



# **MASTER'S PROGRAMME IN URBAN MANAGEMENT AND DEVELOPMENT**

**(October 2009 – September 2010)**

## **He Kāinga Hou ki te Hau Kāinga Housing development on multiply-owned ancestral land in a high-growth area of New Zealand**

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## Summary

Many owners of multiply-owned ancestral Māori land want to build housing on their land, but difficulties mean that relatively few developments have been realised. Some difficulties result from the nature of Māori land tenure under the Māori Land Act 1993, which aims to balance the protection and development of Māori land. Others are related to government policies and the demands of the market environment. The desire to build housing on Māori land reflects a social and cultural connection to the land, as well as problems with increasingly unaffordable housing for the indigenous Māori and general population in the growing cities of Aotearoa/New Zealand.

This thesis explores how owners of Māori land develop housing on their land, how property development concepts apply to these developments, and the effect of government policies on the viability of housing development on Māori land. The research documents two case studies in the western Bay of Plenty, New Zealand, where owners of Māori land have taken up the challenge to develop housing on their land for their people. These developments are compared with two housing developments held in general (non-Maori) title. The research finds that the interpretation of concepts such as return, risk, and timing are very different in developments on Māori land than in developments on general land. Stated social and cultural objectives for development combined with a goal to provide affordable housing suggest that the two housing developments on Māori land could be considered ‘not-for-profit’. This suggestion is supported by the developments’ reliance on government funding, and similarities with other not-for-profit housing models on collectively-owned land.

Government policies aim to encourage housing development on Māori land through various policies including funding, targeted land-use planning, and capability support. These policies differ in their effect on supporting owners of Māori land to meet the costs of development and to develop their land as *papakāinga*. Central government provides funding for development, but there is uncertainty about whether local government will act to reduce the costs of development that are within their control, such as Development Impact Fees.

This research suggests that developing housing on multiply-owned ancestral land is possible in a market environment, but that developments will operate differently to housing developments on general land. Currently government policies attempt to address these differences with varying levels of success. It is apparent that in high-growth areas, housing development of a not-for-profit nature on Māori land contributes to local government objectives of accommodating population growth, and central government objectives of improving access to affordable housing. However, provisions in the Māori Land Act which protect land by restricting alienation and requiring extensive consultation with multiple owners complicate housing development on Māori land. Owners of Māori land must also resolve the tension between ‘development for today’ and ‘protection for tomorrow’.

These two case studies of housing development on Māori land illustrate that the protection and development of Māori land are not exclusive. The thesis concludes that in order to encourage more housing on Māori land, there is a critical need to balance the protective mechanisms of the Māori Land Act with targeted government policies that increase the viability of housing development on Māori land, where this fits with owners’ aspirations.

**Keywords:** land tenure; housing development; indigenous; government policies; New Zealand

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*Tēnā koutou mo ōu koutou manaakitanga ki a au.*

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## Currency conversion rates

NZ \$ (NZD): New Zealand Dollars

US \$ (USD): United States Dollars

AU \$ (AUS): Australian Dollars

CA \$ (CAD): Canadian Dollars

Exchange rate: 1.00 NZD = 0.7109 USD, 29 August 2010.

## Glossary of Māori words

	Selected definition from <i>Te Aka Māori-English Dictionary</i> (Moorfield 2010)
<b>Ahi kā</b>	(noun) burning fires of occupation – title to land through occupation by a group, generally over a long period of time*
<b>Hapū</b>	(noun) kinship group, clan, tribe, subtribe – section of a large kinship group*
<b>Haukāinga</b>	(noun) home, true home, local people of a <i>marae</i> , home people
<b>Hou</b>	(stative) be new
<b>Iwi</b>	(noun) extended kinship group, tribe, nation, people, nationality, race – often refers to a large group of people descended from a common ancestor*
<b>Kāinga</b>	(noun) home, residence, village
<b>Kaitiakitanga</b>	(noun) guardianship, trustee
<b>Kaumātua</b>	(noun) adult, elder, elderly man, elderly woman, old man
<b>Kōhanga reo</b>	(noun) Māori language preschool
<b>Kuia</b>	(noun) elderly woman
<b>Mana whenua</b>	(noun) territorial rights, power from the land – power associated with possession and occupation of tribal land
<b>Māori</b>	(noun) indigenous New Zealander, indigenous person of Aotearoa/New Zealand
<b>Marae</b>	(noun) courtyard – the open area in front of the [meeting house], where formal greetings and discussions take place. Often also used to include the complex of buildings around the <i>marae</i>
<b>Maunga</b>	(noun) mountain
<b>Pā</b>	(noun) village, fortified village
<b>Pākehā</b>	(noun) New Zealander of European descent
<b>Papa kāinga</b>	(noun) original home, home base, village*
<b>Puna</b>	(noun) spring (of water), well, pool
<b>Rohe</b>	(noun) boundary, district, region, territory, area, border (of land)
<b>Tangata Whenua</b>	(noun) local people, hosts, indigenous people of the land – people born of the <i>whenua</i> , i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta are buried
<b>Tapu</b>	(stative) be sacred, prohibited, restricted, set apart, forbidden, under [divine] protection
<b>Taonga tuku iho</b>	(noun) property, goods, possessions, effects, treasure, something prized
<b>Tiaki</b>	(verb) to look after, nurse, care, protect, conserve
<b>Tikanga Māori</b>	(noun) correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention
<b>Tino rangatiratanga</b>	(noun) self-determination
<b>Tūrangawaewae</b>	(noun) domicile, place where one has rights of residence and belonging through kinship and <i>whakapapa</i> , lands of origin
<b>Wāhi tapu</b>	(noun) location, locality, place
<b>Wairua</b>	(noun) spirit, soul, quintessence – spirit of a person which exists beyond death
<b>Whakapapa</b>	(noun) genealogy, genealogical table, lineage, descent
<b>Whānau</b>	(noun) extended family, family group, a familiar term of address to a number of people
<b>Whenua</b>	(noun) land, country

\*These concepts are discussed in more detail within the body of the thesis

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## Chapter 1: Introduction

### 1.1 Developing housing on Māori land

'Typical of Indigenous people around the world, Aboriginal peoples in Canada and Maori of New Zealand are struggling to reassert their nationhood within the post-colonial states in which they find themselves. For both, claims to their traditional lands and the right to use the resources of these lands are... integral to this process for two reasons. First, traditional lands are the 'place' of the nation and are inseparable from the people, their culture, and their identity as a nation. Second, land and resources are the foundation upon which Maori and Aboriginal peoples in Canada intend to rebuild the economies of their nations and so improve the socioeconomic circumstance of their people – individuals, families, communities and nations' (Anderson, Barnett 2006, p.2-3)

In May 2010, the New Zealand government released a new mortgage guarantee product – the Kāinga Whenua loan – aimed at assisting landowners to access finance for housing development on Māori land. This product complemented the launch in late 2009 of the Māori Demonstration Partnership fund, an off-shoot of the Housing Innovation Fund to increase third sector provision of affordable housing, focussed on Māori organisations. In May 2009, a pilot housing development was launched along with a Māori Housing Toolkit. All three of these initiatives have been hailed as long-awaited steps towards solving the difficulties of developing housing on Māori land.

Māori land has two key features – multiple ownership, and an ancestral connection between the owners today and the holders of land rights in the past. Communal ownership of land was considered obstructive to development by the colonists of New Zealand, and the customary tenure of Māori land was formalised through a court system awarding individualised titles in the late 1800s and throughout the 1900s. Through inheritance, these individual titles have been fragmented, resulting in multiple ownership of land. In the last decade of the twentieth century, multiple ownership of ancestral land was recognised as an acceptable form of tenure by the New Zealand judicial system, in the context of a 'renaissance' of Māori culture and identity. Te Ture Whenua Māori/Māori Land Act 1993<sup>1</sup> aims to both protect Māori land from alienation, and to allow Māori to develop their land for the benefit of the owners.

Many owners of Māori land left their lands of origin in the 1950s and 1960s as part of a wider population shift to New Zealand's major cities. Through urban development, some cities have grown to the point where Māori land which was rural is now urban, or peri-urban. A number of owners express a desire to return home to their lands to live, in order to reconnect with their history and to utilise the land for their social and economic benefit. However, these owners face many challenges in developing land protected by Māori tenure, including accessing finance, working within government plans and policies, and communicating between multiple owners.

The desire of many owners of Māori land to build housing on their land has been recognised by central government for at least three decades. In the late 1970s the Department of Māori Affairs provided loans for Māori to build on their land. In 1985 the Papakainga Housing

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<sup>1</sup> Although the formal name of this legislation is Te Ture Whenua Māori Act 1993/Māori Land Act 1993, I will refer to it simply as the Māori Land Act.

Scheme was introduced by the Housing Corporation New Zealand<sup>2</sup>, which aimed to give Māori the opportunity to use their land for housing, ‘wherever it is located’ (Davey, Kearns 1994). A Papakainga Housing Bill was suggested in 1984, but the contents of this Bill – relating to planning provisions, gaining consent from owners, and legal rights to occupy land – were seen to be covered under the Māori Land Act (which eventually passed in 1993) and the review of the Town and Country Planning Act 1977 which resulted in an entirely new piece of planning legislation, the Resource Management Act, in 1991 (Durie 1998). More recently Housing New Zealand Corporation offered another loan product – ‘Kapa Hanga Kainga’ – related to their Low Deposit Rural Lending programme. In the last three decades a number of reports mentioning housing on Māori land have been released, many of which identify the same barriers to development. Various attempts have been made to build capability and provide information to land owners, including *papakāinga* [housing on Māori land] handbooks, guides and toolkits. Several local governments have also supported housing on Māori land through their district land-use plans (for instance, *papakāinga* zones have been included in district plans in the central North Island since the 1970s) and more recently, as part of strategic planning for urban growth.

However, concern remains that Māori land is under-developed and under-utilised for the benefit of its owners (Linkhorn 2006). The persistence of this concern, after twenty-five years of specific policies, new legislation, and targeted initiatives raises the question: **why have these efforts from successive local and central governments not resulted in more housing on multiply-owned ancestral Māori land?**

*Kua tākoto te mānuka – the challenge has been laid*

This thesis canvasses three possible answers to this question: that the market environment does not support housing development on Māori land; that government policies do not adequately address the differences between developing housing on Māori and general land; or that the legislative framework for Māori land places too much emphasis on protecting the land from alienation, and not enough emphasis on development.

The Māori Housing Experiences report published in 2005 recommended that further qualitative research be undertaken to ‘...more deeply examine the relationships between Māori cultural practices and contemporary, commercial housing realities and practices’ (Waldegrave, King et al. 2006, p.14). The report also noted a need for research to monitor the effect of government policies on Māori housing circumstances. This thesis contributes to these research areas by examining two contemporary examples of peri-urban Māori land in the western Bay of Plenty, New Zealand, where owners are meeting the challenge to build housing developments for their people. Focussing on these two ‘success stories’, the thesis asks: **How do owners of multiply-owned ancestral land develop housing?**

To answer this question, further focus is given to the sub-questions:

- **How is property development theory applicable to developing housing on Māori land?**
- **How do government policies affect the viability of developing housing on Māori land?**

These three questions set the frame for the research contained within this thesis.

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<sup>2</sup> Now known as Housing New Zealand Corporation

### 1.1.1 What is Māori land?

The phrase ‘Māori land’ refers to land held under the Māori Land Act, which may be either Māori customary title (owned in accordance with pre-legislative rights and responsibilities) or Māori freehold title (granted to an individual or trust by a freehold order through the Māori Land Court). Māori land is defined in contrast to general land, which is ‘ordinary private land deriving ultimately from a Crown grant’ (Boast 2004a, p.65) and controlled by the Land Transfer Act 1952. The amount of Māori land has fluctuated since colonisation due to confiscation and purchase. Today there is virtually no Māori customary land (Boast 2004a) but Māori freehold land is a significant asset comprising approximately 1.4 million hectares, or 5.5% of New Zealand’s land mass (Isaac 2010).

- Just over 1.4 million hectares
- 5.5% of New Zealand’s land mass
- 12% of North Island
- 58% of titles are under a management structure
- The land is covered by 26,500 titles
- Approximately 2.3 million ownership interests
- The average size of a block is 53.9 hectares
- Smallest 10% of blocks average 80 sqm; largest 10% average 468 ha
- Average number of owners per title is 86
- Estimated 57% of titles are unsurveyed (Isaac 2010)

#### Box 1 Quick facts about Māori land

‘Māori freehold land’ under the Māori Land Act is a freehold title which can be held by an individual or multiple individuals. The Act also provides for the title to be vested in a number of different kinds of trust or a Māori land incorporation.

