable management of Māori land. It includes discussion on some of the current initiatives being explored by the Whangarei District Council and examines some of the approaches being advanced by the Council to build capacity within Māoridom so that they can better plan for their own communities.

Keywords: papakainga; housing; Māori; land; planning; resource management.

Introduction

Establishing papakainga housing within the Whangarei District is not easy. Whangarei District Council have only begun to appreciate how difficult it is for Māori to build papakainga housing on their own ancestral land after spending the last 18 months trying to fathom all the issues, considerations and requirements that must be carefully negotiated before a *whanau* can move into their *whare*.

This paper will firstly take you through the background research on Māori land, the barriers to development, the forms of land ownership and different land trusts available for Māori land-owners. A discussion is presented about what papakainga housing is, and the philosophy behind Whangarei District Council providing policy to support the development of it.

The issues relating to Māori land are very different to land in European title. This needed to be recognised during the policy development process, which included identification of the issues, consultation with stakeholders, working through the options, developing a draft framework, assumption testing, and exploring methods of implementation. Some of the options being advanced by other councils have been developed to work well in their district, but sometimes more tailored solutions are required. Also investigated is a region-wide unitary policy approach along with working with three government agencies along the way.

It's not always easy for two people to be on the same page, but when you are from different cultural backgrounds you are often starting in different books. But, what we have discovered is that it might just be that you are holding different translations of the same story, so if you persevere you can reach a common ending. We have a long way to go before we see how this story pans out, but the plot has been set for a very interesting journey.

Māori land

Māori land is unique. “*Māori land refers to a particular status of land that is distinctly different from all other land in New Zealand owing to its form of tenure and its controlling legislations*” (Stephenson, 2001: 163). Māori land cannot be bought or sold on the open market. It must be retained by Māori and passed down through the generations, forming multiple ownership. Māori land is registered through the Māori Land Court and is subject to *Te Ture Whenua Māori Act 1993* (the Māori Land Act), which supports this retention of Māori land. Section 17(1) of that Act states that the primary objective of the Court in exercising its jurisdiction shall be to promote and assist in:

- (a) *The retention of Māori land and General land owned by Māori in the hands of the owners; and*
- (b) *The effective use, management, and development, by or on behalf of the owners, of Māori land and General land owned by Māori.*

Today, Māori land forms the scenic and unspoiled backdrop to many developments and subdivisions throughout New Zealand because the land is often not developed. Some of the land however is uninhabitable and unusable for economic purposes due to the nature of the site, and with some 30% of Māori land being landlocked by land not owned by Māori, access is often difficult (McClean, 2002).

Māori Land Court Judge David Ambler (2007: 2) writes:

(Māori land) comprises mostly hilly terrain, river valley and coastal areas. Māori coastal land is now caught up in the race for coastal development. It risks losing that race and being sacrificed by local councils to provide the aesthetic backdrop to support other subdivision development: council zoning renders Māori land in coastal areas “green zones” for the benefit of neighbouring subdivision development.

Approximately 4.25% of the Whangarei District is made up of Māori land, which is comprised in some 950 blocks totalling 11,000 hectares. Small areas of Māori land are peppered throughout the District, although there are more significant concentrations in a few localities. To compare with other districts in the Northland Region, Kaipara District to the west and south has 9,600 hectares of Māori Land held in 230 blocks, making up 3% of the District's land area. Far North District has significantly more, with approximately 130,000 hectares (or 19% of the District's land area) being held in Māori land blocks.

Forms of Māori land ownership

Māori land blocks are often held in one single title (either under Māori Land or General Land title) with a collective of multiple owners. If one or more of the owners wish to build on 'their' piece of land, there are a number of ways this can be carried out.

Partition

Partitions under the Māori Land Act are defined by the Māori Land Court (2002: 8) as, “*when one or more owners separate their shares from the rest of the landowners and create a separate title*”. Partitions are often sought for Māori land to provide the owners with the necessary security to apply for finance to develop and build on the block. “*The Māori Land Court shall not make a partition order unless it is satisfied that the partition is necessary for the effective operation, development, and utilisation of the land*” (Māori Land Court, 2002: 8). In determining partitions the Court will therefore consider issues such as access and the lay of the land (Māori Land Court, 2002).

