

## ML – Maaori land

*The relevant area specific zone chapter provisions apply in addition to this chapter.*

### Overview

#### *Understanding Maaori land tenure*

- (1) Land in Aotearoa was governed and managed by hapuu in accordance with tikanga. This customary regime was profoundly changed in 1840 with the British Crown's assumption of sovereignty and the introduction of the doctrine of tenure and estates. The Crown became the sole body able to deal with Maaori regarding land. Following Te Riri Paakehaa (the New Zealand land wars), the government confiscated millions of acres of land from hapuu and iwi in the Waikato under the New Zealand Settlements Act 1863. Thousands of acres were returned via a Compensation Court. This land was no longer customary land. It had been converted into a freehold title. The Native Land Court was also established in the 1860s. One of the Court's primary tasks was to determine the nature of the Maaori customary interest in any land and to convert that interest into a fee simple interest which settlers could then directly purchase from those Maaori to whom it has been awarded. This land is now known as Maaori Freehold Land. As a result of Native Land Court determinations for generations that, on intestacy, interests were to be distributed equally among the children of the deceased, land interests have become fragmented. The combined impact of confiscation and the Native Land Court regime took from Maaori the land necessary to sustain their people. Other laws, such as Public Works legislation, also contributed to alienation of land. Today, approximately 5.5% of the land mass in Aotearoa New Zealand is Maaori Land that comes under the jurisdiction of Te Ture Whenua Maaori 1993. That includes some 5% of the land in Waikato District. Individualisation and extreme fragmentation continue to impede efforts of Maaori landowners to utilise and develop their land. This plan incorporates specific objectives, policies and rules and methods that are intended to enable utilisation and development.
- (2) Section 2 of Te Ture Whenua Maaori Act 1993 (Te Ture Whenua) directs that the powers, duties and discretions conferred by Te Ture Whenua are to be exercised in a manner that facilitates and promotes the retention, use, development and control of Maaori land as a taonga tuku iho. In light of the legislative history summarised above, and the designation of Maaori land as a taonga tuku iho, Te Ture Whenua imposes restraints on further alienation of land. The Maaori Land Court has jurisdiction to do such things as set aside land as a Maaori Reservation, to establish trusts, to grant occupation orders, and to grant orders for partition. It is common for the Court to request a Concept Management Plan or a Land Plan and comments from the Council as part of its deliberations).

### Te Ture Whenua

#### *Maaori reservations*

- (3) Under section 338, a Maaori Reservation may be created from Maaori Freehold Land or General Land for:
  - (a) "...the purposes of a village site, marae, meeting place, recreation ground, sports ground, bathing place, church site, building site, burial ground, landing

place, fishing ground, spring, well, timber reserve, catchment area or other source of water supply, or place of culture cultural, historical, or scenic interest, or for any other specified purpose;” or

- (b) for “a waahi tapu, being a place of special significance according to tikanga Maori”.

It is not necessary for a Maaori Reservation to include a marae and section 338 is broad enough to include a hauora, or health facility.

#### *Trusts and incorporations*

- (4) In light of difficulties associated with multiple ownership, Trusts and Incorporations are useful for managing blocks of Maaori Freehold Land or General Land. The Ahu Whenua Trust is the most common form of trust used for commercial purposes. Under section 215, an Ahu Whenua Trust may be formed where the Court is satisfied that the trust would “promote and facilitate the use and administration of the land in the interests of the persons beneficially entitled”. Other forms of trust that can be established under Te Ture Whenua that may be used to manage land include Whaanau Trusts and Whenua Toopu Trusts. The Court is required to set out the terms of any trust by Court order. The Trust Order would also identify the purposes of the Trust. Incorporations are another popular model for managing Maaori land. Incorporations are administered by management committees elected by shareholders, who work to a constitution set down by the Maaori Incorporations Constitutions Regulations 1994. A land plan or concept management plan can be useful as a planning tool to assist trustees and committee members fulfil their responsibilities, such as allocating licences to occupy land.

#### *Occupation orders*

- (5) Under Part 15, the Maaori Land Court may make an Occupation Order over Maaori Freehold Land or General Land. Where there is a Trust or Incorporation in place, the Court must not make an Occupation Order without the consent of the trustees or the Incorporation.

#### *Integrated development of Maaori Freehold Land*

- (6) The integrated and comprehensive management of Maaori land is promoted through a range of methods outside of the regulatory framework of the District Plan. Council has been actively leading the promotion of integrated planning of Papakaainga housing development with Te Puni Kookiri and a range of supporting agencies including Waikato Regional Council. This commenced with the development of the Papakaainga Maaori Housing Toolkit in 2013, developed to assist landowners in their aspirations to return to their whenua. This toolkit includes the development of concept plans.

