

Timaru District Plan Review: Research Report on Māori Purpose (Kāinga Nohoanga) Zone

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1. Introduction

Timaru District Council is carrying out a full review of its district plan. Among the matters to be addressed in this review is provision to enable mana whenua to undertake papakāinga and marae-related activities. It has been agreed that a Māori Purpose Zone should be the primary mechanism to provide for these activities.

Timaru District lies within the traditional boundaries of Ngāi Tahu. Te Rūnanga o Ngāi Tahu is the mandated iwi authority for Ngāi Tahu whānui, and was established by the Te Rūnanga o Ngāi Tahu Act 1996. Within Ngāi Tahu whānui, Papatipu Rūnanga are representative bodies of the whānau and hapū of traditional marae-based communities.

The hapū who hold mana whenua in Timaru District are Kāti Huirapa. The rohe of Kāti Huirapa extends over the area from the Rakaia River in the north to the Waitaki River in the south and the Papatipu Rūnanga that represents Kāti Huirapa is Te Rūnanga o Arowhenua.

This report identifies issues, options, and the preferences of Kāti Huirapa to inform drafting of the Māori Purpose Zone chapter. The purpose of this report is to provide information and analysis to support development of the Māori Purpose Zone chapter. The report identifies issues and policy options and describes the approach preferred by Kāti Huirapa.

The report has been prepared by Aoraki Environmental Consultancy Limited (AECL), which is the mandated resource management agency of Te Rūnanga o Arowhenua.

2. Context

2.1 Historical context and current land use

The traditional way of life for Kāti Huirapa was closely related to gathering of natural resources, which were used to feed, clothe and equip people. The gathering and preparation of food and other resources were based around kāinga nohoanga. These were permanent or seasonal settlements situated near a particular resource to be worked. Permanent settlements were located primarily along the coast, with seasonal settlements along the river systems and further inland.

The principal Kāti Huirapa settlement in South Canterbury was at Te Waiaateruatī pā, which was situated near the mouth of the Ōpihi River. This settlement was supported by the resources provided by an extensive network of wetlands and hāpua, and by cultivated food gardens (māra kai) on the rich soils at Arowhenua and Waipopo.

From 1844 to 1864 the Crown purchased the bulk of Te Waipounamu from Ngāi Tahu in eight major land purchases¹. The largest purchase was the Canterbury Purchase negotiated in 1848 by Henry Tacy Kemp. As part of the Deed of Sale (commonly referred to as 'Kemp's Deed'), allocations of land for settlement and use by Ngāi Tahu whānui were promised and Crown Grants of occupational reserves and fishing easements were made in relation to these.

Occupational reserves were intended to allow whānui to live on their ancestral lands and also to provide for communal activities and for food production from the land. Ngāi Tahu understanding of this intent has been described in evidence to the Waitangi Tribunal as follows:

- The right to dwell on land, with that right to remain in place in perpetuity to descendants;
- The right to mahinga kai, including the right to hunt, harvest and to develop mahinga kai resources;
- The right to develop land to achieve the above, including subdivision, and setting aside land for communal facilities or other activities to support the community; and
- The right to develop a sustainable and growing economic base within the community that would sustain future generations².

The main occupational reserve areas granted in 1848 were Arowhenua Native Reserve 881 (152 hectares) and Waipopo Native Reserve 882 (76 hectares)³. In the years following the Canterbury Purchase, Kāti Huirapa began to shift to these areas from Te Waiateruatī, and Arowhenua became the site of the tipuna marae and the main area of settlement. However a lack of recognition of the purpose of the reserve allocations has resulted in obstacles to full occupation and use of the Waipopo and Arowhenua reserves. These obstacles include successive local government decisions about flood hazard management (discussed further in Section 2.2 below) and land zoning. There is a continuing frustration on the part of owners about the longstanding denial of their rights to make decisions about the use of their land.

From the enactment of the Town and Country Planning Act 1953, preparation of district schemes led to regulation of where particular activities could take place across districts. The activities taking place in rural settlements were commonly recognised by appropriate zoning; however the purpose of Māori occupational reserves was not recognised in zoning decisions. These areas were made subject to rural zoning that imposed severe restrictions on residential development and activities associated with this.

In addition to the barriers to developing the land for settlement, financial and legislative drivers have contributed, over time, to some of the land being converted to general title and sold. In the early part of the 20th century, onerous tax and rating requirements led to alienation of some land due to failure to make payments. Economic circumstances during the Depression also forced many people to sell their land. Other financial drivers include the lack of available mechanisms, until recently, for obtaining mortgage and development finance on multiply-owned land.

¹ Evison, H.C. (1993). *Te Wai Pounamu: The Greenstone Island. A History of the Southern Maori during the European Colonisation of New Zealand*. Aoraki Press, Wellington and Christchurch.

² Waitangi Tribunal, Ngāi Tahu Land Report, 1991, para 17.5.2.

³ Other occupational reserves (including additional areas north of the Orari River granted in 1868 as a result of action in the Native Land Court) were used for seasonal settlement and mara kai.