Māori freehold land is located mainly in the centre and east coast of the North Island, in the Waiariki (23%), Aotea (28%), and Te Tai Rawhiti (18%) districts (Isaac 2010). In 2001, land held by Māori trusts was estimated to be worth NZ \$1,522 million (US \$1,082 million) (Ministry of Māori Development 2003 cited in Capital Strategy, SGS Economics and Planning 2007).

**This thesis focuses on Māori freehold land, which will be referred to as ‘Māori land’. It is important to note that this thesis does not consider land held in general title by Māori owners.**

### 1.1.2 Multiple ownership of Māori land

Land blocks generally have multiple owners – 10% of titles record only one owner, but at the other extreme, another 10% record an average of 629 owners. The Māori Land Court estimates that half of interests may be owned by deceased owners, and others by the same people under different names, or by people who are unaware that they are landowners (Isaac 2010). This is illustrated by the fact that the current Māori population is estimated to currently total 652, 900, but ownership interests number approximately 2.3 million (Statistics New Zealand 2006c). Attitudes to multiple ownership have changed over the years. In 1961, the Hunn report famously stated that multiple ownership obstructs utilisation because:

‘Everybody’s land is nobody’s land. That, in short, is the story of Maori land today. (JK Hunn Report on the Department of Maori Affairs, 1961 pp 48-49 in Boast 2004a, p.110)

However, the contemporary view of the Māori Land Tenure Review Group – a group of well-respected Māori academics and practitioners set up to review the Māori Land Act in 2005 – is that multiple ownership is a ‘positive value’, although it ‘...attracts some transaction and opportunity costs’ (Maori Land Tenure Review Group 2006). Multiple ownership is seen to reflect the communal nature of relationships to Māori land through the statutory recognition of a ‘customary’ form of ownership (Chief Registrar, Maori Land Court 2010).

**For the purposes of this thesis ‘multiple ownership’ is defined as ownership of a piece of land by more than two people<sup>3</sup>.**

This definition excludes land held by a couple. Not all land held in a collective tenures is multiply owned and distinctions between communal ownership (ownership of an asset by a group) and multiple ownership (different owners holding shares in an undivided asset) will be further discussed in the theoretical framework.

### **1.1.3 The concept of ‘*papakāinga*’**

The term ‘*papakāinga*’ is frequently used in discussion about aspirations for housing on Māori land, and relates to the ancestral aspect of multiply-owned Māori land. The most comprehensive contemporary description of the ‘*papakāinga*’ concept appears in Awatere et al. (2008). With the publisher’s permission, it is reproduced in full below:

‘Papakāinga, a traditional settlement that encourages community identity, participation, and membership, is an attempt to reclaim, repossess, and reoccupy traditional lands. Common descent from an ancestor affirmed individual rights and privileges to occupy and build on common property; these rights also extended to the use of natural resources. Common rights and privileges thus underpin the concept of papakainga (Metge, 1995).

Papakāinga is a term used to describe Māori communal and cluster type settlements. The term papakāinga comes from Papa – meaning land, earth, ground; and kāinga – meaning settlement, community, dwelling or village (Ryan 1989; Williams 2000). In traditional times, settlements were designed on the clustering of dwellings and other buildings utilities within the use of common open space between. The central focal point of the community was usually the largest dwelling and the marae – or the open courtyard in front (Best, 2005). The use of papakāinga community models continues today by many Māori communities.

Contemporary papakāinga are usually dwellings, buildings and other structures constructed on communally owned family landholdings. Share or occupational rights are allocated to individual members of a family to build, live or occupy a portion of space on family land (Durie, 1998; Mead 2003). A range of papakāinga structures are apparent in New Zealand and they are commonly based on a Māori governance structure – under [the Māori Land] Act 1993 – and influenced by the Resource Management Act and local government rules and regulations’ (Awatere, Pauling et al. 2008, p.18).

Awatere et al. list a number of common characteristics of *papakāinga* settlements besides housing, including proximity to a *marae* [community base] or community complex, and the presence of facilities such as ‘schools, Kohanga reo [Maori language pre-school], kaumatua flats (elderly housing), a medical centre, farms, orchards, and sporting facilities’ (Awatere, Pauling et al. 2008, p.18). The diversity of activities that may occur in a *papakāinga* settlement is reflected in other definitions, which range from the simple:

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

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<sup>3</sup> This definition follows the interpretation of ‘multiple ownership’ given for Māori land in the (*Local Government (Rating) Act. 2002, Part 1, s.5*)

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

The concept of *papakāinga* was recognised in law as early as 1900, in the Māori Land Administration Act (s.21) which established ‘absolutely inalienable’ *papakāinga* blocks to be administered by Māori Land Councils. This Act was superseded by subsequent legislation (Boast 2004a, p.97).

**Potential development on Māori land discussed in this thesis is limited to residential development and supporting facilities.**

### **1.1.4 Māori land in the Western Bay of Plenty**

This research centres on Māori land in the western Bay of Plenty, in the North Island of New Zealand. The Western Bay of Plenty sub-region is one of the fastest-growing sub-regions in New Zealand, with the population expected to increase 45-50% by 2026 (Hill 2007). The sub-region includes two local council districts – Tauranga City Council and Western Bay of Plenty District Council – as well as a regional council – Environment Bay of Plenty – which covers both local council districts as well as the eastern Bay of Plenty. The Western Bay of Plenty SmartGrowth Strategy was initiated in 2001 in response to community concerns about ‘rapid population growth and the lack of leadership and coordinated arrangements to manage that growth’. The final strategy was approved in 2004 (SmartGrowth 2007, p.i).

A Land Capacity report commissioned by SmartGrowth in 2002 showed that there were 646 hectares of Māori freehold land zoned residential in the two districts, and 21,245 hectares in rural areas (SmartGrowth 2007). Dewes and Walzl note that in Tauranga and the Western Bay of Plenty Māori groups were involved in armed conflict with the Crown in the 1860s and 1870s. These conflicts led to confiscation of Māori land by the Crown, a process which was later investigated by a government inquiry and resulted in the return of ‘small or marginal pieces of land’ to selected individuals. These lands – namely the 22,035 hectares mentioned above – are ‘the last vestiges of land formerly held by iwi or hapu [Māori kinship groups]’ (Dewes, Walzl 2007, p.41).

In 2006 census, the Māori population in the Western Bay of Plenty was 23,493, an increase of 14.5% since 2001 (Hill 2007). The Māori population is projected to double by 2026, and triple by 2051 (SmartGrowth 2007). A report on affordable housing in the Bay of Plenty noted that Māori income levels are lower than the regional median and that unemployment levels are significantly higher than the general population (Capital Strategy, SGS Economics and Planning 2007). This report also found that 22-28% of households in the Western Bay of Plenty sub-region are living under ‘housing stress’ because their housing is unaffordable<sup>4</sup>. The report did not generate separate figures for Māori households, but suggested that ‘addressing options that enable Maori to more effectively utilise their land for housing’ could help to provide affordable housing for lower-waged workers, especially Māori (Capital Strategy, SGS Economics and Planning 2007, p.123).

## **1.2 Thesis outline**

Chapter One introduces the challenges of building housing on Māori land, and the effects of urbanisation and ruralisation of the Māori population on development aspirations for Māori land. After describing the key characteristics of Māori land and the concept of ‘*papakāinga*’

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<sup>4</sup> The study defined ‘housing stress’ as occurring when housing costs exceed 30% of a household’s gross income (Capital Strategy, SGS Economics and Planning 2007)

development, the chapter finishes with a snapshot of Māori land in the western Bay of Plenty study area.

The second chapter sets the context for housing development on Māori land by describing the social/cultural and legal frameworks for housing development on Māori land and introducing the dual concepts of protection and development. The chapter highlights the downward trend in homeownership and housing affordability for Māori people, and links this with the desire of some owners of Māori land to improve both social/cultural connections with the land and the financial situation of owners by providing affordable housing on Māori land. The chapter also measures targets for housing on Māori land in the western Bay of Plenty against current housing figures, and briefly describes three commonly-cited barriers to housing development on Māori land: access to finance, local government planning provisions, and capacity and communication between owners.

Chapter Three sets out the theoretical framework for the research by bringing together literature from three different fields: the market environment for property development; the market environment for collective land tenure; and – moving to specifically focus on indigenous land tenure – briefly surveys government-guaranteed loans, taxation on indigenous land, and targeted planning for indigenous land.

The fourth chapter describes the research methodology, including the rationale for selecting the study area and interviewees, the research questions and variables, and the limitations of the research.

Chapter Five documents the results of interviews with representatives from four case studies – two on general land and two on Māori land. The first set of results illustrates differing perceptions of the ten property development concepts, while the second set uses interviewee responses to assess the effect of seven government policies or programmes on the viability of housing development.

The last chapter discusses the two main findings of the research: firstly that housing development on Māori land is a very different proposition to housing development on general land, and that the developments on Māori land under study could be classified as ‘not-for-profit’; and secondly that government policies to facilitate funding and increase permitted housing density on Māori land are critical to landowners being able to implement their projects, and to meet costs. Consideration is given to whether – given the ‘public good’ nature of housing development on Māori land – development on general land should subsidise development on Māori land through reduced Development Impact Fees. Finally, the chapter concludes that housing development on Māori land is made possible by owners managing the tension between land protection (as exemplified by the Māori Land Act) and development (as promoted by government policies and programmes).



## Chapter 2: Context

### 2.1 Māori interests in land

This section explores the interests held by owners of Māori land in their land and the potential influence of these interests on housing development. Molinsky define interests as:

‘the benefits or advantages that a landowner derives from ownership, at a particular point in time, that the owner sees as enhancing (or potentially enhancing) his or her well being, physically, financially, or emotionally. Interests are, in other words, the positive value generated by landownership. It follows that they play a role in land decisions, since owners’ calculations about buying, selling, transferring, subdividing, developing, and using their land will depend, at least in part, on the value they currently gain from ownership or the value they believe they might gain in the future’ (Molinsky 2006, p.29)

This discussion covers the nature of collective ownership over Māori land, attitudes towards ancestral land, and the role of land in anchoring Māori identity. These interests are defined by legislation, or stem from social or cultural norms, or both. However, it must be recognised that there is no single set of ‘Māori interests’ in land, and that interests in land may change, or be changing, over time.

#### 2.1.1 Collective ownership and Māori land

Most Māori freehold land has not been held in customary title since the Treaty of Waitangi<sup>5</sup> was signed in 1840 –

‘Aboriginal [or customary] title is a compendious expression to cover the rights over land and water enjoyed by the indigenous or established inhabitants of a country up to the time of its colonisation. One the acquisition of territory, whether by settlement, cession or annexation, the colonising power acquires a radical or underlying title which goes with sovereignty...’ (Te Runanganui o Te Ika Whenua Inc Society and Another v Attorney-General and Others (1994) 2 NZLR 20, 24 cited in Bourassa, Strong 2002, p.241)

Following colonisation, the New Zealand government passed the Native Land Act 1865, the ‘great object’ of which was ‘the abolition of communal ownership of land’ (Chief Judge Fenton quoted in (Durie 1998, p.122). The Native Land Act was part of an international ‘trend away from collective rights in land to individualised tenure’ during the late nineteenth century, based on the colonial perception that collective forms of tenure were ‘an obstacle to economic modernisation’ (Boast 2004a, p.72). Titles to land throughout New Zealand were determined by the Native Land Court (later known as the Māori Land Court), and awarded ‘on the basis of custom’ to individuals, ignoring the fact that Māori customary law did not recognise individuals as owners (Boast 2004a, p.38). Consequently, most Māori freehold land has been held under individual title since the late 1800s. The Native Land Court also practised the principle of equal succession, which has resulted in the fragmentation of these individual interests as they have been bequeathed to descendants. Today, Māori freehold land is not held under customary title, but has multiple individual owners who are ‘tenants in common’ holding shares of varying sizes (Boast 2004a). These owners may operate in a

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<sup>5</sup> The Treaty of Waitangi was signed in 1840 between the British Crown and some (but not all) groups of Māori. The three articles of the Treaty of Waitangi extended the rights of British citizens to Māori; guaranteed Māori the ownership and rights to control their resources; and in return gave the British Crown powers of government over New Zealand.

communal ownership structure, such as a trust, and land development depends on them acting together as Altman et al. clarify:

'Land used for housing might be owned by a narrow or wider group of owners, [such as an] ...extended family group that owns a parcel of Māori land outright [and] is prepared to operate as a single economic unit for housing purposes...' (Altman, Linkhorn et al. 2005, p.24)

Contemporary Māori land is therefore multiply-owned by people who are related by common ancestry.