Partitions can also be used as title reconstruction and improvement procedures to separate interests in two or more neighbouring blocks to combine them into one title. The Māori Land Act provides for two distinct types of land partition, being a 'hapu partition' and a 'full partition'. “*Hapu partitions are granted by the Māori Land Court where the parcels will be held by members of the same hapu*” (Māori Land Court, 2002: 8). Although this procedure provides for the creation of separate titles to the land, it is not deemed by the *Resource Management Act 1991* to constitute a subdivision, so resource consent is not required from the relevant district council.

A 'full partition' deemed to be a subdivision of land by the *Resource Management Act 1991* because a separate Māori freehold title is issued for each partition. Subdivision consent is therefore required from the district council, and the resultant titles can each be used to secure finance. With the approval of the Māori Land Court these partitions can also be transferred into general title, enabling them to be sold on the open market or used as security for mortgages from mainstream banks. Today, these partitions are rarely used by Māori Land owners or supported by the Māori Land Court as these blocks have a greater possibility of becoming alienated, thereby defeating the purpose of the Māori Land Act.

Occupation Order

Section 328 of the *Te Ture Whenua Māori Act 1993* relates to occupation orders. Occupation orders are described in *Title Improvement* (Māori Land Court, 2002: 23):

An occupation order issued by the Māori Land Court gives a landowner the right to use part of the land as a dwelling site (normally an area of 1000 square metres).

Due to the Northland Regional Council's requirements for on-site wastewater disposal, the minimum area for occupation orders issued by the Māori Land Court within the Whangarei District is 2,000m². No separate title is created through occupation orders, and although having a right of occupation, the order holders do not have ownership over the occupied land.

License to Occupy

Māori Land Court (2002: 24) describe a license to occupy as:

A license to occupy has the same effect as an occupation order but is negotiated between the trustees of the land and the person intending to have the house built. The authority to grant a license must be contained in the trust order.

As with an occupation order, a license to occupy does not change the title ownership structure of the land. Instead of obtaining title, the licensee has exclusive rights to occupy a defined part of the block for a defined period of time. The Māori Land Court will usually issue a license to occupy for a period between 25 to 30 years.

Implications of Ownership Status

Although influenced by a number of factors, the decision on which form of ownership to use can have a bearing on eligibility for government assistance programmes. For example, New Zealand Housing Corporation has developed a *Kainga Whenua* ('Welcome Home') loan scheme, which is available for multiple-owned Māori land where license to occupy has been sought. Land defined by occupation order is therefore not eligible under this loan package, which acts as a further disincentive for pursuing this form of ownership. In *Te Tai Tokerau* the Māori Land Court prefers the use of occupation orders, while in other parts of New Zealand licenses to occupy appear to be the preferred form of tenure.

A further implication arising from Māori land tenure that Whangarei District Council is currently grappling with (and quite possibly other Councils throughout New Zealand as well) is how to identify who is the 'owner' under the *Building Act 2004*.

The *Building Act 2004* prescribes that only the owner can obtain building consent to build on the land. Therefore, before a dwelling can be located on Māori land, the Council, as administrators of the Building Act, needs to ensure that a 'license to occupy' or an 'occupation order' has been obtained by the prospective resident. Alternatively, the trustees must make the application for building consent in circumstances where the land is held in a trust.

Where land is administered through a trust, it is the trustees who are the owners. The Trust Order will detail the number or percentage of trustees that must agree to any decision made on behalf of the trust. For Māori land not held in a trust, the legal ownership is determined by a ‘share balance’, being the shareholding or percentage of shares each individual owns.

Māori land trusts

Significant quantities of Māori land are held in multiple ownership. For ease of administration and to assist with sustainable governance and management of the land, the Māori Land Court in *Te Tai Tokerau* (Northland) encourages the establishment of trusts.

The legal definition of a trust is an equitable obligation binding a person, the trustee, to deal with property over which he or she has control (the trust property) for the benefit of certain persons (the beneficiaries), any one of whom may enforce the obligation. The trustee may also be a beneficiary.