Legislative processes driving further land alienation included the 1967 Maori Affairs Amendment Act, which introduced compulsory conversion of Māori freehold land with four or fewer owners into general land, and processes related to acquisition of land for public works. Until the 1970s Māori land could be acquired for public works without compensation, and Māori Land Court processes related to such acquisition did not provide for proper input of owners.

As a result of these factors, the Arowhenua and Waipopo areas today are made up of a mix of Māori freehold land and land in general title. Some land in general title is retained by descendants of the recognised owners, while other land is owned by people with no ancestral relationship to the land.

The original Waipopo Reserve has been significantly reduced in size as a result of public works acquisitions. An area of approximately 14 acres (5.7 ha) was lost through realignment of Opihi River, and a further area (known as the inner reserve) was taken by the Acclimatisation Society through the former Maori Affairs Department for fishing huts, with no right of compensation.

Current land use activities at Arowhenua include residential and farming activities, marae facilities, a health clinic, primary school, church and urupā. Activities at Waipopo are a mix of residential activities and farming. Residential activity at Waipopo includes an area of fishing huts on Māori land administered by the Waipopo Huts Trust and the Kotare Trust.

2.2 Environmental constraints

Flood hazard management

The Opihi-Temuka river system, like other Canterbury rivers, is prone to periodic flood events. The earlier Waiateruati pa was located on an elevated site to avoid flooding. In contrast, parts of the land at Arowhenua and Waipopo have always been subject to flood hazard. However, after significant floods in February 1945 flooded Temuka and washed away the railway track at the Temuka Bridge, river works, including channel straightening and stopbanks, were constructed along the Temuka River as part of the Orari-Waihi-Temuka Flood Control Scheme. These works have been designed to protect Temuka, with the result that flood hazard on the other side of the river, at Arowhenua and Waipopo, is increased⁴.

Te Rūnanga o Arowhenua has been frustrated at previous lack of involvement in decision-making about flood hazard management, and continues to seek improved protection for Arowhenua and Waipopo settlements. However, until this is achieved, the existing flood hazard imposes a significant constraint on development in some areas, including through minimum floor level requirements and restrictions on location and extension of buildings.

Modelling being undertaken by Environment Canterbury will provide up-to-date information about the extent and magnitude of flood hazard at Arowhenua and Waipopo, but this was not available at the time of writing this report.

There are three ways in which the development constraint could A:

⁴ See Hall, R.J. 1997. Report: Arowhenua flood plain study: Report to the Canterbury Regional Council, 8 June 1997; and King, D et al 2012. Maori community adaptation to climate variability and change – Examining risk, vulnerability and adaptive strategies with Ngāti Huirapa at Arowhenua Pā, Te Umu Kaha (Temuka), New Zealand. NIWA Report AKL2011-015, March 2012.

- (a) Measures could be undertaken to increase the level of flood protection for Arowhenua and Waipopo;
- (b) Areas of land with a lower level of flood risk could be incorporated into the zone;
- (c) Regulatory controls to address flood risk could incorporate more flexibility for types of development that reduce, or at least do not increase, the risk (for example, this might include the ability to extend dwellings by adding a second storey).

The first of these options is beyond the scope of the district plan to address. The other two are considered in the evaluation of options later in this report.

Infrastructure services

Arowhenua is served by community water supplies controlled by Te Rūnanga o Arowhenua. The supply is expected to be sufficient to meet anticipated needs from kāinga nohoanga development, provided that the quality of the water is able to be maintained at a level that meets national drinking water standards. Waipopo residents are dependent on individual bores for water supply. In regard to water supply in both areas, the Rūnanga is concerned about the threats to water quality posed by some types of land use and development, particularly the effects of intensive dairy farming.

If water quality threats are not able to be effectively managed, the Rūnanga has identified that the best alternative would be to have the ability to link the water supply to the Temuka reticulated supply.

Arowhenua is connected to the Temuka wastewater network. However dwellings at Waipopo rely on septic tanks. In order to protect the quality of groundwater and surface water bodies, it would be desirable to replace this form of wastewater management in future with a community wastewater treatment system.

Climate change

Potential effects of climate change could include:

- changes in the magnitude and frequency of riverine flood events;
- increased effects of storm tides on coastal erosion and inundation in the lower reaches of the Opihi River; and
- effects of higher sea levels on the water table near the coast, including seawater intrusion into groundwater and transformation of low-lying land into wetlands.

An investigation of potential climate change impacts on the community at Arowhenua and Waipopo was undertaken by NIWA, in collaboration with Te Rūnanga o Arowhenua, in 2012⁵. This indicated that an increase in the magnitude of flood peaks in the Temuka River would not markedly alter the extent of land at Arowhenua that could be affected, but would be likely to increase the risk of damage to low-lying properties and infrastructure.

⁵ King, D et al 2012. Maori community adaptation to climate variability and change – Examining risk, vulnerability and adaptive strategies with Ngāti Huirapa at Arowhenua Pā, Te Umu Kaha (Temuka), New Zealand. NIWA Report AKL2011-015, March 2012.