### **2.1.2 Attitudes toward ancestral land**

Some interests in Māori land are enshrined in the Māori Land Act 1993 – such as the relationship of Māori with their land as a *taonga tuku iho* [treasured inheritance] (*Te Ture Whenua Maori (Maori Land) Act 1993*)<sup>6</sup>. Others are retained by owners and shown in their descriptions, use and emotions towards the land. Discussing the valuation of land in customary societies, Small and Sheehan consider that '...modernity posits property as a set of material rights that are notionally comparable to their material values. Customary people perceive property only partially in these terms and place greater emphasis on origin and obligations of property within an understanding of community...' (Small, Sheehan 2005, p.1). These origins and obligations include the fact that many customary or indigenous cultures identify their connection with the land as a spiritual relationship resulting from a generative event that created both the land and the people. In some worldviews '...the same generative event produced both the land and the people, creating a family bond making the land almost a brother to the people. In others, people were created out of the land, making it almost literally their mother' (Small, Sheehan 2005, p.4). This connection with the land often manifests in customary law prohibiting alienation of the land.

These kinds of beliefs appear in some Māori worldviews, which describe the creation of the Māori people and the world as we know it through the actions of Ranginui (the 'Sky Father') and Papatūānuku (the 'Earth Mother') and their children (Durie 1998). The Māori Land Act restricts the alienation of land, and retaining land ownership is a common social and cultural imperative in Māori society, as evinced in the slogan of the 1975 Land March which declared that 'Not one acre more' of Māori land should be sold or confiscated (Walker 2004). Hitchcock also notes that:

'The restriction against alienation in the [Māori Land Act] is based not just on the traditional conceptions of the whenua [land], but also as a response to the widespread loss of Maori land throughout the nineteenth and twentieth centuries'

Central to the desire to retain ownership of the land is the determination to pass land onto future generations. The perception of intergenerational responsibility in customary cultures is again illustrated by Small and Sheehan who state that:

'The people, or tribe, is usually understood... to be composed of all members: the past, present and future, and land rights belong equally to all of them. This means that the currently living members of the tribe represent only a tiny portion of the total

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<sup>6</sup> (Boast 2004b, p.21 notes that New Zealand common law recognises, and occasionally incorporate Māori customary law (which he defines as '...the customary practices and rules of the Māori people in existence as at 1840 and that continue to be practised today'). The 'Māori philosophical concepts' referred to in Part 2 of the Resource Management Act 1991– *wāhi tapu* [sacred sites], *kaitiakitanga* [guardianship] etc. – are given as an example.

membership, all of whom have equal rights to the tribe's property' (Small, Sheehan 2005, p.4)

This responsibility can also be seen in perceptions of Māori land 'ownership'. Attendees at meetings held to assess the impact of rates<sup>7</sup> on Māori land, '...emphasised that they only hold the land for their lifetime before handing the responsibility on to the next generation... To fulfil the role of *kaitiaki* [guardian], the keeping of the land and the maintenance of *ahi ka* [rights through occupation] on the land is of key importance' (Dewes, Walzl 2007, p.14). In support, Walzl and Dewes quote the well known proverb – '*Toitu te whenua, Whatungarongaro te tangata*' [People perish but the land is permanent], and note that this proverb 'is used throughout the country to describe the perpetual nature of the relationship that people have with land. It also reflects an implicit cultural value that the *whanau* [family] and *hapu* [kinship group] have an inter-generational obligation of stewardship in respect of land that is central to their identity and survival' (Dewes, Walzl 2007, p.14).

Durie (1998, p.115) articulates clearly the role of land in anchoring Māori identity, stating:

'A Māori identity is secured by land; land binds human relationships, and in turn people learn to bond with the land. Loss of land is loss of life, or at least loss of that part of life which depends on the connections between the past and the present and present with the future'

Generally speaking, these values underpin the desire of Māori owners to return and live on their land as occupants and guardians.

### **2.1.3 Changing attitudes towards Māori land?**

However, these values or interests are not necessarily held by every person of Māori descent, nor every owner of Māori land. Discussing the objective of the Māori Land Act to retain Māori land, Durie reflects that '...not all Maori individuals agree that their interest in Maori land should be confined to being a trustee for future generations. They argue they have been denied the right to use land as an investment, or sell it to the highest bidder, or leave it to a spouse. In this sense, the... ideological position (that Maori land does not belong to any individual, but to the *whanau* [family] or *hapu* [kinship group]) may no longer find commonality with Maori who have become estranged from Maori values and beliefs or who have decided to act independently of their relatives or who place commercial objectives ahead of others' (Durie 1998, p.138).

Linkhorn (2006) notes some debate over the practicality of retaining a 'keep the land at all costs' attitude. Analysing the activities of the Māori Land Court, it is possible to see that some owners obviously consider sale – a review of the National Māori Land Court newsletter from the months April 2010, June 2010, and August 2010 shows eight applications for sale or partition (Maori Land Court 2010a, b, c). In their submission to the Rates Inquiry, Tauranga City Council points out that the common statement that 'Maori land cannot be sold' (e.g. Heatley 2010) is not legally true, and that Māori land is sold (Dewes, Walzl 2007). In contrast with the interests discussed above, there are owners of Māori land who are not averse to selling their land (Chief Registrar, Maori Land Court 2010).

Owners can also choose to remove their land from Māori tenure by changing the status of their land – land can be transferred from Māori to general title, or from general to Māori title. It could be expected that decisions to change land status reflect the owners' view of its utility or value under different tenures. Again, a review of the National Māori Land Court newsletter

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<sup>7</sup> Tax administered by local government in New Zealand

from the months April 2010, June 2010, and August 2010 shows six applications to change the status of specific land blocks from Māori title to general title (Maori Land Court 2010a, b, c). At least one application is based on the claim that an owner cannot get finance against land while it is in Māori title (Stewart 2010). However, the net effect of these changes may be insignificant. During the same three months, the six applications to change land from Māori to general status were balanced by six applications to change land from general to Māori status. Although these figures do not account for either the size of the landblocks, nor whether the applications were successful, it does suggest that change of status is a two-way process<sup>8</sup>.

Finally, settlements under the Treaty of Waitangi do not seem likely to increase the amount of land in Māori title. Treaty of Waitangi settlements allow for the restitution of assets for cultural or commercial purposes, and approximately NZ \$20 million (US \$14.2 million) of land is either land-banked or recommended for land-banking to settle claims in the Bay of Plenty area (Capital Strategy, SGS Economics and Planning 2007). Land returned to *iwi* and *hapū* [kinship groups] can be returned as Māori or general land. Anecdotally however, very little land is being returned as Māori land (Linkhorn 2010; Bennion 2010<sup>9</sup>; Interviewee 2010).

There are a number of well-documented cultural and societal norms relating to the interests of Māori in land, some of which are comparable to ‘customary’ values held by other societies, and some of which are enshrined in the Māori Land Act. However, it must also be recognised that ‘Māori people’ as a group do not hold a homogenous set of beliefs, and interests in land (the ‘perceived benefits of land ownership’) are likely to vary from individual to individual. These variations will include different attitudes to retaining or alienating Māori land.

## 2.2 The Legal Framework

Legislation relevant to the development of Māori land includes: Te Ture Whenua Māori Act 1993/Māori Land Act 1993; Resource Management Act 1991; and the Local Government Act 2002.

### 2.2.1 Te Ture Whenua Māori Act 1993/Māori Land Act 1993

The Māori Land Act sets out the legal definitions of Māori land and the rules within which the Māori land system operates. The Act was passed in 1993 in recognition of the need to improve the legal ability of owners to manage and develop Māori land. The Act ‘...reaffirms Maori concepts of land ownership and represents a legal interpretation of whanau [family] and hapu [kinship group] relationships and their joint interest in a particular piece of land’ (Durie 1998, p.137). It is the first piece of legislation to recognise multiple ownership of ancestral land as a legitimate and viable tenure in contemporary New Zealand society. Recognising the relationship between the Māori people and the Crown created by the Treaty of Waitangi, the Act states that its purpose is:

‘...to recognise that land is a taonga tuku iho [treasured inheritance] of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau [family], and their hapu [kinship group], and to

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<sup>8</sup> It was suggested that some of the applications to change general land to Māori land may be reversing the actions of the Maori Affairs Amendment Act 1967, which automatically changed Māori land with fewer than four owners to general title (Chief Registrar, Maori Land Court 2010).

<sup>9</sup> The impact of the repeal of the Foreshore and Seabed Act 2004 on the amount of Māori land is unknown (Bennion 2010).

protect wahi tapu [sacred sites]: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu' (Preamble, *Te Ture Whenua Maori (Maori Land) Act*. 1993).

## 2.2.2 The role of trusts and incorporations

Currently 58% of Māori land is administered by a governance body, comprising 166 incorporations and 5521 *ahu whenua* trusts (Isaac 2010). The type of body responsible for any specific landblock reflects owners' choice between bodies legally available at the time of establishment. Māori incorporations were originally provided for in the Native Land Court Act of 1894, because as Sir Apirana Ngata, the first Māori graduate reflected in 1940:

'It was necessary on the one hand to evolve a system of organising the individuals in the title in such a way as to stabilise corporate action and legal decisions, and on the other hand to secure legislative recognition of the title expressing such as an organisation as could be legally offered to a money lender and on which he could lend ... The system ... is in effect an adaptation of the tribal system, the hierarchy of chiefs being represented by the Committee of Management...' (Sutherland cited in (Gilling 2007, p.27).

Gilling notes that incorporations were the dominant model of governance for Maori land for most of the twentieth century and explains that '...[t]echnically, Maori incorporations as structures are similar to companies. They aim to facilitate and promote the use and administration of Maori freehold land on behalf of the owners. They are intended to manage whole blocks of land, or clusters of blocks grouped by geographical proximity and/or the *whakapapa* [genealogical] connections of their owners, and constitute some of the most commercial types of Maori land management structures' (Gilling 2007, p.28). Since 1993 incorporations have been subject to the Māori Land Act, and 'owners' no longer own specific pieces of land, but are 'shareholders' in the incorporation.

*Ahu whenua* trusts are an invention of the Māori Land Act 1993, although they replaced and resemble trusts possible under earlier legislation<sup>10</sup>. Under an *ahu whenua* trust, the land is vested in trustees and the owners become beneficiaries of the trust. Beneficiaries' interests in the land, as defined and recognised on title records, can be sold or gifted within the parameters for alienation set out in the Māori Land Act. The purpose of an *ahu whenua* trust is detailed in the court order which creates the trust (Gilling 2007), and these bodies are very similar to ordinary trusts, although they are overseen by the Māori Land Court as well as the general court. Gilling states that *ahu whenua* trusts are generally considered 'unsuited for commercial purposes given their broad purpose, their restrictions on land alienation and use (hindering obtaining development finance), their relatively cumbersome level of beneficiary involvement, and their high degree of Māori Land Court oversight' (Gilling 2007, p.34)

It is important to recognise that landowners, trusts, and incorporations are not the same as *whānau* [families], *hapū* [kinship groups], and *iwi* [extended kinship groups] – the 'traditional' structures of Māori organisation. Legislation such as the Resource Management Act recognises specific responsibilities for local government to consult with *iwi* and *hapū* [kinship groups] as *tangata whenua* [indigenous people], but accords no special rights to owners or trustees of Māori land. A generalised depiction of these structures is given in Appendix A.

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<sup>10</sup> '438 trusts' were provided for in section 438 of the Māori Affairs Act 1953

### 2.2.3 Rights over Māori land

As discussed above, and notwithstanding the intention of the Māori Land Act to retain Māori land in Māori hands, Māori freehold land can legally be alienated. The Act provides for a wide range of rights over land to be transferred – possible ‘alienations’ include: transfers of legal interests in Māori land; leases and licences, easements, profits, mortgages, charges, encumbrances and trusts made in respect of Māori land; arrangements to dispose of Māori land; arrangements to succeed to Māori land on the death of any owner; and agreements that Māori land be taken for public works (*Te Ture Whenua Maori (Maori Land) Act 1993*, s.4). The Māori Land Court retains the responsibility to approve most of these transactions.