Māori Land Court (2001: 8). Māori Land Trusts. Department for Courts, Wellington, New Zealand.

There are presently five types of trust that may be administered under the *Te Ture Whenua Māori Act 1993*, being *ahu whenua*, *whenua topu*, *kai tiaki*, *whanau*, and *putea* trusts (Māori Land Court, 2001). The three most relevant to the establishment of papakainga housing are described by the Māori Land Court as follows:

*The **ahu whenua** trust is the most flexible type of trust. It is a land management trust designed to manage whole blocks of land and is often used for commercial purposes. It aims to facilitate and promote the use and administration of the land in the interests of the owners. **Whanau**, **putea**, and **kai tiaki** trusts can operate under the umbrella of an *ahu whenua* trust (Māori Land Court, 2001: 19).*

*The **whenua topu** trust is an *iwi* or *hapu* land management trust. It aims to facilitate the use and administration of the land in the interests of *iwi* or *hapu*. It has many of the features of an *ahu whenua* trust. It allows the trustees to conduct their business in a professional and business like manner and yet, at the same time, provide for the cultural needs of the beneficiaries (Māori Land Court, 2001: 21).*

*The **whanau** trust is a share management trust designed to manage specified shares in Māori land. It is the most family-orientated trust. It allows *whanau* to bring together all their descendants. This provides the *whanau* with an alternative to fragmenting their shares (Māori Land Court, 2001: 26).*

The *ahu whenua* trust is the most preferred by the Māori Land Court in *Te Tai Tokerau* to facilitate the development and administration of Māori land blocks for papakainga housing. An important feature of these trusts is that they can include multiple blocks of land, as well as general land owned by Māori. *Ahu whenua* trusts can lie within a hierarchy of trusts (such as a *whanau* trust) but it is these trusts that have the most potential for the development of papakainga housing.

Barriers affecting use and development of Māori land

There are a number of rules and requirements associated with Māori land ownership that make it unique from any other form of land tenure in New Zealand. One of the main impediments for Māori who seek to utilise their ancestral land is the difficulty of raising finance to develop land that is held under multiple ownership. Banks and other lenders are often reluctant to lend on multiple-owned Māori land because of statutory restrictions on the sale of the land and consequentially, the difficulties in establishing its capital value and gaining security over the land. Robertson (2004: 6) writes that:

The overarching problem in relation to Māori land is that the current complexity of ownership locks it out of the normal institutional use, development and enjoyment by the owners. This problem leads to difficulties in administration, utilisation, and title maintenance and income distribution.

Greater challenges can be experienced even closer to home – the diversity of opinion amongst family members is often the greatest obstacle, along with having the platform to hold the discussions, encountered by those seeking to develop land held under multiple-ownership. Over the years the land is passed on through subsequent generations, with the ever-increasing number of owners perpetually adding to the complexity of the debate. There is often conflict and disagreements where there are a number of people involved, some of which may be the legacy of historic family grievances that cannot be readily resolved. Once established, trusts is an effective way of avoiding such difficulties while future proofing development and administering the land.

The costs associated with the development of papakainga housing are also seen to be a significant barrier by Māori land owners. Affordability is often lessened by the remote rural locations of much of the Māori land. The construction of sewerage, stormwater, power and phone connections in isolated areas adds to the overall cost of development. Without these facilities however, the lack of infrastructure often limits the ability of Māori to pursue sustainable management and development on their land. The compliance costs arising from the resource consent and building consent requirements add even greater up-front development costs.

...plans do not adequately cater for Māori circumstances and also because the cost of planning consents and appeals serve only the interests of those who could afford to speculate (Stephenson, 2001: 180).

However, before any judgments can be made about the apparent inequities between the land administration regimes for Māori Land versus General Land, the subtleties of their relationship must first be examined.

The legislative context

Resource Management Act 1991 (RMA)

The RMA is New Zealand's primary planning legislation. The purpose of the Act is to promote the sustainable management of natural and physical resources. The RMA defines sustainable management as:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety.