Māori Reserve land near the mouth of the Opihi River and in other coastal areas has already been lost to coastal erosion. However Arowhenua and Waipopo are outside the area likely to be affected by this in the foreseeable future. The NIWA report indicates that an increase in coastal inundation is likely to have significant effects on farmland along the coastal margin and on the Milford Huts settlement on the north side of the Opihi River. Waipopo is outside the extent of inundation in the scenarios modelled by NIWA, but storm tides could potentially exacerbate the effects of riverine flooding by raising the level of water in the Opihi River. Further modelling would be required to determine the potential effects of this.

The NIWA report does not examine the potential impacts on water tables. However community members have noted that the water table in Māori Reserve land on the opposite side of the Opihi River from Waipopo appears to be higher than it was in the past.

3. Mana whenua aspirations

3.1 Purpose of papakāinga/ kāinga nohoanga

Papakāinga can be literally interpreted as “a place to come home to”. It is envisaged by Kāti Huirapa as a form of settlement that enables whanau to exercise rangatiratanga (as recognised in the Ngāi Tahu Claims Settlement Act 1998), to establish a tikanga-based community on ancestral land and to carry out the cultural, economic and social activities that are needed to sustain the community. This would include providing:

- opportunities for housing and income generation for whānau;
- retirement options for kaumatua; and
- the ability to establish community and social services.

Definitions of ‘papakāinga’ in district plans are commonly restricted to residential activity. Ngāi Tahu preference is for use of the term ‘kāinga nohoanga’, which also encompasses the broader range of commercial, social and community facilities and activities needed to fulfil the intent of the occupational reserves and to sustain viable settlements in these areas.

3.2 Desired outcomes from district plan provisions

To achieve the purpose described above, the following outcomes are sought.

(a) Flexibility to configure development to suit a communal lifestyle: The concept of whanaungatanga is important to Kāti Huirapa, and implies a responsibility for wider whanau to maintain and strengthen relationships and to make decisions together. Part of implementing this concept includes the ability for whanau to live in close connection with each other, with the flexibility to provide room for different generations as their needs change. The one house-one site model traditionally used for residential development in district plans is not suited to this approach, and also imposes a barrier to the ability of multiple land owners to make full use of their land.

(b) An approach that enables community and business activities: The intent of the occupational reserves was to enable the grantees not only to live on the land, but also to be able to support themselves. Traditionally this would have included means such as food cultivation and harvest of mahinga kai resources. While these activities are still important, in today’s society the ability to carry

out other activities to earn an income is also crucial to sustain the community. This is recognised in other rural settlements by providing for some commercial activity, but similar rules have not been applied to settlements on Māori Reserve land in the past.

To sustain the community it is also important to enable improvement of existing marae facilities and community services and establishment of new facilities and services as the need arises.

(c) Consistent rules irrespective of land tenure: As discussed earlier in this report, the current mixed pattern of land tenure at Waipopo and Arowhenua is a result of various drivers that have worked against retaining the original Māori Reserve land tenure across the areas as a whole. In recent times there have been moves to reverse past changes in tenure; however at present the form of land tenure of a particular allotment does not provide a reliable indicator of whether the land is owned by descendants of the original grantees. Limiting provision for kāinga nohoanga to land still in its original tenure would not effectively provide for the intent of the reserves and would also constrain opportunities to adapt to flood hazard and population changes by acquiring land within the original reserve areas that has since passed into different ownership. For these reasons, general land within the zone boundaries should be treated the same way as Māori land.

(d) A practical response to flood hazard that enables development while keeping people safe: Te Rūnanga o Arowhenua wishes to ensure that whānau are kept safe from the effects of flooding. However this needs to be managed in a way that does not unnecessarily constrain the ability for them to live on their ancestral land. In order to avoid existing dwellings becoming unfit for purpose, the Rūnanga seeks flexibility for some rebuilding, modification or extension of existing dwellings in areas of flood restrictions as well as provision to construct new buildings if the design appropriately mitigates the effects of flood hazard.

Until flood modelling becomes available, the extent of land affected by flood hazard is uncertain. Zone boundaries should be broad enough to ensure adequate land is available to meet the needs for kāinga nohoanga development. It would also be desirable to allow flexibility to extend the zone to new areas in future if development of the existing areas is constrained significantly due to flood hazard.

(e) Future-proofing for water supply and wastewater services: Infrastructure services need to be adequate to protect people's health, in terms of water quality and water availability. To achieve this, the Rūnanga seeks provisions that would:

- Avoid the adverse effects of activities on the community water supply at Arowhenua;
- Allow for connection to the Temuka water supply if the existing supply becomes unusable due to failure to meet water quality standards; and
- Support use of holding tanks or future establishment of a community wastewater system as a preferable alternative to septic tanks at Waipopo.

(f) Recognition of rangatiratanga over ancestral land: To enable full exercise of rangatiratanga over the Māori Reserve areas, Te Rūnanga o Arowhenua has a long term aspiration to have full decision-making powers over the development that occurs within these areas (for example by transfer of powers for resource consent decision-making). In the shorter term, the Rūnanga wants to ensure

that development controls in the district plan do not unnecessarily restrict the flexibility for mana whenua to make decisions about the form and nature of development that takes place on their ancestral land. Amenity considerations within the zone should be managed by the Rūnanga, with district plan development controls only imposed where necessary to address health and safety, protection of the natural environment, and significant boundary effects on neighbouring zones.