Besides alienation, the Māori Land Act also allows owners to ‘rationalise the land base to facilitate development’ through partition, amalgamating or aggregating titles, and creating rights of occupation (Smith 2004, p.201). Again, the Māori Land Court must consider and approve these decisions. Court decisions on applications to rationalise land must take into account:

- The opinion of the owners or shareholders [in respect to lands that have been incorporated], as a whole; and
- The effect of the proposal on the interests of the owners of the land or the shareholders of the incorporation; and
- The best overall use and development of the land use (Smith 2004, p.201).

Applications must include evidence of sufficient communication with, and support from, landowners.

Improvements on the land do not belong as-of-right to the landowner(s). This means that the termination of a lease can require the owners of Māori land to compensate the leasee for improvements (Gilling 2007).

Since 1993 there has been significant public debate about the impact of the Māori Land Act on the use of Māori land. A theme of this debate has been whether the legislation, as applied by the Māori Land Court, is striking the right balance between protecting the retention of Māori land and allowing owners of Māori land to develop their land (e.g. Morad, Jay 1997). In 2005 the Māori Land Tenure Review Group noted that:

‘It can be argued that the retention of Māori land has been successfully achieved since the passing of [the Māori Land Act] 1993... However, a range of problems still remains. These problems either prevent any utilisation from taking place or significantly hamper or even undermine the effectiveness of attempts being made to [utilise] land’ (Maori Land Tenure Review Group 2006, p.11)

In response to these kinds of concerns, the Māori Land Act has been amended a number of times since 1993, but not substantively altered (Maori Land Tenure Review Group 2006).

### 2.2.4 Resource Management Act 1991

The second piece of legislation that affects housing development on Māori land is the Resource Management Act 1991, New Zealand’s comprehensive law covering environmental management and planning. This law is largely administered by local government, and the Act requires local<sup>11</sup> councils to create a mandatory district land-use plan which includes zones

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<sup>11</sup> City and district councils. Regional councils also create resource management plans to manage specific environmental effects.

where specified activities are permitted, controlled, restricted discretionary, discretionary, or non-complying, depending on the effects of those activities on the surrounding environment. Applications for resource consent to develop land or use resources are judged against these activities. Councils can also develop growth management strategies, such as the Western Bay of Plenty SmartGrowth Strategy, but these strategies are not legal or regulatory documents.

There are several provisions within the Resource Management Act relating to councils' relationship and responsibilities towards Māori, relevant to housing development:

- Part 2, Section 6 states that the 'relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu [sacred sites]; and other taonga [treasured possessions]' is a matter of national importance in resource management;
- Section 7 stipulates that *kaitiakitanga* [guardianship] must be considered in resource management decisions, along with the '[e]fficient use and development of natural and physical resources'; and
- Section 8 requires that '[i]n achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall... take into account the principles of the Treaty of Waitangi'<sup>12</sup> (*Resource Management Act 1991*).

These provisions can be interpreted as '...cumulatively oblig[ing] Council to ensure there is opportunity for tangata whenua [indigenous people] to live on, develop and manage their ancestral lands in accordance with tikanga Maori (Maori customary values and practices)' (Manukau City Council 2002, Ch. 17.2, p.2). Furthermore, Section 74 of the Act explicitly encourages *iwi* and *hapū* [kinship groups] to develop their own resource management plans (known as Iwi or Hapū Management Plans), which must be taken 'into consideration' by councils when formulating or changing district plans.

### **2.2.5 Local Government Act 2002**

The Local Government Act 2002 sets out the responsibilities and governs the operations of local government. Key planning documents created under the Local Government Act include Community Outcomes (a set of aspirations determined through consultation with the community) and Long-Term Council Community Plans which balance the aspirations of the current community with the needs of future generations, and identify a strategy and funding to achieve agreed goals. Section 4 of the Act includes specific principles and requirements for councils which are intended to promote Māori participation in decision-making processes.

Local governments also levy property taxes, known as 'rates'. The Local Government Act requires councils to develop policies regarding the reduction or postponement of payment of rates on Māori land but does not require that these policies approve rates relief.

## **2.3 Housing on Māori land**

In summary, the provisions of the Resource Management Act and Local Government Act mean that local government must recognise and provide for housing on Māori land, if that is identified as a priority by the landowners as represented by *mana whenua* [local indigenous people]. Within this legal and regulatory context, it is important to also understand the social, cultural and economic drivers informing landowners' decisions about providing housing on Māori land.

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<sup>12</sup> The exact nature of the Treaty principles continues to be a source of debate but one simple interpretation identifies the principles of partnership, active protection, and redress (see (Hayward 1997)

### **2.3.1 Māori and Housing**

Access to high-quality housing for Māori is a recognised and long-standing problem, both in urban and rural areas. A 1988 National Housing Commission report identified ‘a specific Maori rural housing crisis due to decades of neglect by housing authorities coupled with a return of Maori families to turangawaewae [lands of origin]’ (Davey, Kearns 1994). At the same time, a national estimate of housing need found that 51% of households (urban and rural) in ‘serious housing need’ were classified as Māori households (Murphy, Cloher 1995).

Studies suggest that Māori aspire to home ownership (Murphy, Cloher 1995), but Māori homeownership rates are half that of the general population (Waldegrave, King et al. 2006). A comparison of studies<sup>13</sup> illustrates the fall in Māori home ownership since the early 1980s. Beginning from a base of 49.8% of Māori owning their own homes (with or without mortgage) in 1981, (Murphy, Cloher 1995), homeownership by Māori nationwide dropped to 31.7% in 2001, and fell further to 30.1% in 2006 (Te Puni Kokiri 2010). Falling homeownership follows a national trend – homeownership by the general population also dropped from 67.8% in 2001 to 66.9% in 2006 (Statistics New Zealand 2006b).

Murphy and Cloher consider that that ‘[l]ow incomes, widespread unemployment and high levels of welfare dependency have combined with unfavourable legal structures and private sector institutional practices – including discrimination – to consign Maori to a disadvantaged position in the housing market’ (Murphy, Cloher 1995, p.334). They attribute low homeownership levels among Māori – on Māori and general land – to longterm marginalisation of Māori people in the labour market, resulting in difficulties in accessing mortgage finance. In a study on ‘Māori Housing Experiences’ released in 2005, Waldegrave et al. confirm the difficulty for many Māori in raising finance, but also identify barriers relating to ‘lack of knowledge about homeownership; difficulty of accessing services and information; low motivation; discrimination; high bureaucratic costs in both urban and rural environments; and high development costs especially in rural areas’ (Waldegrave, King et al. 2006, p.11). As homeownership rates have fallen, the number of Māori renting accommodation has increased. However, the supply of rental housing is very limited in rural areas.

Studies have also identified problems with the quality and affordability of Māori housing (e.g. Murphy, Cloher 1995). The Affordable Housing in the Bay of Plenty Region ‘Solutions Study’ released in 2005 estimated that ‘by 2006 there would be 9144 [Māori and non-Māori] households living in housing stress in the sub-region, but only 5257 houses in the sub-region would be valued at less than NZ \$250,000 (US \$177,725) and considered affordable to those households’ (Hill 2007). Combining evidence of existing Māori disadvantage in the housing market with projected population increases, it is possible to conclude that current and future Māori population in the Bay of Plenty are likely to require a significant number of houses that are classed as ‘affordable’, either on Māori or general land.

### **2.3.2 Why do owners of Māori land want to build housing on their land?**

Awatere et al. state that:

‘The ability to live on their traditional land in papakainga developments is a way in which Maori will be able to maintain and enhance their culture and traditions. Two

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<sup>13</sup> These figures must be viewed with care as the data has been gathered from two sources which may not be exactly comparable.



aspirations of papakainga are ahi ka and mana whenua; the first is the desire by families to maintain ahi ka – the occupation and use of their traditional lands; the second [mana whenua] is the continued maintenance and ownership of land within the family' (Awatere, Pauling et al. 2008, p.18)

The concepts of *ahi kā roa* and *mana whenua* are discussed briefly below.

*Ahi kā roa*: Occupying their own land is an inherent goal for many owners of Māori land. The Te Aranga Māori Cultural Landscapes Strategy describes “‘ahi kā roa’ – the importance of maintaining occupancy of, and connection with, whenua [land] – as the puna (well-spring) of our identity, and recognition of the value and importance of those who ‘keep the home fires burning’” (Te Aranga Steering Committee 2008, p.7). O’Sullivan and Dana quote Mead’s description of *ahi kā roa* which: ‘...can be translated as ‘constant burning fire’ (Moko Mead 1997). This principle entails the occupation of an area of land by a group, generally over a long period of time. By right of continuous occupation traced back through ancestors who lived on the land a group holds influence over the land and is able to exercise sovereignty over their land and themselves’. As Davey observes, ‘[t]he goal of policy for housing on collectively owned Maori land... can be seen as assisting Maori people with the resources they need for adequate housing on the land which they already feel is home’ (Davey, Kearns 1994, p.75-6)

*Mana whenua*: Other reports identify that many Māori wish to live close to their family, and to the ‘ancestral roots of the whanau [family] in its turangawaewae [lands of origin], or more specifically the marae’ (Capital Strategy, SGS Economics and Planning 2007, p.128). This wish ‘must be seen in the context of a revival in Maori cultural consciousness, efforts to promote the Maori language, and demands for the return of Maori land and other resources, such as forests and fisheries, to tribal control’ (Davey, Kearns 1994, p.74). Several authors suggest that the desire to return home may mean that the Māori population are reversing the urbanisation trends of the 1950s and 1960s, at least in some areas (e.g. Murphy, Cloher 1995, Stephenson 2001, Waldegrave, King et al. 2006). However Waldegrave et al. note that the literature does not describe ‘the extent to which urban to rural migration is occurring’ (Waldegrave, King et al. 2006, p.29).

Building housing on Māori land also needs to be seen in the context of increasingly prominent Māori voices in the architecture, urban design and planning disciplines in New Zealand. A number of academics and practitioners have highlighted the pre-European existence of a distinctly Māori approach to the built environment, and the continuing practice of this approach in contemporary Māori buildings, settlements, and communities (for instance see Awatere, Pauling et al. 2008, Rolleston, Awatere 2009).

Awatere et al. state that ‘papakāinga development is a process of design’, and cite work done by Blair (2006) and Rolleston (2006) with Māori communities which identified ‘...rangatiratanga (self-determination), whānau (social/family relations), whakapapa (genealogical connection), and kaitiakitanga (sustainable environment management) as key traditional values in contemporary Maori driven design and development’ (Awatere, Pauling et al. 2008, p.15). In Rolleston’s case study of the Ōrakei development in Auckland, these values manifested in design aspects such as visible celebrations of tribal identity, the ability to work from home, communal gardens, housing for the elderly and on-site water infrastructure (Rolleston, Awatere 2009). However, it must be stressed that there is no ‘one papakāinga model’, and that ‘papakāinga’ [housing development on Māori land] may be defined and imagined differently by each *whānau* [family] or *hapū* [kinship group] (Awatere, Pauling et al. 2008).

The social, cultural, and environmental values mentioned above are a strong driver for owners of Māori land to build housing on their land. Awatere et al. state that '...from a Maori perspective, the economic benefit acquired by an individual or group [from papakāinga] is derived from their relationship with the environment, culture, society, and the spiritual world. These elements tend to take priority over the economic and financial benefits of housing development' (Awatere, Pauling et al. 2008, p.1). However, housing can also provide economic benefits, as Walzl and Dewes note:

‘For many hapu, the establishment of papakainga housing is the perfect solution to address the difficulty of encouraging their people to return home whilst getting over the high cost of land for residence’ (Dewes, Walzl 2007)

Homeownership in general is seen to have many benefits, including: independence; tenure security; a stable environment; investment gains; improved financial position after retirement; and a sense of belonging (Housing New Zealand Corporation 2005). This thesis argues that some, but not all, of these benefits can be achieved through housing on land held under collective tenure.