Under the RMA it is mandatory for a territorial authority to prepare a district plan for managing land use and development within its territorial boundaries. A district plan must not be inconsistent with any national policy statement and must give effect to the regional policy statement. The RMA requires district plans, and thereby any change to district plans to meet the purpose and principles of the RMA. Consideration must therefore be given to the extent to which a plan change achieves the purpose and principles set out in Sections 5 to 8 of Part 2 of the RMA.

Te Ture Whenua Māori Act 1993 (Māori Land Act)

The Te Ture Whenua Māori Act 1993 (Māori Land Act) came into force on 1 July 1993, replacing the Māori Affairs Act 1953. The purpose of the Act is to ensure that the owners of Māori land, their hapu and whanau will continue to hold the land for future generations. The Māori Land Act seeks to avoid the alienation of Māori land and set out stringent rules governing the recording of ownership, status of land, leases and trusts. There is no capacity for anyone to alienate Māori customary land, but multiple-owned freehold land can be partitioned under the Act. The Act provides for the change of land ownership and offers five different kinds of trusts, putea, whanau, ahu whenua, whenua topu and kai tiaki (as previously discussed).

Relationship between the Māori Land Act & the RMA

A number of Council and Māori Land Court officers have told us about their trouble grappling with the relationship between the RMA and the Māori Land Act in relation to the sustainable management of Māori land. The confusion largely stems from unclear linkages between the Acts, both in terms of their ‘purpose’ and their administration – whether partitions are deemed to be a subdivision for the purposes of a district plan for example.

The Māori Land Act is the primary legislation relating to the administration of Māori land. While it does contain some prescription as to how Māori Land can be used, it is the RMA that regulates the environmental effects resulting from land use. Partition orders can be sought under the Māori Land Act without requiring resource consent under the RMA. However, papakainga does not neatly fit into the ‘subdivision’ or ‘land use’ categories within the RMA, leading to misunderstandings and conflicts between applicants and councils.

The RMA states that Māori land is exempt from the subdivision provisions limitation of the RMA unless the Māori Land Act states otherwise (Section 11(2)). Conversely, the Māori Land Act states that partitions must meet the requirements of the RMA. The circular nature of the cross referencing between the two pieces of legislation places the ultimate onus on the Māori Land Court Judges to determine which provisions of the RMA (and by consequence, the district plan) apply when issuing a partition. To further confuse the matter, hapu partitions are excluded from the RMA definition of subdivision, so although new titles may result, they are not subject to the RMA (and thus the district plan) provisions. It is the Māori Land Court’s practice however, to have regard to the district plan when considering both full and hapu partitions to avoid difficulties arising at a later stage when building consents are sought from the district council. It is therefore important papakainga housing provisions are included in the district plan.

What is papakainga housing?

So what is papakainga housing, and how should it be provided for in a district plan? There is no single agreed definition of papakainga housing; it can include a number of buildings, such as housing, recreational facilities, marae or just one individual house on its own site. Common descriptions of papakainga housing typically make reference to the *whakapapa* relationship that Māori have with their ancestral land.

Whangarei District Council considers papakainga housing to be a form of development that can occur on ancestral Māori land. There are two main reasons for adopting this position. Firstly, papakainga housing is not just about *whare* – thus, defining it as a ‘housing development’ provides for greater flexibility for ancillary buildings and activities that are not necessarily related to residential activities. Secondly, papakainga housing is only provided for on ‘ancestral Māori land’. This ensures that our provisions apply to Māori land, other land (either Māori or general) that is administered under the *Te Ture Whenua Māori Act 1993* and general land owned by Māori that was reverted from Māori land to general land under the 1967 amendment to that Act. In a practical sense, there must be a genuine *whakapapa* link to the land, which can be determined through a status order from the Māori Land Court.

One of the people we had discussions with, said that traditionally, the literal meaning of papakainga housing was, ‘a nurturing place to return to’ hence the presence of ‘*kai*’ in the word as the land provides its people with food.