4. Statutory framework

4.1 Resource Management Act 1991 and national direction

The obligation to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands is identified as a matter of national importance in the RMA (section 6(e)).

Section 8 requires that the principles of the Treaty of Waitangi are taken into account. These principles include:

- active protection - a duty to take an active role in the protection of the ability for Kāti Huirapa to use and manage their traditional resources and taoka to the fullest extent practicable⁶;
- rangatiratanga - the authority and ability for Kāti Huirapa to manage and control their natural resources and taoka in accordance with customs and having regard to cultural preferences⁷; and
- partnership - the duty for all parties to act reasonably, with the utmost good faith⁸, and with the courtesy of real and meaningful consultation.

These provisions must be viewed in the context of the sustainable management purpose of the RMA (section 5) and, as part of this purpose, the requirement that natural and physical resources are managed in a way that enables people and communities, including Kāti Huirapa, to provide for their social, economic, and cultural well-being (section 5(2)).

The National Planning Standards describe different spatial layers that may be used in a district plan. Relevant layers include:

- Zones, which are used to identify and manage an area with common environmental characteristics or where environmental outcomes are sought, by bundling compatible activities or effects together, and controlling those that are incompatible; and
- Precincts, which are used to identify and manage an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s). Precincts may apply in a single zone or across multiple zones.

Zones that may be used include a Māori Purpose Zone, which is described in the Standards as “[an area] used predominantly for a range of activities that specifically meet Māori cultural needs including but not limited to residential and commercial activities”.

⁶ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 664 Cooke J.

⁷ *Waitangi Tribunal, Motunui-Waitara Report*, pg 51.

⁸ *Te Rūnanga o Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301, Cooke J.

There are no national policy statements or national environmental standards that have particular relevance to provision for kāinga nohoanga.

4.2 Te Ture Whenua Māori Act 1993

The Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993) governs administration of Māori land. The Act is intended to promote Māori land being used, developed and controlled by Māori owners and their whānau, hapū and descendants. To achieve those goals, the Act requires that almost all dealings with Māori land must be examined and approved by the Māori Land Court, including partitions of land between multiple owners and land transfers.

Partitions are deemed to be subdivisions under the Resource Management Act unless they are partitions into parcels to be held by owners who are members of the same hapū⁹, and any subdivisions require the approval of the Māori Land Court as well as consent under the Resource Management Act.

Māori land is divided into Māori customary land and Māori freehold land. Māori customary land is land held by Māori in accordance with tikanga Māori that is still in the customary title that applied prior to the signing of the Treaty of Waitangi. Māori freehold land is land where Māori customary interests have been converted to freehold title by the Māori Land Court or its predecessors by a freehold order, but retained in Māori ownership.¹⁰ Most Māori freehold land was created by the Land Courts in the 19th and early 20th centuries as part of a drive to convert communal ownership to individual title.

A third category of land – General land owned by Māori – is also subject to some of the provisions of Te Ture Whenua Māori Act. This category refers to ordinary freehold land that is now beneficially owned either by one Māori person or by a group of people, the majority of whom are Māori. Where the owners of such land are in agreement, and in circumstances where this is desirable to reflect the history of the land and the personal association of the owners with the land, the Māori Land Court can change the status of this land to Māori freehold land¹¹.

4.3 Canterbury Regional Policy Statement 2013

The Canterbury Regional Policy Statement requires territorial authorities to include, in district plans, provisions for the relationship between Ngāi Tahu, their culture and traditions, and their ancestral lands, water, sites, wāhi tapu and other taonga (CRPS 4.3.15).

Objective 5.2.1 (Location, design and function of development) requires that development is located and designed so that it functions in a way that, among other matters, facilitates the establishment of papakāinga and marae.

Specific provision is made for papakāinga housing, marae and ancillary activities in Policy 5.3.4, as follows:

⁹ Section 301 Te Ture Whenua Māori Act 1993.

¹⁰ Section 129 Te Ture Whenua Māori Act 1993.

¹¹ Section 133 Te Ture Whenua Māori Act 1993.

To recognise that the following activities, when undertaken by tāngata whenua with mana whenua, are appropriate when they occur on their ancestral land in a manner that enhances their on-going relationship and culture and traditions with that land:

- 1. papakāinga housing;*
- 2. marae; and*
- 3. ancillary activities associated with the above;*

And provide for these activities if:

- 4. adverse effects on the health and safety of people are avoided or mitigated; and*
- 5. as a result of the location, design, landscaping and management of the papakāinga housing and marae:*

(a) adverse effects on the following are avoided, and if avoidance is not practicable, mitigated:

(i) the important natural character values of coastal environment, wetlands, lakes, rivers and their margins;

(ii) the values of the outstanding natural features and landscapes;

(iii) the values of the historic heritage; and

(iv) the values of areas of significant indigenous vegetation and habitats of indigenous fauna.

(b) regard has been given to amenity values of the surrounding environment.