### 2.3.3 Supply of housing on Māori land

A draft report provided by Tauranga City Council shows that in 2004, there were 224 dwellings on Māori land in the Western Bay of Plenty district (SmartGrowth Combined Tangata Whenua Forum 2004). The report mentions an existing *papakāinga* settlement at Hungahungatoroa which has reached capacity at thirty dwellings, and another settlement at Manoeka of an unspecified size. In the ten years from 1994, fifty new dwellings were built on Māori land, and twenty-two were resited in the Tauranga City Council and Western Bay of Plenty District Council jurisdictions (SmartGrowth Combined Tangata Whenua Forum 2004). Hill states that ‘[b]uilding consents issued on multiple-owned Māori land from 1994 until 2006... average 11 consents issued for new and re-sited dwellings in total per annum’. This should be compared to the number of new dwelling consents issued by the two councils over the same period for dwellings on general land, which exceeded 1800 per annum (Hill 2007). A 2005 report by Western Bay of Plenty District Council concludes that it is ‘very evident from examining any of the data sets that numbers of housing development on Maori land over the past 5-10 years have not been high’ (cited in (Hill 2007)).

It is observable that if all Māori people within the western Bay of Plenty wanted to live in dwellings on Māori land, the current rates of housing provision would not meet demand. If, as predicted, the Māori population in the Western Bay of Plenty sub-region doubles to 48,000 by 2026, at current rates of housing provision (eleven consents per year), assuming the New Zealand average household size of 2.7 (Statistics New Zealand 2006a) and taking into account the existing 224 dwellings noted in Western Bay of Plenty District, there would a shortfall of 17,778 dwellings in 2026. This is obviously not a realistic scenario – not all Māori people in the western Bay of Plenty will own Māori land in the western Bay of Plenty, and not all owners of Māori land will want to live on Māori land<sup>14</sup> – but it serves to illustrate the distance between reality and aspiration.

The Land Capacity report commissioned for SmartGrowth in 2002 notes that ‘[t]he theoretical available household capacity within the residential, marae [community base] and papakainga [housing on Māori land] zones of the subregion could potentially provide for an

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<sup>14</sup> It is possible for people who are not owners of the land to occupy Māori land. A non-owner (of any ethnicity) could be granted a lease or other determination of right, but this may need to be approved by the Māori Land Court. A non-owner could not be granted a ‘licence to occupy’, because these licences are restricted to owners of the land.

additional 3,660 households' (Phizacklea 2002, p.18). Two years later, the Western Bay of Plenty SmartGrowth Strategy identified a target of 16,000 people living on Māori land by 2026. Assuming the same average household size as above, and taking into account existing houses, this target requires relocations or new builds on Māori land to rise from 11 to 356 per annum to deliver a total of 5,702<sup>15</sup> houses on Māori land in the Western Bay of Plenty sub-region in 2026.

### **2.3.4 Barriers to building housing on Māori land**

The introduction to this thesis questioned why there are relatively few houses on Māori land, and suggested that government policies may not adequately address barriers to housing development on Māori land. These barriers are well-documented. Summarising a 1982 study by Tama Nikora, Turner states that:

'The nature of the problems: fragmentation by partition, lack of survey, multiple ownership by succession, and the disadvantages of a second best system of land registration; are the underlying cause of the hindrance to utilisation [of Māori land]. Poor records, lack of mapping and therefore access to related land use information are fundamental impediments to initiating discussion, reaching agreement and taking action on land developments. Other issues such as administration structures for owners, finance, irrational boundaries, lack of practical access and survey also compound the challenges' (Turner 2004, pp.20-21)

Sixteen years later, following the passage of the Māori Land Act, Durie (1998, p.142) reiterates the outstanding obstacles to developing Māori land, comprising the large number of owners; difficulty obtaining developmental funding; inadequate land information; low levels of expertise; and legal restraints.

In the last two years, a significant amount of work has been done to improve titling and available land information. In contemporary reports, the three commonly stated barriers include access to finance; local government planning provisions; and the capacity of land trusts to communicate with land owners and make decisions in accordance with the requirements of the Māori Land Court (for instance, see Durie 1998, Stephenson 2001, Hitchcock 2008). Some difficulties are associated with the fact that Māori land has multiple owners – leading to higher transaction costs – and some stem from the ancestral status of Māori land which restricts the owners' ability to alienate the land. Many barriers are a result of the combination of these two factors.

### **2.3.5 Access to finance**

Reports of difficulties experienced by Māori landowners accessing loan finance for development are well-documented (e.g. Hitchcock 2008), based on the fact that multiply-owned land is generally not viewed as appropriate security for a loan. Access to finance is a long-standing issue in development of Māori land. Discussing agricultural development, Kawharu describes the situation in the 1920s:

'However, it was all very well for the Maori to want development finance – and for the government to recognise this want – they had also to be able to offer an acceptable security. And so long as the bulk of the people remained untouched by consolidation,

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<sup>15</sup> My calculation of 5,702 new houses needed to house 16,000 people is well above Phizacklea's assessment of the capacity of Māori land to host 3,660 new households. This discrepancy could be due to different assumptions about household size, or anticipated changes in permitted residential density on Māori land between the 2002 and 2004 estimates.

their real wealth, land, was useless for security purposes. Maori land titles were complex and totally unacceptable in the commercial world' (Kawharu 1977, p.28)

There appear to be three different issues identified as barriers to accessing finance. These are: firstly, that the land is multiply-owned and it is perceived to be difficult to gain agreement from all the owners to use land as security; secondly, that both the registration of a mortgage against the title and the sale of land to recover the loan require approval from the Māori Land Court, which relies on the judges' discretion; and thirdly, that any sale of the land to recover mortgage funds would have to be to a 'preferred class of alienee' – that is, a member of the family group.

Few people dispute the difficulties of working with multiple owners (Boast 2004a). However, the second and third issues require further examination, because there are conflicting interpretations of the interaction between legal restrictions on alienation and the rights of potential lenders.

In 1998, Durie asserted that '[b]ecause [the Māori Land Act] prohibits alienation of land, banks will not be able to seize the asset if it is land, nor can they count on hapu [kinship group] and whanau [family] to find funds from other sources'(Durie 1998). However, as discussed above, alienation of land is not prohibited, but restricted. Linkhorn notes that it is the registration of a mortgage against the title that counts as 'alienation' and that requires Māori Land Court approval, not the subsequent sale of land. Using the case of mortgaged land at the Matauri X block in Northland, he shows that once land has been mortgaged, there are no restrictions on banks seizing or selling land to recover funds (Linkhorn 2006)<sup>16</sup>. Reiterating the fact that the land is alienated at the time of mortgage, Linkhorn also denies the necessity of a bank or lender offering land confiscated for mortgage default to the preferred alienees. He states:

'It seems to be regularly assumed that a key barrier to a lender recovering their interests—by selling mortgaged land when the borrower is in default—is the general obligation that before Maori land can be sold on the open market it must be first offered to a preferred class of alienees comprising the kin of the sellers. This is not so' (Linkhorn 2006, p.9)

Legal technicalities notwithstanding, a perception remains that it is difficult, if not impossible, to raise debt-funding against Māori land. Accepting the complications of accessing finance for housing development, the Bay of Plenty Affordable Housing 'Solutions Study' suggests that 'the only, current, practical options [for developing housing on Māori land] are:

- To secure a leasehold interest on the building constructed on the land with the mortgage registered (and enforced if necessary) in the "mainstream" Land Court
- To obtain mortgage guarantee or underwriting from another party
- To provide rental or shared equity homes through a community housing organisation, including those established by tribal authorities
- To utilise "sweat equity" schemes associated with bulk or joint purchasing initiatives, e.g. Habitat for Humanity programmes' (Capital Strategy, SGS Economics and Planning 2007, p.127)

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<sup>16</sup> Although in the case of Matauri X, the lender was prevented from taking the land because the Court of Appeal found that the original decision to grant the mortgage over the land was outside the mandate of the Matauri X Incorporation (Linkhorn 2006)

### 2.3.6 Local government planning provisions

In 2005 the Western Bay of Plenty District Council Māori Forum identified zoning restrictions, construction costs, and the time necessary to gain resource consent as among barriers to building homes on multiply-owned land (Capital Strategy, SGS Economics and Planning 2007). Davey and Kearns also note local planning requirements and high building costs (due to poor access to land in remote locations) as obstacles to development (Davey, Kearns 1994). The Affordable Housing ‘Solutions Study’ suggests that district plan zoning schemes ‘need to recognise that higher densities of papakainga or kaumatua [elderly] housing on multiple owned land are appropriate’, and that ‘most Māori land is under Rural G zoning, where conditions are too restrictive’ (Capital Strategy, SGS Economics and Planning 2007, p.129).

Stephenson sources the rural zoning of Māori land to the beginnings of the Town and Country Planning Act in 1953 when, because of urbanisation, ‘[m]any rural areas were bereft of their usual Maori population’ (Stephenson 2001, p.175). She quotes Judge RM Russell of the Māori Land Court:

‘When planners started preparing district schemes for counties, they found marae standing by themselves with only one or two houses nearby. The planners zoned the actual areas occupied by such marae as Marae Reserves and the surrounding land as rural. People who had left a rural area in their youth in search of work found that a rural zoning prevented them from returning and building a home to live by the marae in their retirement’ (Stephenson 2001, p.175)

Some changes towards recognising Māori aspirations for housing have been seen more recently. Davey and Kearns note that ‘the concept of a *marae* community zone or *papakāinga* zone...has been applied in the former Taupo, Tauranga and Opotiki Counties since the late 1970s, for the purposes of housing as well as *marae* [community bases] and cultural uses’ (Davey, Kearns 1994). Māori purpose zones are also used in the district plans of Manukau and Auckland cities. The most comprehensive assessment of *papakāinga* zoning to date has been done by Hartshorne:

‘In an assessment of seven local authorities provision for papakāinga housing through their district plans, Hartshorne (1997) found many plans lacking in important elements. There was a lack of clear definition of papakāinga housing with several plans containing no definition at all. Restrictions on dwelling numbers and density were inappropriate, and ...some plans required papakāinga housing to be built next to an associated Marae. Finally, in some plans, zoning classifications of papakāinga housing increased the difficulty in obtaining resource consents, and ...there were a lack of techniques that provided for papakāinga housing in a non-exclusive flexible way. This meant that greater weight was placed on the agricultural utility of land as opposed to the social benefits for Māori in establishing papakāinga housing’ (cited in Waldegrave, King et al. 2006).

However, the proportion of Māori land zoned for residential development of any kind nationally remains low, at an estimated 1% (Chief Registrar, Maori Land Court 2010).

### 2.3.7 Capacity and communication between land owners

The Affordable Housing ‘Solutions Study’ notes that the governance and administration of Māori land varies across the Bay of Plenty region. As well as Māori land trusts and incorporations, there are a number of organisations which carry out various social and commercial functions, but very few specialised community housing organisations. Options

suggested to improve capacity of owners of Māori land to develop housing include: providing training to encourage the establishment of tribal or community housing organisations; forming partnerships between tribal authorities and existing community housing organisations, commercial housing developers, or public sector housing developers; utilising shared service arrangements to achieve economies of scale; and identifying the potential contribution of Treaty of Waitangi settlement funds to supporting affordable housing initiatives (Capital Strategy, SGS Economics and Planning 2007).

Also focussing on capacity, Linkhorn suggests that legal restrictions on the alienation of Māori land are less of a barrier to accessing finance than the business experience of Māori land owners and strength of business proposals, and correspondingly limited familiarity in the banking sector with Māori land issues (Linkhorn 2006). However, Hitchcock cautions against identifying a lack of management and business skills as the main impediment to accessing finance, noting that strong evidence is required to avoid ‘...cast[ing] an unjustified shadow over the expertise of managers and trustees responsible for Māori land’ (Hitchcock 2008)

Notwithstanding the capacity of trustees to prepare and advance development proposals, trusts must also be able to communicate with the wider group of owners to approve decisions. The Māori Land Court requires a quorum of 75% of landowners to approve a development proposal (Maori Trustee Waiariki 2010). Such requirements stipulating the consent of a large proportion of landowners get exponentially more difficult to fulfil as the number of owners increases. Submissions to the Rates Inquiry revealed ‘...a number of reasons for land remaining unproductive, including: difficulty of locating owners; family members living in different places and difficulty in involving them in decision making; ...and fragmentation of titles’ (Department of Internal Affairs 2007, p.214). Kawharu identifies that tensions can exist between the wider group of (often absentee) owners and the residents or users of the land (Kawharu 1977).

In conclusion, housing development on Māori land takes places within the context of a number of social, cultural and legal perspectives on land ownership and use. Coupled with a demonstrated need for affordable housing for Māori in the Bay of Plenty and nationwide, these interests encourage owners of Māori land to consider developing housing for their people on their land. However, housing developments face barriers relating to finance, planning, communication and capacity. Some of these barriers relate to the protective nature of Māori land tenure, while others relate to government plans and the demands of the market environment. The strength of these barriers is illustrated by the existence of relatively few dwellings on Māori land.