#### *Treaty Settlement Land*

- (7) As part of Treaty Settlements, claimant groups such as iwi and hapuu receive an acknowledgement and apology by the Crown for its past actions and omissions, particularly in relation to confiscation, the Native Land Court regime and other legislation that led to Maaori being dispossessed of their land. Through settlement processes, post-settlement governance entities are established to receive cultural and commercial redress. The return of land is an integral form of both cultural and

commercial redress. With a few exceptions, claimants choose to have their redress land returned to them as General Land, rather than Maaori Freehold Land. The 1995 Waikato Raupatu Settlement created a unique form of inalienable title known as Pootatau Te Wherowhero title. Some of Waikato-Tainui's land is held in this title. For the purposes of this plan, land returned via a Treaty settlement is called Treaty Settlement Land. In this plan, Maaori land encompasses both Treaty Settlement Land and land that comes under Te Ture Whenua. Given the historical context set out above, it is an aim of this plan to remove any undue barriers for Maaori to utilise, manage and enjoy their land. To this end, the plan provides permitted activity status for particular uses and administration of Maaori Land.

## Objectives

ML-OI Whenuatanga (land management).

Tangata Whenua have the ability to utilise, manage and enjoy Maaori land in accordance with tikanga Maaori, including maatauranga Maaori.

## Policies

ML-PI Tangata whenuatanga (utilisation by landowners).

- (1) Tangata Whenua are enabled to sustainably manage their lands and resources in accordance with their cultural preferences and aspirations.
- (2) Tangata whenua are enabled to sustainably use and develop Maaori Land, through a range of uses in accordance with tikanga and maatauranga Maaori, including:
  - (a) Marae and associated facilities;
  - (b) Papakaainga housing development;
  - (c) Papakaainga buildings;
  - (d) Cultural events;
  - (e) Urupaa;
  - (f) Tuaahu;
  - (g) Waharoa;
  - (h) Church;
  - (i) Hauora;
  - (j) Koohanga;
  - (k) Conference centre and facilities;
  - (l) Waananga;
  - (m) Recreation facilities; and,
  - (n) Papa taakaro.
- (3) Commercial activity is provided for in a way and at a scale that supports the occupation, development and use of Maaori land and meets the needs of Tangata Whenua, whilst complementing or supporting the role of business town centres in the District.

*Non-regulatory policies*

- ML-P2 Non-regulatory policies.
- (1) Council will work with iwi, hapuu and whaanau to encourage and support the comprehensive, co-ordinated and efficient development of Maaori land.
  - (2) Alongside partner agencies, Council will support and promote the use of best practice guidance and toolkits for Maaori housing, including Te Kete Paaraha Mo Nga Papakaainga Ki Waikato: Waikato Maaori Housing Toolkit, to assist iwi and hapuu in the development of Maaori land.

## Rules

- (1) The rules that apply to Maaori Land are:
  - (a) Land use – activity rule ML-R1 to ML-R5;
  - (b) Land use – activity rules of the underlying zone, excluding the following:
    - (i) Home business; and
    - (ii) Commercial activity where the activity status is non-complying.
  - (c) Land use – effects rules of the underlying zone.
  - (d) Land use – building rules of the underlying zone, excluding the following:
    - (i) Number of residential units;
    - (ii) Minor residential unit rules;
    - (iii) Buildings and structures in Landscape and Natural Character Areas;
    - (iv) Building height; and
    - (v) Building coverage.
- (2) The following activities from Part 2 – District-wide matters do not apply to activities on Maaori Land:
  - (i) Rule WWS-R15 (Outfall structures located within an Identified Area);
  - (ii) Rule TRPT-R1(1)(a)(ix) (Vehicle access for all activities);
  - (iii) Rule TRPT-R2(1)(a)(v) (On-site parking and loading);
  - (iv) Rule TRPT-R2(1)(a)(vi) (On-site parking and loading);
  - (v) Rule TRPT-R2(1)(a)(x) (On-site parking and loading); and,
  - (vi) Rule TRPT-R3(1)(a)(vii) (On-site manoeuvring and queuing).]