The explanation to this policy interprets “ancillary activities” broadly, commenting that traditionally such activities would include food gathering, storage and trade, manufacturing and trade of artisan goods, and the receiving and hosting of visitors. It also states that:

- Ancestral land is not confined to land that remains in Māori freehold or Māori customary land title;
- Due to the fixed location and finite resource of ancestral land available for papakāinga and marae, development and use of the land for these purposes and for ancillary activities is generally appropriate, even in circumstances where a similar form of development for other purposes would not be; and
- While it is desirable that development is sensitive to adverse effects on the amenity values of adjoining activities, the need to ensure aspirations for papakāinga and marae are not unduly compromised should take priority over this.

4.4 Iwi management plans

Te Whakatau Kaupapa (TWK) is a resource management strategy for the Canterbury region that was published by Ngai Tahu in 1990. This document discusses resource management issues and sets out policies on key issues. Although these policies reflect the statutory environment at the time of

publication (which pre-dates enactment of the RMA and the NTCSA), there are a number of policies relating to development of land intended for settlement of Ngāi Tahu whānui¹². These policies seek:

- That district plans should provide recognition of the originally intended purposes of Māori Reserve lands, in consultation with the owners;
- That proposals to build, or to establish business, on such land should be considered in light of the original intent (which should be interpreted to include any activities that support the development of the communal base for Ngāi Tahu);
- That proposals to initiate community-owned businesses should be actively encouraged and not subject to unnecessary constraints;
- That proposals to construct community buildings for communal use should be actively assisted;
- That minimum area requirements should not apply to Ngāi Tahu individuals and Rūnanga wishing to build dwellings or establish businesses near their marae; and
- That the local Rūnanga should be consulted on all matters affecting Māori Reserve land in their area.

The Iwi Management Plan of Kāti Huirapa for the Area Rakaia to Waitaki (IMP) was published in 1992. This document has a strong focus on protection and restoration of mahika kai, and is primarily directed at matters within the jurisdiction of the regional council. However the IMP also includes a statement seeking “that all things which affect Maori land will be dealt with by Maori first and foremost”.

These matters are reflected in the aspirations and outcomes sought by Kāti Huirapa as described in Section 3 of this report.

5. Identification and assessment of options

5.1 Approaches in existing district plans

Operative Timaru District Plan

In the operative district plan, Arowhenua and a large part of the Waipopo area are included in the **Rural 2 Zone**. This zone is distinguished from the Rural 1 Zone because of the presence of versatile soils. To protect these soils for productive use, subdivision that creates allotments of less than 10 ha is a discretionary activity. A single household unit is permitted on any site that is 1000m² or larger, and an additional unit for accommodation of a dependent relative is also permitted.

Marae, schools, kohanga reo or pre-school facilities, places of assembly and papakāinga are also specifically permitted on Māori Reserve land MR 881, MR 882, and MR 4074 which is under the control of the Māori Land Court. Papakāinga is not defined.

Relevant development controls applying to all buildings in the Rural 2 Zone include building setbacks of 6m from the road frontage, 3m from other site boundaries, and 20 metres from any river or stream. The maximum building height for a permitted activity is 15m.

¹² Te Whakatau Kaupapa, pages 4-7 to 4-8.

Although the permitted activity status for papakāinga and related activities in the Rural 2 Zone is intended to enable these activities, the ability to benefit from these provisions is hampered by the limitation of the rule to land which remains in Māori Reserve title, the restriction on subdivision and restrictions on development imposed by rules relating to flood hazard.

Flood hazard rules apply across all zones, and include:

- All household units are subject to a floor height requirement related to the 0.5% annual exceedance probability (AEP) (except for limited extensions of buildings that were in existence at 7 October 1995), and are a non-complying activity if this requirement is not met¹³;
- Buildings and structures subject to a risk of flooding with an AEP of greater than 2% are a discretionary activity, except for utilities and maintenance of existing buildings and structures¹⁴; and
- Most buildings and structures within 100m of identified stopbanks (on the landward side) are a discretionary activity¹⁵. (In particular, this affects sites in the vicinity of Waipopo Road to the extent that they are not already affected by a prohibition on new household units in the Recreation 1 Zone.)

The part of Waipopo where residential settlement is concentrated is included in the **Recreation 1 Zone**, which also applies to areas of “holiday huts” in areas such as Milford and Rangitata Mouth.

The Recreation 1 Zone primarily provides for recreational activities and seeks to avoid further residential development because of the threat posed by flood hazard. No structures are permitted except for bridges and utility services. Modification of dwellings is a discretionary activity provided the modification is for the purpose of reducing likely flood damage. Buildings accessory to a dwelling are also a discretionary activity. Any new household units are prohibited.

The restrictions in the flood hazard rules and the rules in the Recreation 1 zone act as a significant barrier, not only to erection of new structures, but also to improvement of existing inadequate dwellings in parts of Waipopo and Arowhenua.

¹³ Operative Timaru District Plan, Rules 6.16.2.1(1) and (2) and 6.16.2.4

¹⁴ Operative Timaru District Plan, Rule 6.16.2.3(2)

¹⁵ Operative Timaru District Plan, Rule 6.16.2.3(1)

District plans in neighbouring districts

The Mackenzie and Ashburton District Plans do not include any provisions to enable papakāinga/ kāinga nohoanga.