The next chapter places these barriers within a theoretical framework that explores how housing development works on general land, and how housing projects may change when developed on collectively-owned land.

## Chapter 3: Theoretical framework

The discussion of ‘Māori interests’ in land highlighted a tension between the protection of land, and the desire to develop land. The conceptual framework for this research brings these interests in land together with two broad areas of research – the market environment for housing development; and the government environment for housing development. An outline of the classic market approach to housing development is followed by a review of how the market approach works in housing development models on collective land tenure such as condominiums and community land trusts. These models ‘protect’ land to various degrees through collective governance, and demonstrate the centrality of selling and leasing rights over land to market development models. Focussing more closely on development on land that cannot be sold, the chapter ends with a brief survey of government approaches around the world to working to encourage housing on collectively-owned ancestral land.

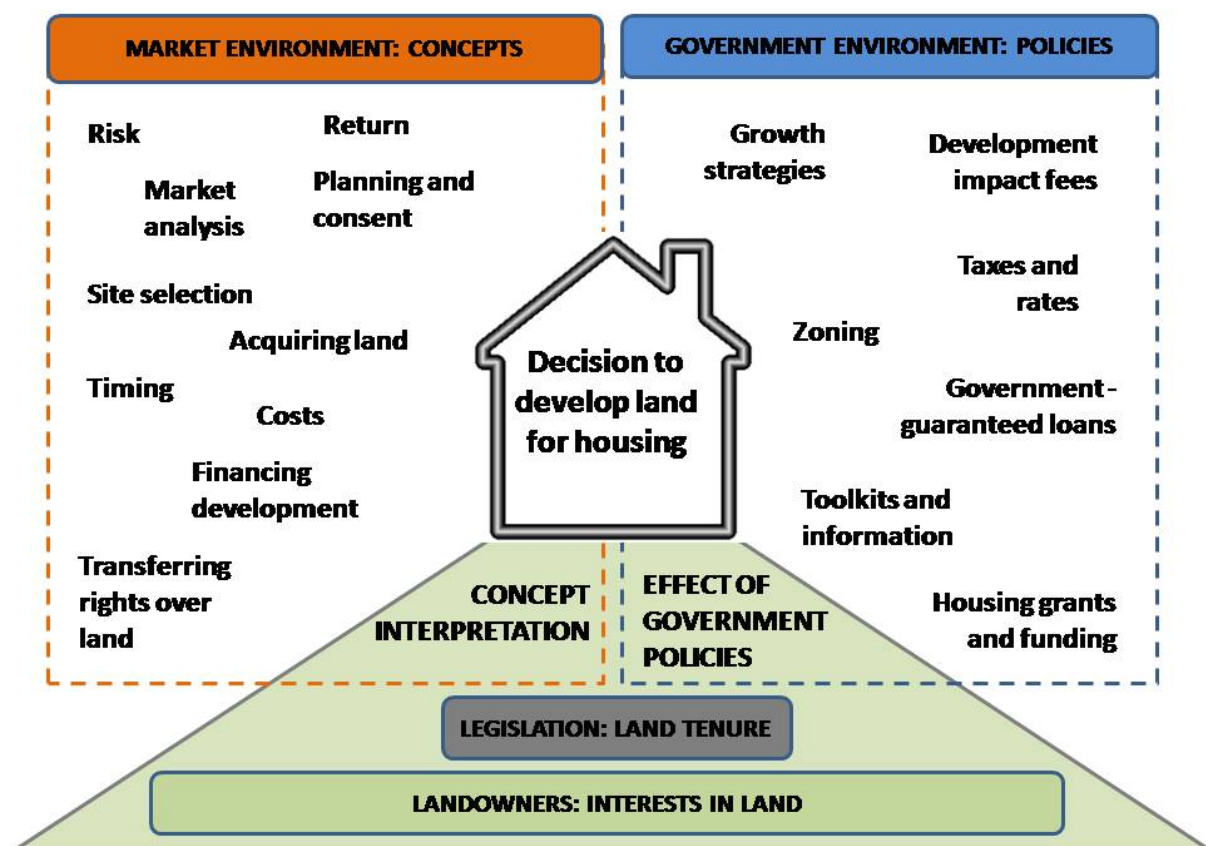


Figure 1 Conceptual framework

### 3.1 Part One: Market environment for housing development

This section outlines the standard parameters assessed in decision-making about development, as presented in a popular property development textbook in wide use in the United Kingdom and Australia (Wilkinson, Reed 2008). These parameters include: acquiring land for development; return on investment; risk; market analysis; planning and consenting; timing; costs of development; funding development; and transferring rights over property.

#### 3.1.1 Land acquisition

Literature suggests that property developers accumulate profit from two aspects of development – creating buildings which are sold for more than the cost to construct them;

and selling land at a higher price than it was bought for. As Brown et al. (1981) show, investors or developers frequently buy land well before the market requires its development. This enables developers to acquire land at a price that is lower than its potential urban value, but at a price that is often well above the agricultural value. For most housing developments, the increase in land value contributes much more to capital gains than the increase in house value (Bourassa 2007), and developers try to acquire land that will increase in value, for instance land 'in the path of urban expansion' (Brown, Phillips et al. 1981, p.139). The location of a land block dictates the uses permitted on it, and consequently land value. A commercial developer is likely to select the location that suits their proposed development best.

As a general rule, developers try to buy larger rather than smaller blocks of land. The size of an area available for development depends on existing land holdings, the availability of adjacent properties, and the financial ability to buy further land. Any landowner can choose to develop all or some of their land, depending on market conditions. Larger developments can generate economies of scale by including a sufficient number of buildings to allow the developer to achieve a lower price for construction materials, infrastructure, or amenities, than otherwise achievable. Developers also prefer land to acquire with a 'clean', registered title, unencumbered with covenants or preferred purchaser clauses.

### **3.1.2 Return on investment**

The 'return on investment' is the expected profit from a development. Return is normally expressed in currency amounts, but can also be expressed as a percentage (for instance, in an internal rate of return calculation). Although it is difficult to generalise, Wilkinson and Reed suggest that developers generally seek between 15% and 25% of the total cost of the development as their expected profit (Wilkinson, Reed 2008, p.103). This percentage rises with perceived risk. Henneberry and Rowley confirm this general figure (Henneberry, Rowley 2002, p.106), and also note the importance of market trends in determining 'the minimum rate or profit required by the developer to compensate him/her for risk and effort' (Henneberry, Rowley 2002, p.106). This profit allowance may include an amount of contingency funding in case expenditure exceeds expectations.

### **3.1.3 Risk**

Analysing and mitigating risks is a crucial component of decision-making about a property development. Wilkinson and Reed (Wilkinson, Reed 2008) state that:

'The two major types of risk that affect property are either systematic (or market) risk or unsystematic (or property-specific) risk. Importantly, a developer should never underestimate risk and the level of risk in every development scheme should be identified and, if possible, contained or reduced' (p.116)

Risks arise from the possibility of change in a number of development variables. Some variables are within the developer's control, such as decisions about target market or quality of construction, while other variables, for instance rental income, investment yield and building costs are more 'sensitive' to external fluctuations outside the control of the property developer. For each of these variables, developers can use techniques (such as pre-letting, partnering with a building contractor, or fixing a short-term interest rate) to reduce uncertainty. However, '...it must be acknowledged that by reducing or effectively sharing the risk, the developer must expect to have to limit the potential reward' (Wilkinson, Reed 2008, p.115). They note further that...'[w]hen a developer is deciding how much to reduce the element of risk, a balance needs to be struck between profit and certainty. In general terms, the greater the certainty, the lower the potential profit' (Wilkinson, Reed 2008, p.119).



An acceptable level of risk is therefore a subjective judgement made by the developer in the context of their specific project, and will depend largely on their motivation. Confirming Wilkinson and Reed's advice that 'the degree of risk is usually directly related to the complexity and scale of the proposed development' (2008, p.119) Coiacetto finds that small residential subdivisions (less than ten lots) are often carried out by low-risk developers who follow, rather than deviate from, existing local styles and trends (Coiacetto 2001).

### **3.1.4 Market analysis**

Before acquiring land for development, a developer needs to assess what should be built on a particular site. This is done through market research, which studies supply and demand in order to determine the 'highest and best use' of a property (Wilkinson and Reed 2008). Market research tools such as marketability studies, economic feasibility and investment analysis help a developer to assess different options for the use of their land – residential, industrial, commercial, high density, low density etc. – and to compare the market risks and returns for each option. This analysis focuses both on the subject property to determine its competitiveness against other properties, and on the wider property market to define the target market for the proposed development and assess the possible effect of externalities (Wilkinson, Reed 2008). Henneberry notes that in a dynamic property market '...[t]o be in a position to exploit opportunities for profit, developers must continually monitor property market trends and consider their implications for development profitability' (Henneberry, 1999 in Guy and Henneberry 2002, p.101). Wilkinson and Reed recommend a marketability study should answer questions about:

- End users, their characteristics and requirements
- Market demand for the proposed development, including desirability and affordability
- Likely market share and possible competitors
- Estimated absorption rate for proposed development; and
- Alternative uses and their comparative risks and return on investment (2008, p.261)

This information enables the developer to make an informed judgement about the kind of development that will be required or desired on a particular site at a specific point in the future.

### **3.1.5 Planning and consent**

Most property developments take place within a legal and regulatory framework set by central and local government. These frameworks can include strategic growth plans as well as more detailed planning and zoning regulations.

Strategic growth planning aims to 'broker agreements about longer-term spatial development patterns', and in doing so increase the certainty of development (Haughton, Allmendinger et al. 2010, p.5). The 'growth corridors' drawn on growth strategy maps are an important source of information for prospective developers. Similarly, the zoning enacted for a particular area can have a dramatic effect on the value of the land, increasing prices where higher-value development is permitted and reducing prices where the value of permitted development is decreased (Evans 2004). This effect is particularly marked in peri-urban areas, where zoning permits the change of land use from agricultural to residential or commercial. Iaquina and Dreschner note that '...in urban and periurban environments there is an intensification of conflict and a necessity for negotiating and resolving competing claims (e.g., residential versus agricultural land debates...) and for implementing development plans' (Iaquina, Drescher 2000, p.4).

Within an area zoned for residential development, individual projects still generally need to get specific planning consent to begin development, and a building consent to begin building. Depending on the activities permitted in the area, and the level of discretion the legislation permits government officials, this can be a process with uncertain outcomes. In fact, Wilkinson and Reed suggest that:

'In order to reduce risk, a site should not be purchased until the appropriate planning permission has been obtained and the detailed building cost established. If this is not possible, the developer should try to negotiate a contract that is subject to obtaining a satisfactory planning consent... this is standard procedure for many property sales' (2008, p.116)

If a developer wants to create a project that is not permitted within the zone, it is possible in most jurisdictions to apply for a change of zoning. Although a zoning change increasing permitted building density will increase the value of the property, developers must be aware that '...planning applications take time and any improvement in value that might be obtained needs to be balanced against the costs of holding the site' (Wilkinson and Reed 2008, p.116).

### **3.1.6 Timing**

Coordinating the timing of development can also be very important for a development to minimise costs and to match the housing supply generated by the development with the demand at that point in the property development cycle. Wilkinson and Reed state that '[a]s with most businesses, cash flow is critical due to the cost of borrowing funds and the effect of compound interest over an extended period of time' (2008, p.109). Many developers use cash flow analysis to assess the inflow and outflow of capital over time, coordinating loan periods, lease periods, and other variables to minimise interest costs (Morley 2002).

Timing is also crucial to ensure that a development meets demand, as '[h]istory has shown that poor timing by a property developer can result in completion at the bottom of the cycle where rents are low and demand is scarce' (Wilkinson and Reed 2008, p.168). The ability to break a project into phases can be a major advantage for the overall viability of the project (Wilkinson, Reed 2008, p.109). As an example, D'Arcy and Keogh (D'Arcy, Keogh 2002) note that small-scale house builders tend to build in phases to maintain flexibility of supply, whereas volume builders sacrifice flexibility for economies of scale and are locked into producing a certain number of houses at a certain time.

### **3.1.7 Costs of development**

The costs of development include many different elements, including preparation of the site, costs of drainage and external services, building costs, landscaping costs, professional consultants' fees, finance costs, letting and sale fees, and so on (Morley 2002).