The philosophy behind papakainga housing

At present, the increasing cost of living has resulted in Māori moving out of urban areas, with many seeking to return to their ancestral lands (Whangarei District Council, 2009). Māori returning to their own land often look to build or occupy a house there, as there is a strong link between Māori and the land, particularly within their own tribal areas (*‘rohe’*). This link ties back to Māori roots and is central to Māori identity. A study undertaken by the *Centre of Housing Research* revealed that satisfaction among Māori participants was higher when living close to whanau or on whanau land (Waldegrave et. al, 2006).

It is important to understand the different way Europeans view home or land ownership as compared to Māori. Europeans tends to view the land in economic ‘ownership’ terms while Māori have a strong ‘relationship’ with the land in regards to spiritual and cultural values on land. “*Land is at the heart of Māori society*” (Stephenson, 2001: 193). Māori relationship with land is more about one’s *whakapapa* link to the land than about development of the land, and the RMA seeks to encapsulate this relationship as ‘*kaitiakitanga*’.

Papakainga and the Whangarei District Plan

The Whangarei District Plan currently contains no provisions relating to papakainga, and in the wider context many of the agencies involved lack material resources that could support the development of papakainga on ancestral Māori land. Restrictions on the sale of Māori land, and the consequential effect this has on access to finance, further impedes the use and development of Māori land by its owners, compared to the options available to other land owners.

Whangarei District Council is in the process of removing some of these impediments by dealing with papakainga housing in a targeted way in the District Plan. Because of the extent of Māori land within the District, and due to the unique attributes of Māori land, it has been recognised that it warrants particular attention by the Council.

It is Council's responsibility to define what 'way' or 'rate' at which subdivision can occur. Within this, Council needs to recognise and provide for Māori. In the Whangarei District Plan the construction of a residential unit in the countryside environment is permitted without resource consent if the residential unit will be the only residential unit on the site, or where there is at least 20 hectares of net site area associated with each residential unit. This does not cater for the development of papakainga housing on multiply owned Māori land efficiently.

The Environment Court has observed that land subdivision and development in rural areas has historically been undertaken on a site by site basis, using arbitrary district wide rules with little or no regard being placed on the physical features of the land. This council is therefore looking to move away from this approach to one with a greater degree of flexibility, where landowners create a plan to identify how their land can be managed or developed in a sustainable way.

Local authorities throughout NZ

We examined the district plans of other local authorities throughout New Zealand to see how papakainga housing was provided for in other districts. Most district plans throughout New Zealand have included 'papakainga' provisions, although the standards that councils apply to papakainga developments vary markedly.

Far North District

In the Far North District papakainga housing is provided for in rural environments if each dwelling unit has exclusive use of a 3,000m² area. Resource consent is still required in all cases however, with the Council reserving control over matters such as the number and location of the dwellings, location and standard of access, screening and planting. There has been some success with papakainga developments being applied for under this planning regime. The district plan also caters for papakainga housing as an 'integrated development' when a proposal does not meet the specified rules.

Gisborne District

The Gisborne District Plan contains a section dedicated to papakainga housing. Papakainga housing is allowed without resource consent subject to some amenity protection controls such as height limits, road standards, building size, fencing and so forth. This regime provides the owners of Māori land with maximum freedom and flexibility to use and develop their properties as they see fit, in accordance with the traditional and cultural relationship with their ancestral lands.

Hastings District

Like Gisborne, the Hastings District Plan provides for papakainga developments without resource consent if compliant with general performance standards such as building coverage, outdoor living space, service courts, parking spaces, sewerage treatment and requirements as to the location of buildings. Hastings District Council also introduced a papakainga guide in

2008, which is a non-regulatory initiative to provide step-by-step advice on how to navigate the development process.

Kaipara District

The operative Kaipara District Plan identifies all Māori land within the District through a separate 'Māori Purpose Zone'. Papakainga housing developments of 3 household units or less are permitted within this zone provided that each household unit has a net site area of 1,000m². The Proposed Kaipara District Plan provides for papakainga with more flexibility, allowing for no more than 10 individual units per site. Each papakainga development has to for example, meet the Performance Standards, align with the Engineering Standards, 1,500m² area of land per household for wastewater disposal within the boundaries of the site and so on. Also, there are the common planning restrictions, such as, maximum height, height in relation to building and setbacks. If any standard or rule is exceeded, resource consent will need to be sought from Council. The Council can then approve or decline the consent.