The Waimate District Plan permits papakāinga housing on any multiply-owned Māori or ancestral land in the Rural Zone. Marae and associated activities are not provided for but there is a policy supporting their establishment on ancestral land. Development controls applying to papakāinga housing include:

- building setbacks of 20m from boundaries of properties in different ownership and 7.5m from road;
- maximum site coverage of 35%; and
- 10m height limit.

Each site must have legal road access, but separate dwellings on the same site do not need separate access.

While these provisions enable housing, they do not provide for associated economic activities. The large boundary setbacks are also likely to be restrictive on smaller sites.

Other recent district plans

Approaches to papakāinga/ kāinga nohoanga development in recent district plans generally fall into two categories:

- (a) Zone provisions that apply to all land, or to land in specific tenure, in a defined spatial area; or
- (b) Provisions for a 'floating' zone applying to any land that meets specified ownership/ tenure criteria irrespective of the underlying zone. (In the framework of the National Planning Standards, this would most closely equate to a precinct applying across multiple zones.)

Table 1 below describes and comments on examples of both these approaches.

Table 1: Approaches to papakāinga or kāinga nohoanga in recent district plans

District Plan	Land included	Range of activities permitted	Development controls	Comment
Defined zone				
Christchurch (operative)	<p>Zone includes Māori land and general land within defined area, but general land is treated as if it was in the rural zone.</p> <p>A policy supports the application of the zone in other locations where it enables the use and development of Ngāi Tahu ancestral land.</p>	<p>On Māori land only: Range of residential, community, educational and health facilities, mahinga kai, urupā, home business, small scale offices and convenience shops up to 100m² floor area per business, public amenities, emergency service facilities</p> <p>On Māori land and general land: Activities that are permitted in Rural Zone</p>	<p>No restriction on number of dwellings per site</p> <p>Building setbacks: 10m from boundaries of properties in different ownership, 15m from road</p> <p>Maximum of 35% of site can be covered by buildings</p> <p>9m height limit except for art, carvings and cultural symbols</p> <p>Controlled activity status for buildings in landscape or natural character overlay</p> <p>Natural hazard rules apply</p>	<p>Generally good framework for enabling development on Māori land, but treats other land in the zone as rural, which would restrict any non-rural development on that land.</p> <p>Reported experience is that the boundary setbacks have proven to be too restrictive on narrow sites.</p>
Porirua draft district plan	Zone is a defined area of Māori land.	3 residential units per site, and also customary activity, conservation activity, rural activities, small scale (up to 100m ² floor area) community and educational facilities, home businesses, offices and	<p>1m building setback from side boundary</p> <p>Maximum height 9 m</p> <p>Where connection to reticulated services is not practicable for new</p>	Generally good framework for enabling development on Māori land. Much of the land is still in large blocks and it seems as though there is no general land within

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District Plan	Land included	Range of activities permitted	Development controls	Comment
		entertainment/ hospitality activities	buildings, all water supply and wastewater treatment and disposal systems to be contained within each site.	the area, so the question of how general land should be treated does not come up.
Floating zone				
Dunedin (subject to appeal)	Provisions apply to land in a rural or residential zone that is in an original native reserve area. Provisions may only be used by descendants of the original grantees of the reserve, or their immediate family. Proof of descent can be obtained from the Māori Land Court or the Ngāi Tahu Whakapapa Unit.	In a residential zone, papakāika housing is treated as a subset of residential activity and is permitted. In a rural zone, papakāika housing is not permitted, but is a controlled activity, with control over design and density matters as well as servicing.	In a residential zone: Subject to the same controls as standard residential activity. In a rural zone: - May be developed at a density of 6 residential units per site, but design, scale and location of development must maintain rural character and amenity as much as possible - 40m separation required from any residential building on an adjoining site - Maximum height 10 m - If no longer required for use in accordance with the papakāika definition, building must be removed or resource consent obtained for in	The provisions are limited to housing and do not enable other activities within the intent of Māori Reserve land. Lack of provision for multiple units on land with residential zoning limits the ability to establish communal developments. Controlled activity status for development in the rural zones, with control over general design of development, also limits the exercise of rangatiratanga by owners of the land.

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District Plan	Land included	Range of activities permitted	Development controls	Comment
			rural zone.	
Whangarei District Plan	Provisions apply on ancestral land subject to the Te Ture Whenua Māori Act 1993 anywhere in the district (including Māori customary land, Māori freehold land and General land owned by Māori), regardless of underlying zoning.	<p>On Māori freehold land: papakāinga developments (including commercial and industrial activities and places of assembly established in conjunction with and directly associated with the residential activities of the papakāinga).</p> <p>On general land owned by Māori that is either the subject of proceedings before the Māori Land Court to convert it to Maori freehold land, or where an ancestral link has been identified: Restricted discretionary activity status applies.</p>	<p>Not more than 1 residential unit per 2000m² of net site area.</p> <p>Development plan must be submitted to the Council before building consent applied for, demonstrating that the land has the capacity to cater for the development and that required amenity standards are met.</p> <p>Setback for non-residential activities: 100m from any dwelling on another site.</p> <p>Scale limit for commercial and industrial activities: maximum, in total, on any one site is 500m²</p> <p>Certification from a qualified engineer that the land can be serviced in terms of access, water, wastewater and stormwater.</p>	<p>Generally good framework for enabling development on Māori land. The provisions also recognise the history of tenure conversion by providing for development on other land (by resource consent) if an ancestral link can be shown.</p> <p>The provisions also acknowledge rangatiratanga aspirations by noting the possibility of transfer of powers from Council to iwi in relation to the development.</p>

5.2 Evaluation of options

Potential approaches have been evaluated in respect to the following:

- (a) The extent/ boundaries of the zone or precinct;
- (b) The range of activities to be provided for; and
- (c) The types of management controls to be applied to development.