Land acquisition is a major expense, and normally the first major financial commitment a developer makes to a project (Wilkinson, Reed 2008). According to Johnston, recent figures for a major city in Australia show that the cost of land acquisition makes up 21% of the total cost to the consumer for a house-and-land package, and 22% of the total costs of development for a multi-unit housing development (Johnston 2009). The second major financial commitment a developer makes is for construction costs. Construction costs for a single house vary according to size of the dwelling and quality of construction materials, as well as location and access to the building site. Within a multi-building development, further costs are added for communal amenities (such as community buildings), roads, and open space. The costs of raw materials, labour, and finance can be dramatically affected by external financial conditions.

Developments can also incur transaction costs, a concept explained by Buitelaar:

‘Transaction costs do not contribute directly to the output of a development process, like land, bricks, concrete and trees, in other words the production costs. From a perspective of cost efficiency, transaction costs can be seen as dead weight losses that have to be minimised. It is assumed ...that the fewer the transaction costs, the more smooth and efficient the development process’ (Buitelaar 2004, pp.2541-2).

In property development, these costs may include ‘(1) identifying the bargaining parties; (2) determining the appropriate amount for the transaction; (3) enforcing contractual agreements; and (4) meeting government regulations’ (Hong 2007, p.5). Buitelaar identifies possible transaction-cost generating factors, which for land exchange include: number of parties involved; conflict of interest; information levels; and delineation of rights. Change in any of these factors may affect the predictability of development outcomes. He also notes that transaction costs are borne by different parties, not just the property developer (Buitelaar 2004, p.2547).

### **3.1.8 Funding**

Under a standard development model, a project is funded by a combination of capital from the developer and debt-funding from a bank. Wilkinson and Reed note:

‘The choice of both source and method of development finance will depend on how much equity (the developer's own capital) ...the developer is able and willing to commit to a scheme. If the developer has insufficient capital then the aim is to arrange as much external finance as possible in order to meet all costs associated with the property’ (2008, p.149)

External finance can either be in the form of debt funding where the institution lends the developer a set sum of money, to be repaid with interest over a specific period, or equity funding, where the financial institution contributes money in return for a ‘share’ of the profits and/or ownership of the development. Debt funding is frequently used by smaller-scale developers, such as ‘mum and dad’ developers who use their equity in the family home to leverage finance to buy or build a second property for investment. Debt funding is more profitable for developers than equity funding because it allows them to capture all the profit from increases in value – as long as rents and capital values are rising (Wilkinson, Reed 2008).

Debt funding can be granted either as a corporate loan (where money is lent to a company) or as a project-specific loan (where finance is given for a certain project). Using project finance developers may be able to borrow up to 65-70 percent of the development value or 70-80 percent of the development cost (Wilkinson and Reed 2008). Seeking external finance also requires project partners to share the risks and profits from development. A developer must consider how much risk they want to pass to the funder, and the funder’s corresponding share of the profit (through interest payments or equity). Conversely, the funding institution must decide whether the proposed development is a safe place to invest money. Factors in the institution’s decision include the size of the company, their financial assets and track record, and the nature and duration of the development project:

‘The banks will seek to assure themselves that the property is well-located, that the developer has the ability to complete the project and that the overall scheme is viable’ (Wilkinson and Reed 2008, p.140).

Developers must provide banks with information setting out evidence of market demand, likely income, and development feasibility. The conditions under which funding is lent

'...will vary according to the banking sectors' knowledge and overall confidence in the property market (systematic risk) and in the actual property itself (unsystematic risk)' (Wilkinson and Reed 2008, p.159). Real estate has traditionally been seen as a fairly secure investment because the financier can hold a mortgage or first claim over the land and improvements. The mortgage is noted on the property title, and the owner is unable to transfer or sell the land without clearing the mortgage (Wilkinson and Reed 2008). However, the recent financial crisis has challenged the perceived security of investment in property, particularly in the United States (Case 2010).

### **3.1.9 Transferring rights over land**

In every project, a developer has the option to hold onto a project as an investment and earn income through leasing, or to sell the land for a one-off capital gain. Transfer of fee title land (with or without development) is generally regarded as the way to derive an 'optimal' development decision (e.g. Dale-Johnson, Brzeski 2003). However, development can also take place through transferring less-than-freehold rights, such as leasing or renting.

Land can be leased for development, or property can be rented for use. The viability of either mechanism in a property development depends on the market acceptability of leasehold title both to funders as security for a loan, and to potential lessees or renters who are concerned with the security of their tenure. The public sector provides many examples of leasing land for development, for residential and commercial development (Bourassa, Hong 2003). Renting residential property is also very common. However, Wilkinson and Reed caution developers considering rental development that '...participation in the lower end of the property market is very risky, involving intensive management and regular voids' (2008, p.146).

### **3.1.10 Conclusion**

In summary, location and planning permissions are very important factors in a property developer's decision to create a certain development on a given site. An assessment of likely risks and return – as a function of costs and projected income – is also an essential part of the development decision-making process, not just for the developer but also for any institution which may consider contributing funding through debt or equity. Finally, most property developments involve transferring freehold rights over land, but there are some variations, including leasehold rights, which are also acceptable to the market in certain circumstances. A number of models for housing development which utilise leasehold or shared equity rights over land are discussed in the next section.

## 3.2 Part Two: Market environment for housing on collectively-owned land

Following the discussion of how residential property development works in theory, it is useful to see how these nine concepts are interpreted when considering property development on collectively-owned land. This section gives a brief overview of collective land tenures worldwide, and then revisits the nine property development concepts covered in the previous section in the context of three models of housing development on land held in collective tenure.

### 3.2.1 Collective land tenure worldwide

In Western society, the phrase ‘individual ownership of land’ implies a single voting person holding an exclusive title to a piece of land with discrete and defensible boundaries. Although Jacobs reminds us that private individual property can be seen as the ‘...literal key to a market-based capitalist economy’ and ‘...central to democratic political structures’ (Jacobs 2009, p.53), there are many places around the world where land is not held individually, but collectively. In fact, as Lueck and Allen (1995) note, ‘...sole ownership is the dominant regime for buildings and equipment, but not for land’. Collective land ownership can take a number of forms, as shown in Table 1.

However, the utility of collective land tenure has been challenged, not just in the colonial era which promoted the individualisation of tenure in New Zealand and other countries, but today. Throughout the 1990s, under the influence of titling advocates such as de Soto, the World Bank and other global organisations promoted the formalisation of property ownership into individual freehold land title. Giving individuals title to land aims to unlock the ‘dead capital’ of assets such as housing and land, owned by people with ‘defective’ or no land title and consequently, no access to credit. ‘Defective’ forms of asset ownership include collective ownership, inalienable land, and fragmented or disputed titles (de Soto 2000).

During the last two decades, a number of countries have moved away from collective tenure towards individual land ownership. Mexico reformed its dominant *ejido* system of community-based tenure in 1992, making it legally possible to change *ejido* tenure into private, individual forms of land ownership (Barnes 2009). Jacobs (2009) points out that in the last five years both China and Cuba have allowed private ownership of housing, a change he places in the context of increasing emphasis on private property rights in both developed and developing countries. Questions about the utility of collective land tenure were raised in Australia in 2005, when it was noted that although significant amounts of land have been returned to communal Aboriginal ownership since the 1960s, the socio-economic circumstances of these people have not improved commensurately:

‘The apparent lack of improvement in social, economic and housing conditions has led to the suggestion... that an important explanation for contemporary marginality and policy failure is the nature of property rights. In early 2005, Hughes and Warin (2005:1)... argued that the communal ownership of inalienable freehold title is important in explaining housing shortages and economic under-development... More recently... the Prime Minister of Australia has supported the view that land privatisation and individualisation of property rights might improve housing and economic development prospects for Indigenous peoples...’ (Altman, Linkhorn et al. 2005)<sup>17</sup>

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<sup>17</sup> The Prime Minister later reversed this support (Altman, Linkhorn et al. 2005)

<b>Selected collective ownership tenures</b>	<b>Description of title ownership and use rights</b>	<b>Example and reference</b>
<b>Informal ownership</b>		
Apportionment (shared ownership)	Individuals buy a large piece of land together and share it informally	Turkey (Payne, Fernandes 2001)
<b>Customary ownership</b>		
Customary ownership	Land is owned jointly in accordance with the rules of custom which are expounded by chiefs and elders; people other than the owners may have secondary or subsidiary rights.	Tonga, Fiji, Solomon Islands and other South Pacific nations (Paterson 2001)
<b>Trust structures</b>		
Individual trust	Land is held in trust for descendants of an ancestor; shares are fractionated through inheritance; leasing is overseen by a government agency.	United States (Anderson, Lueck 1992)
Tribal trust	Land is held in trust for a tribe; leasing is restricted and overseen by a government agency.	United States (Anderson, Lueck 1992)
Reserve land	Land is owned by government but dedicated for the use of indigenous people; governed by First Nation Council.	Canada (Dust 1997)
Aboriginal land	Freehold title vested in statutory corporations and held in trust for the benefit of Aborigines entitled to use or occupy the land; improvements are also owned by the land trust.	Australia (Altman, Linkhorn et al. 2005)
Community land ownership (also known as community land trusts)	Title to land is held by a cooperative corporate entity in which all participants own a share of stock; individuals hold perpetual leases for improvements.	United Kingdom and United States (Doebele 1987; Bourassa 2007)
<b>Legal persons</b>		
Community-based tenure	Title to the land is held by a defined community-based legal entity with strictly controlled membership. Others may reside on or possess the land with approval of community members.	Mexico ( <i>ejido</i> system) (Barnes 2009)
Body corporate (also known as a condominium model)	Units built on land are owned by individuals; common property, including the land is owned by all the unit proprietors as tenants in common.	New Zealand (Gibbons 2008)
Share equity housing cooperative	Land title is held by a collective entity; shareholders lease units from the entity.	United States (Hansmann 1991)
Multiple ownership	Land title is awarded to an individual or group; fractionated into shareholdings through inheritance.	New Zealand (Kawharu 1977)

**Table 1 Examples of collective land tenure worldwide (Author, 2010)**

Collective land tenure has received attention from a different angle through the work of Elinor Ostrom, the first female winner of the Nobel Memorial Prize for Economic Sciences. Ostrom's work reconsiders the 'tragedy of the commons' paradigm (Hardin 1968) that underpins many critiques of communal land tenure, and highlights the many ways that communities use communication to reach mutually-beneficial decisions (Ostrom 2003). Other scholars highlight the adaptiveness of existing kinds of collective tenure. For instance, Payne and Fernandes (Payne, Fernandes 2001) propose the existence of a continuum of land tenures, moving from traditional customary ownership or use rights through informal use rights to statutory individual property rights. Each tenure category has evolved in its own context, and fulfils the needs of a certain sector of the population.

Different tenures can also coexist. In Australia, a set of Indigenous Land Tenure Principles developed by the National Indigenous Council in 2005 propose that:

‘...to maximise the opportunity for individuals and families to acquire and exercise a personal interest in [Aboriginal land], whether for the purposes of home ownership or business development... a mixed system of [underlying perpetual collective] freehold and [overlapping transferable individual] leasehold interests’ be developed’ (Altman, Linkhorn et al. 2005, p.9)

### 3.3 Property development on collectively-owned land

Following that brief review of collective land tenures around the world, I revisit the nine standard parameters described earlier to discuss the applicability of these concepts in housing development on collectively-owned land. I will use three models of housing development on collectively-owned land to explore these parameters: the housing cooperative; the condominium model, and the community land trust model. All three models are based on formal legal arrangements where the landowner and the homeowner share equity in the land and/or house, as briefly described below:

- In a **condominium** arrangement, residents each own their own dwelling. Residents are also collective owners of common spaces such as grounds, or lifts and lobby areas in an apartment complex;
- In a **housing cooperative**, residents collectively own the building as shareholders. Each resident leases their dwelling from the housing cooperative, so that ‘the tenants are collectively their own landlord’ (Hansmann 1991, p.26);
- Under a **community land trust**, the ownership of the land is vested in a trust which comprises representatives of residents as well as community and public representatives. Residents buy or lease their houses from the trust (Bourassa 2007).

These models range from the purely commercial condominium model to not-for-profit community land trusts. Although collective housing models also exist in New Zealand<sup>18</sup>, the wider use of these tenures in the United States is reflected in the origin of much of the literature regarding housing development on collectively-owned land.