Rotorua District

Under the Rotorua District Plan, applications for papakainga are assessed against a set of criteria such as proximity to marae, effect on surrounding environment, and sustainable management. Applications for papakainga must include a development plan for the area, and the development plan must show the location and extent of the area proposed to become papakainga housing, building sites, number of household units and provision for infrastructure.

Western Bay of Plenty

Western Bay of Plenty has spent years developing a papakainga housing toolkit that was released in 2009. There are 5 parts of the toolkit, part 4 has being the latest one to be published which details technical design, options and associated costs.

Under Section 2 'Rural' of the Operative Plan for Western Bay of Plenty, provides for 'lots for houses on Māori land'.

"Multiple owned Māori land may be subdivided into lots each containing a substantial dwelling (see definition on following page) where the property is in "multiple ownership" and the subdivision is required for the purpose of excising from the land the site upon which such dwelling is erected. "Multiple owned Māori land" in this context means Māori land owned by three or more legal owners who have an undivided interest in the land which they have held since 31 March 1986. "Site" in this context means an area of land not less than 2000m²" (Western Bay of Plenty, 2008: 21).

Dwellings on Māori land is considered a controlled activity, provided there being an average of at least 4000m² of net land area per dwelling.

A special zone is also provided for settlements associated with community facilities in rural areas. The Māori Community Zones in the Transitional District Plan were essentially settlements located around Marae which are regarded as community facilities for Māori, particularly whanau (extended Māori family). The concept is continued in this District Plan. It is seen as appropriate, in terms of effects, to allow other settlements to be developed in association with other community facilities, such as rural primary schools.

A new zone is provided for these developments and is called a Residential (Rural Community) Zone, except where it is associated with a Marae, it shall be known as a Papakainga Zone and incorporates the name of the respective Marae. In general the Residential Zone rules will apply except that a different level of development standards (roading etc) is provided in recognition of the “low key” rural nature of such settlements.

Plan Change 94: Papakainga Housing

In 2009, Whangarei District Council initiated a two-phase project to incorporate provisions for papakainga housing into the District Plan. Phase One of the project was to develop objectives and policies for inclusion into the District Plan to provide a planning framework to support papakainga housing. Phase Two relates to the implementation methods, focusing on ways in which the regulatory processes can be simplified and planning capacity can be enhanced within Māoridom.

Findings

Our research has shown that the three components required to achieve successful papakainga housing on Māori land relate to administration, environment and resourcing. Conceptually these components equate to *Whakapapa* (Māori Land Court), *Tupuranga* (WDC) and *Puawaitanga* (resources). The *whare* is built to house the *whanau* who are the creative energy at the centre of the process. [Figure 1].

Successful papakainga provisions will be reliant on all three factors (environmental, administration and resourcing) being developed together as the district council’s planning rules alone will not be able to fix the current problems.



Figure 1 – Required components for successful papakainga

Phase One: Provisions

Due to the absence of any reference to papakainga in our District Plan, our first priority was to introduce objectives and policies to support and facilitate the development of papakainga housing on ancestral Māori land. The proposed objectives and policies focus on five key outcomes:

- Promoting traditional forms of development on ancestral Māori land.
- Development scale and intensity to be determined by the physical characteristics of each individual site.
- Maximum flexibility for the use and development of the land.
- Non-residential activities are supported where suitable to the locality.
- Ecological, landscape, cultural and heritage features of value to the wider community are protected.

Our research indicated that some local authorities in New Zealand had problems with the designation and zoning option because iwi were not in favour of Māori land being identified on planning maps. Thus, we felt the best approach was the creation of a process rather than relying on rules to manage the development of Māori land. This does not require Māori land to be identified on planning maps, so that changes to the District Plan are not necessary every

time the status of a particular piece of ancestral Māori land changes (through the Treaty of Waitangi settlement process for example).