5.2.1 Extent of zone/ precinct

Older district plans, if they provide for papakāinga, have generally taken an approach which inserts the provisions into a broader rural zone. This approach sets the provisions within a policy framework focusing on rural production, rather than supporting settlement. This means that development of papakāinga rules and assessment of consent applications must be considered against objectives and policies that are likely to conflict with the intent of the papakāinga provisions. This approach fails to recognise the original intent of the occupational reserves.

More recently, district plans have been adopting an approach that includes a full policy framework and rules tailored to the purpose of papakāinga or broader kāinga nohoanga. Plans differ as to whether this framework is applied to a defined area of land or to eligible land across the district, and as to what categories of land tenure are included.

Three options have been considered for Timaru District:

1. Establishment of a Māori Purpose Zone on land currently identified as Māori Reserve land;
2. Establishment of a Māori Purpose Zone on area originally set aside as Māori Reserve, including land that has been converted to general title; or
3. Establishment of a precinct applying to any land identified as Māori Land under the Te Ture Whenua Māori Act and/ or where evidence of descent provided.

As discussed earlier in this report, parts of the areas originally granted as Māori Reserve have been converted to general land, with some, but not all, of this remaining in the ownership of descendants of the original grantees. The change in tenure is shown in maps in Appendix 1.

A zone based on the original reserve area has several benefits over one that is confined to the land currently remaining in this tenure. It would more fully recognise the intent of the reserve, and would allow all descendants living on land that was originally granted to use provisions designed to implement this intent. It would provide for a more cohesive pattern of development than a zone based on the patchwork of land currently identified as Māori Reserve land. Importantly, it would also incorporate a larger proportion of land that is not constrained by flood hazard, ensuring that there is adequate opportunity for development.

The preferred approach is to establish a Māori Purpose Zone on the areas at Arowhenua and Waipopo that were originally set aside as Māori Reserve, including land that has been converted to general title. This would include all the land identified in Appendix 1, Figure 1 as well as land at Arowhenua northeast of SH1 that is shown in Appendix 1, Figure 2.

The precinct approach is more suited to situations such as occur in Northland, where areas of Māori Reserve land are distributed widely across districts, than to the South Canterbury situation. In the

Timaru District, Waipopo and Arowhenua are the primary areas of occupational reserve, and Kāti Huirapa wish to develop a cohesive settlement in these areas, centred on their tipuna marae. In addition, a precinct placed in a rural zone would still be subject to the broader rural policy framework, which does not fit the intent of the land. (For example, considerations relating to protection of versatile soils and rural amenity considerations might still carry more weight than appropriate to an area of residential settlement.)

Although a precinct approach is not favoured, we consider it would be desirable to include a policy supporting extension of the zone to other areas if the presence of flood hazard proves to constrain development in the existing areas to an extent that means the intent of the zone cannot be realised.

5.2.2 Range of activities

The current mix of activities at Arowhenua and Waipopo is predominantly residential and farming, with the addition of community, educational and cultural facilities at Arowhenua.

Papakāinga provisions in older district plans were generally limited to residential activity, with marae facilities sometimes also included. This approach would not provide for the existing range of activities at Arowhenua, and would not reflect the full intent of the reserves. As discussed, the intent of the occupational reserves was to sustain viable settlements, including the range of economic, cultural and social activities encompassed in the broader concept of kāinga nohoanga.

The National Planning Standards recognise the mix of activities generally taking place in rural settlements by means of a Settlement Zone, which is intended for:

Areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments.

In many respects, this aligns with the range of activities anticipated by for kāinga nohoanga, but there are some distinctions that are influenced by tikanga and by the needs of whanaungatanga, as follows:

- Other rural settlements are generally supported by production activities in the surrounding rural areas, rather than within the settlement itself. However, the area of land available to Kāti Huirapa is restricted to the reserve area, and so it is important to maintain the ability to carry out farming activities within the Maori Purpose Zone in order to provide food and income for whānau. This provision would exclude intensive pastoral farming because of concerns about the potential for adverse effects on water supply sources and on amenity.
- The Settlement Zone description incorporates community activities, which, in conjunction with the definition of “community facility” in the National Planning Standards, would include land and buildings used for recreational, sporting, cultural, safety, health, welfare, or worship purposes. However it does not clearly include educational activities. It is important that the Maori Purposes Zone enables the opportunity for tikanga-based education, including kōhanga reo and kura kaupapa;
- Kāti Huirapa have concerns about establishment of industry in the Maori Purposes Zone because of the range of potential effects on cultural values, air and water quality and general amenity.