### Land use – activities

ML-R1	Maaori purpose activity	
Maaori Land across all zones	<p><b>(1) Activity status: PER</b></p> <p><b>Activity-specific standards:</b></p> <p>(a) Building height does not exceed 7.5m in any of the following areas:</p> <p>(i) Outstanding Natural Landscape;</p>	<p><b>(2) Activity status where compliance not achieved: RDIS</b></p> <p><b>Council's discretion is restricted to the following matters:</b></p> <p>(a) The adverse visual and amenity effects from any building or</p>

	<ul style="list-style-type: none"> <li>(ii) Outstanding Natural Feature;</li> <li>(iii) Outstanding Natural Character Area of the coastal environment;</li> <li>(iv) High Natural Character Area of the coastal environment;</li> </ul> <p>(b) For residential units:</p> <ul style="list-style-type: none"> <li>(i) Where the underlying zone would otherwise require an outdoor living space, and compliance with that cannot be achieved, a communal living court of at least 24m<sup>2</sup> per residential unit shall be provided.</li> <li>(ii) Where the underlying zone would otherwise require a service court, and compliance with that cannot be achieved, a communal service court of at least 3m<sup>2</sup> per residential unit shall be provided at ground floor.</li> </ul>	<p>structure on the attributes of the identified landscape or natural character area are avoided, remedied or mitigated;</p> <p>(b) In regards to outdoor living spaces:</p> <ul style="list-style-type: none"> <li>(i) The extent to which the space is useable to the occupiers;</li> <li>(ii) Access to sunlight;</li> <li>(iii) Privacy of adjoining residential sites; and,</li> <li>(iv) Accessibility to and convenience of the space for occupiers;</li> </ul> <p>(c) In regards to service courts:</p> <ul style="list-style-type: none"> <li>(i) The convenience and accessibility of the spaces for building occupiers;</li> <li>(ii) The adequacy of the space to meet the expected requirements of building occupiers; and,</li> <li>(iii) Adverse effects on the location of the space on visual amenity from the street or adjoining sites.</li> </ul>
<b>ML-R2</b>	Home business	
Maaori Land across all zones	<p><b>(1) Activity status: PER</b></p> <p><b>Activity-specific standards:</b></p> <ul style="list-style-type: none"> <li>(a) There is only one home business per residential unit;</li> <li>(b) Each home business does not occupy more than 100m<sup>2</sup>;</li> <li>(c) Is wholly contained within a building;</li> <li>(d) No more than two people who are not permanent residents of the site are employed at any one time per home occupation;</li> <li>(e) Unloading and loading of vehicles or the receiving of customers or deliveries only occur after 7:00am and before 7:00pm on any day; and,</li> <li>(f) Machinery is only operated after 7:30am and up to 7:00pm on any day.</li> </ul>	<p><b>(2) Activity status where compliance not achieved: RDIS</b></p> <p><b>Council's discretion is restricted to the following matters:</b></p> <ul style="list-style-type: none"> <li>(a) The adverse visual and amenity effects from any building or structure on the attributes of the identified landscape or natural character area are avoided, remedied or mitigated.</li> </ul>
<b>ML-R3</b>	Visitor accommodation at Riria Kereopa Drive	

Maaori Land across all zones	<b>(1) Activity status: PER</b> <b>Activity-specific standards:</b> Nil.	<b>(2) Activity status where compliance not achieved: n/a</b>
<b>ML-R4</b>	Commercial activity at Riria Kereopa Drive	
Maaori Land across all zones	<b>(1) Activity status: PER</b> <b>Activity-specific standards:</b> (a) Commercial activity is for any one or more of the following: (i) Restaurant; (ii) Car wash; (iii) Boat wash; (iv) Grocery store; or (v) Boating store.	<b>(2) Activity status where compliance not achieved: DIS</b>
<b>ML-R5</b>	Any commercial activity that is a non-complying activity in the land-use activity rules of the relevant zone chapter.	
Maaori Land across all zones	<b>(1) Activity status: DIS</b> <b>Activity-specific standards:</b> Nil.	

Advice notes:

(1) Council encourages Maaori Land Trusts to prepare a Concept Management Plan as part of their land planning, to assist shareholders to overcome the barriers of consents and funding grants from other agencies. A Concept Management Plan is a 'Best Practice Planning Tool' that was introduced by the Te Kete Paaraha Mo Nga Papakainga Ki Waikato (Waikato Maaori Housing Toolkit).

(2) As part of the building consent process, an applicant seeking to build on Maaori Freehold Land or Maaori Customary Land may be required to provide:

(a) a Licence to Occupy, where the land is vested in trustees whose authority is defined in a Trust Order and/or a Maaori Incorporation;

(b) A lease, or an Occupation Order of the Māori Land Court, where a Trust Order or Maaori Incorporation does not exist.