The effect of the October 2009 amendment to the RMA (s86B) is that any proposed rules relating to papakainga would not have any legal effect until Council releases its decisions on submissions. This influenced our decision to notify the objectives and policies and have them tested through the public participation process ahead of any rules or other methods. It was imperative to us that the policy framework be introduced (which does have immediate legal effect) for any papakainga proposals to be considered against in the interim.

Our proposed policy framework makes way for the introduction of a management plan concept for the consideration of papakainga proposals on a site-by-site basis. Whangarei District Council has recently proposed a plan change to introduce a 'Management Plan Technique' that provides for subdivision and development to occur by way of a 'concept plan' where the rules relating to the use and development of the land are tailored to a particular site, taking into account its location, surroundings, and objectives and policies relevant to the subject land.

This proposed technique is effectively enabling applicants to write their own rules for their site, and will form the model for the "Papakainga Development Plan" that will be rolled out as Phase Two of our project.

Phase Two: Developing our approach

Our Current Initiative

As we were developing district plan provisions for papakainga housing, we became increasingly aware of the bigger picture that makes up the entire papakainga development process. There are significant disjoints within this process at the interface between councils and the Māori Land Court. We found instances where owners had recently been through confrontational disputes with family members through Māori Land Court proceedings, but were then informed by the Council that they were required to get those same family members' approval as 'affected parties' in terms of the RMA resource consent process. These situations should not arise, so we have set about to streamline and simplify the process to prevent unnecessary duplication of effort.

Our approach seeks to avoid duplication of processes by creating a technique that includes environmental management within existing land administration mechanisms. The use of Māori land trusts provides a more sustainable pathway for Māori landowners to manage their land, both now and in the future. The establishment of a trust ensures that a governing body is set up to future proof and succession plan the whenua. We believe it is an essential component in making the development of papakainga housing on ancestral Māori land successful.

If a trust has not been established, or it is not possible to do so, the Council will encourage Māori landowners to either go through the Māori Land Court process to establish a trust, otherwise follow the more stringent resource management requirements that the Council would require to ensure the ongoing management of environmental effects associated with land use and development.

We see a number of synergies between the land development models we are presently considering for all other rural and coastal areas of the district, and believe that the land development model using ahu whenua trusts may in fact be more sustainable than the

traditional European form of subdivision. There is an opportunity for trust orders (which are endorsed by the Māori Land Court) to include the papakainga development plan so that they include not just land administration provisions, but deal with sustainable environmental management matters as well.

We are continuing to examine ways in which the council can more effectively exercise its functions. Much time and money could be spent drafting rules and standards that require Māori landowners to engage planners to interpret before submitting an application for more council planners to assess. Instead, we are proposing a pilot scheme whereby council staff work with the Māori Land Court and alongside whanau to assist them with the planning of their sites and preparation of papakainga development plans. These projects will then be compiled into a dossier of case studies that will form stories to share with other landowners as a guide for whanau to develop their own papakainga.

To address concerns regarding the partiality and potential conflicts of interest, we are examining ways in which the Māori Land Court and neighbouring territorial authorities may delegate some of the consenting functions to each other as commissioners. Already there are positive signs that such a regime is very workable.

By showing Māori landowners how to plan for papakainga by working alongside them, we believe we have the opportunity to instill a greater awareness and appreciation of resource management issues than if we were to tell them how it will be. This awareness is the foundation on which greater capacity, resilience, and sustainability can be built within whanau and their communities.

Conclusion

Papakainga housing is regarded by Māori as a way of living on and utilising their ancestral land whilst retaining it as a single entity to be passed on to future generations. Therefore papakainga housing needs to be recognised by local authorities and provision made for it within district plans. These provisions should include clearly defined objectives and methods for the establishment of papakainga housing. It is important that specific provision is made for Māori land, due to its unique land tenure. Because tribal boundaries do not coincide with local government territories, councils should work together to ensure that consistency is achieved across boundaries. Flexibility also needs to be provided to allow for the many and varied needs of the different iwi groups. If all of these outcomes can be achieved, then Councils are in a position to remove some of those barriers that make it difficult for Māori to simply build a house on their own land.

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