5.2.3 Management of development

Most district plans incorporate some flexibility in the pattern and density of development in papakāinga/ kāinga nohoanga provisions to recognise the needs of multiply owned land and aspirations for communal living that reflects whanaungatanga values. In most cases this includes enabling multiple dwellings to be located on a site. Some plans enable this on Māori customary land and Māori freehold land only, while others extend the rule to apply also to general land owned by Māori where evidence is provided of a whakapapa connection to the land. For the reasons discussed in Section 3.2(c) of this report, we consider the latter approach is more appropriate to achieve the intent of the Māori Purpose Zone.

A further alternative approach, which has not been used in any of the district plans reviewed, would be to enable multiple dwellings on all land in the zone, regardless of ownership or tenure. This would avoid the need for any proof of whakapapa connection to be provided. However, there is a risk that such an approach could result in forms of intensive development that are not consistent with the purpose of the zone. For this reason it is not supported.

Development controls imposed on papakāinga/ kāinga nohoanga development in other district plans vary from a strong focus on protecting rural amenity, as in the Dunedin District Plan, to an enabling approach (for example in the Porirua District Plan) which minimises amenity controls and limits requirements to matters such as ensuring appropriate provision for water and waste services is made. The latter approach is more consistent with the direction in Policy 5.3.4 of the Canterbury Regional Policy Statement that controls to protect amenity should not compromise the ability to realise papakāinga aspirations. It also more closely reflects the controls that apply to other rural settlements, and we consider this approach is appropriate to apply to development in Waipopo and Arowhenua. In particular:

- Bulk and location controls should be based on a residential zone model rather than a rural zone, to ensure the design of communal developments and the ability to develop the narrow sites is not inappropriately constrained; and
- Amenity controls should be limited to those necessary to avoid significant effects on neighbouring land.

Development controls imposed to manage flood hazards have significantly constrained development in the Arowhenua and Waipopo areas. While the need to address this matter is not disputed, the Rūnanga has been frustrated at the perceived inflexibility of current controls. The scope and range of any options for introducing more flexibility is not clear in the absence of hazard modelling information. However, we consider that opportunities to allow some flexibility should be explored in circumstances where the risk can be mitigated to a level that does not increase risk to life and that keeps risk to property within acceptable levels.

5.3 Preferred approach

As indicated above, the preferred approach to providing for kāinga nohoanga includes the following components:

- (a) Delineation of a Māori Purpose Zone with boundaries that include land at Arowhenua and Waipopo within the areas originally set aside as Māori Reserve, including both land that is currently in Māori land tenure, as well as other land that has been converted to general title;
- (b) Objectives and policies that recognise the rangatiratanga of mana whenua on their ancestral land and focus on enabling establishment of a tikanga-based community, including the cultural, economic and social activities that are needed to sustain the community, on this land;
- (c) A policy supporting future extension of the zone to other areas of land that may be acquired to replace land that is not able to be developed due to flood hazard;
- (d) Within the Māori Purpose Zone:
 - i) Permitted activity status for a range of residential and community activities based on the range of activities provided for in the Settlement Zone;
 - ii) Permitted activity status for multiple dwellings on Māori land and on general land owned by the Rūnanga or by those with evidence, from either the Māori Land Court or Te Rūnanga o Ngāi Tahu Whakapapa Unit, of whakapapa connection to the land;
 - iii) Provision for commercial activities that support the purpose of the zone;
 - iv) Discretionary activity status for industrial activities (including rural industry);
 - v) Permitted activity status for farming, but a restriction on intensive pastoral farming to avoid threat to the quality of water supply (if this can be achieved within the district plan jurisdiction);
- (e) Controls on permitted activities limited to:
 - i) Boundary and water body setbacks based on Residential/ Rural Settlement Zone provisions;
 - ii) A requirement for screening of storage areas;
 - iii) Earthworks controls;
 - iv) A requirement for development to have available water supply, and appropriate stormwater management and wastewater disposal;
- (f) Flexibility within flood hazard provisions to maintain and improve existing dwellings provided this does not increase flood risk (for example, addition of a second storey could be permitted), and to erect new buildings if they are designed to mitigate the risk;
- (g) On land adjacent to the zone, a boundary setback requirement for industrial and quarrying activities.

Appendix 1: Change in tenure of Māori Reserve land at Arowhenua and Waipopo¹⁶

Figure 1: Original grants of Maori Reserve land (from <http://www.kahurumanu.co.nz/atlas>)¹⁷.



Figure 2: Land currently identified as Maori Land (from Maori Land Court layer on Canterbury Maps)



¹⁶ As well as land at Arowhenua and Waipopo, the images below identify an area of Māori Reserve on the northern side of the Opihi River. This is not part of the area being considered for the Maori Purpose Zone.

¹⁷ There are some apparent errors in the boundaries shown at the northern edges of both Arowhenua and Waipopo. An additional area of land northwest of SH1 is part of MR 881 at Arowhenua, as shown in Figure 2. The Waipopo Reserve also originally extended across the current Opihi River alignment.