#### 3.3.1 Land acquisition

Land for collective housing is acquired either on the market or through public or charitable facilitation, depending on the objectives of the development. Many condominiums and housing cooperative buildings are purpose-built for market sale, and developers look for land with high potential for residential development. Land for community land trusts is sometimes acquired in areas of rapidly rising value to preserve land for housing low-income families (Bourassa 2007). Community land trusts use their collective governance structure to intentionally withdraw high-value from the real estate market, as Bourassa explains:

‘Community land trusts maintain the affordability of housing by shielding residential property from market pressures. Land is held in trust by a board consisting in part of residents of the housing that is on trust-owned land and in part of other community representatives who are committed to supporting the public purposes underpinning the trust. The structure of the board helps to insulate the land trust from opportunity costs associated with high or rising land values’ (Bourassa 2007)

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<sup>18</sup> For instance, co-housing organisations exist at Riverside (Moutere), Creekside (Christchurch), and Earthsong (Auckland).

### 3.3.2 Return on investment

A key consideration in engineering agreements to develop housing on collectively-owned land is the extent to which an owner can realise increases in (collectively owned) land value as well as increases in the value of (individually owned) improvements at the time of resale. This consideration has significant impact on the return gained by an owners, because ‘...most of the upside potential in urban housing prices is in the value of the land, not the value of the structure’ (Bourassa 2007, p.343). In both the condominium and housing cooperative models, the owner is free to realise the full value of their dwelling and land right through sale on the open market. Hansmann notes that although the housing cooperative model uses a lease, ‘...[t]he lease, and the associated shares of stock, can be sold by the lessee at whatever price the market will bring’ (Hansmann 1991, p.27).

The roles of landowner and homeowner in the condominium and housing cooperative models are played by the same people. This is not the case in a community land trust, which means that a discussion of return must be separated into returns for the landowner, and returns for the homeowner. The return to the landowner under the community trust model is minimal, because rents set through ground leases are generally only sufficient to ‘recover some of the key costs of the community land trust in providing access to its land (e.g. US \$50 a month)’ (Johnston 2009, p.1). The community land trust uses the collective governance model to minimise the likelihood of land sale by ensuring that two-thirds of the board have no ownership interest and therefore no incentive to sell the land (Bourassa 2007).

Community land trust projects aim to provide ‘affordable housing in perpetuity’, which means that the ability of homeowners to realise capital gains must be balanced against the purchase price of the house for the next eligible buyer. Most community land trusts stipulate a ‘resale formula’ that awards a portion of the increase in the value of improvements, and in some cases the value of land, to the homeowner on resale of their dwelling. The effect of this formula is that the owner is required to sell the dwelling below the market price (Johnston 2009), which ‘retains the subsidy’ offered by the trust for the next seller. Davis notes that in spite of limitations on resale value, ‘...most people who purchase a community land trust home walk away with considerably more wealth than they possessed when they came into the deal’ (Davis 2009). However, Bourassa warns that community land trust homes ‘...will be a good investment for low-income households only under certain [market] conditions. The seller’s share of the return can be small or even negative’ because the owner is liable for any reduction in the value of the asset caused by depreciation (Bourassa 2007, p.363).

Saegert and Benitez add a different dimension to the question on return on investment by noting the contribution of housing on collective land to generating ‘social capital<sup>19</sup>’ and creating a sense of community (Saegert, Benitez 2003).

### 3.3.3 Risk

In economics literature, sharing risk is discussed in terms of contracts between principals and agents. These contracts are set up to ‘...balance the costs of risk bearing against the incentive gains that result’ (Allen, Lueck 1995). Discussing share contracts (as used, for example, between a landowner and a farmer to distribute income resulting from the farmer’s efforts to harvest benefits from the landowner’s land), Allen and Lueck note that ‘...share contracts are chosen when the costs of dividing and measuring shared assets are low and the margins for moral hazard are large and many’. In other words, this means that people will only enter into

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19 In 1988, Coleman observed that ‘social networks that facilitate cooperation to achieve group, as well as individual, goals provide network members with social capital’ (cited in Saegert, Benitez 2003)



collective arrangements when it takes a relatively small amount of time and effort to establish the arrangement, and when the risk of other parties taking advantage of the collective nature of the arrangement (for instance, unfairly exploiting a common resource) is the same for all parties.

The need to share risk is recognised in the governance of housing cooperatives, where management boards have the ability to screen prospective unit owners on social criteria, such as income. Screening prospective tenants is justified by the fact that in a housing cooperative a single mortgage is taken out for the whole building. Although responsibility to repay the mortgage is apportioned to each unit owner, collective fiscal responsibility remains and a single unit owner's default on mortgage payments could ultimately lead to others having to take on a larger share of the repayment, or a general default on the whole mortgage (Hansmann 1991). Saegert also notes that dealing with non-paying tenants can also cost housing cooperatives significantly (Saegert, Benitez 2003). Regarding risks for the individual homeowner, Hansmann warns that the ability of a housing cooperative to reject potential buyers means that a tenant cannot sell until the market offers a new tenant who is acceptable to the board (1991, p.32). This may increase the risk that the homeowner may wish to sell but cannot. In comparison, condominium arrangements share much less responsibility between owners, and are therefore less risky.

Neglect or disrepair of common-pool resources – the grounds, building structure, and utilities – is also identified as a risk of housing on collective tenure, because no single person holds the responsibility to maintain or report on the status of these facilities (Hansmann 1991).

On the positive side, collective ownership can help to mitigate some risks for land- and homeowners. Saegert and Benitez stress the benefits of collective tenure in ‘...spreading costs and financial risk across multiple shareholder [which] may make the decision to buy a home easier for first-time buyers and those with limited assets’ (Saegert, Benitez 2003). In his 2009 report, Johnston notes that ‘...community land trusts report that owner-occupiers in dwellings on community land trust land have been able to manage the stresses in the mortgage market better than other homeowners... the [National Community Land Trust] network attributed this better performance to a number of factors, including the greater affordability of dwellings on community housing trust land...the financial counselling given to purchasers of dwellings on community land trust land, monitoring of mortgagors’ [sic] loans by their community and trust, and general support for the resident’ (Johnston 2009).

### **3.3.4 Market analysis**

According to Saegert and Benitez, ‘...the populations who could be attracted to [housing on collective land tenures], and who research shows to be well-served by them, spans a broad spectrum of income and ethnicity’ (Saegert, Benitez 2003). As noted above, many housing cooperatives admit members based on criteria (Hansmann 1991). In the early days of cooperative housing in the United States in the 1920s, these criteria served to maintain cooperative housing as the exclusive preserve of the well-off, and Saegert and Benitez observe that:

‘Many cohousing schemes among wealthier populations [employ] limited equity cooperative ownership to assure continuing community control over housing decisions and community norms’ (Saegert, Benitez 2003, p.26)

However, contemporary cooperatives’ criteria are just as likely to favour low-income residents (Saegert, Benitez 2003).

Emphasis on low-income residents may be linked to the limited ability to capture capital gains in some collective tenures. Although housing on collective-owned land makes up a significant amount of the housing stock in the United States (8.2% of all multi-family housing in 1983) (Hansmann 1991) and there has been increasing policy interest in community ownership in the United Kingdom (Home 2009), there is still some scepticism in the market about the potential for wealth creation through housing on collective land, especially through the community land trust model (Bourassa 2007). Basset and Jacobs note perceptions of tenure provided through communal mechanisms as a lesser form of homeownership, suitable only for those who cannot affordable to purchase a dwelling on freehold land (Bassett, Jacobs 1997). These perceptions may reduce the pool of people willing to buy into a collective tenure arrangement. However, evidence indicates that community land trust homeowners can use limited equity homeownership as a ‘stepping stone to market rate housing’ (Bourassa 2007, p.343). Restrictions on absentee ownership may also limit the market acceptability of home ownership with a community land trust development (Johnston 2009).

Marketing housing on collective tenure land could also be difficult because of the relative novelty of the tenure in the contemporary property market<sup>20</sup>. Hansmann argues that ‘...an organisational innovation such as condominium housing ...requires not only that producers (in this case, developers) come to understand the advantages of the new form and the means of implementing it, but that lenders, brokers, and consumers also come to understand and trust it. Consumers, in particular, must come to believe that there will be a resale market for their units, which requires an act of faith before that market has actually developed’ (Hansmann 1991, p.63)

Finally, the social aspects of collective tenure may mean that collective tenures appeal to a limited sector of the population. Discussing limited equity housing cooperatives, Saegert and Benitez note that ‘there is a demand for among low-income households who value a low level of housing externalities and are willing to devote their efforts to reducing them by self-management’ (Saegert, Benitez 2003, p.7). ‘Self-management’ in this context, refers to participation in housing governance and management roles.

### **3.3.5 Planning and consent**

No literature identified that planning or consenting processes differ for development on collective land tenures than for development on land held in individual tenure.

### **3.3.6 Timing**

The timing of development on collective land also appears to be no different from development on individual land, except to the extent that the market cycle determines the relative affordability and returns of full-equity and shared-equity homeownership. For instance, analysis by Bourassa shows that within a low-inflation environment, a household with a limited equity ownership is better off than household with full equity ownership because any lost potential capital gain is cancelled out by lower interest payments. This situation reverses as inflation rises because of the increasing ability of the full-equity owner to capture capital gains (Bourassa 2007).

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<sup>20</sup> Although Hansmann points out the existence of condominium-style tenure in France during the Middle Ages (1991).

### 3.3.7 Costs of development

Saegert and Benitez suggest that cooperative housing may reduce costs for owners through collective procurement of goods, services, and insurance. Hansmann also notes that, ‘...occupants of a cooperative benefit from the savings that result from having only one large mortgage on a building rather than the many individual ones that must each be renegotiated each time a ...unit changes hands’ (Hansmann 1991, p.60)

With regard to transaction costs, a ‘...potentially significant source of costs in residential cooperatives and condominiums ...lies in the collective decision-making mechanisms that these forms require’ (Hansmann 1991, p.34). Transaction costs are likely to increase if the preferences and interests of owners are not homogenous. For instance, the interests of investor-owners of a residential building are likely to be fairly homogenous because they focus on financial return in which they ‘have a part interest in the undivided whole’ (Hansmann 1991, p.36). The interests of owner-occupiers in a similar building are likely to be more heterogeneous. Each owner may have different preferences and – because their dwellings are located in different parts of the building – each owner may be affected by the same decision in different ways. For instance, owners who live on the top floor may be more interested in investing in lifts than owners who live on the ground floor.

Whatever the reason, ‘...conflicts among members are, indeed, a serious problem in the governance of cooperatives and condominiums’ (Hansmann 1991, p.36). Saegert and Benitez confirm that residents’ level of satisfaction with living in a limited equity cooperative ‘...often depends on the quality of social relationships within the shareholders’ association, between leaders and non-leaders, and among co-op sponsors, technical assistants, and residents’ (Saegert, Benitez 2003, p.9).

### 3.3.8 Funding

The nature of funding for housing development on collective land differs between models, and Hansmann explains that ‘...mortgage financing in a cooperative is generally obtained collectively by the cooperative corporation with a single blanket mortgage for the building as a whole, while in a condominium each unit owner obtains his [sic] own mortgage financing with only his individual unit pledged as security’ (Hansmann 1991, p.26)

Reports vary in their assessment of market willingness to accept collectively-owned land as security. Hansmann observes that liquidity constraints relating to investment in ‘...owner-occupied housing in general, and of cooperative and condominium housing in particular... may make it costly or impossible for potential owner-occupants to obtain the necessary capital’ to purchase housing (Hansmann 1991, p.37). However, this observation is opposed by Saegert, who notes that in the collective housing environment of New York City, not only can housing cooperatives borrow money secured by the property as a whole (a ‘blanket debt’), but individuals members of the cooperative can also borrow money secured by their cooperate interests (a ‘share debt’) (Saegert, Benitez 2003).

Bourassa does not mention any difficulties with community land trusts accessing funding, although he does note that a proportion of funding comes from donors, rather than from banks. In the United States community land trusts negotiate ‘leasehold mortgages’ which allow the homeowner to borrow against the dwelling without compromising the interest of the trust or the security of the lender. In these mortgages, the trust takes responsibility for preventing the foreclosure and the sale of the property on the open market (Johnston 2009). Since the 1980s a revolving loan fund has also been available to community land trusts, provided by a nonprofit community development financial institution certified by the United States government (National Housing Trust 2010). Johnston notes that the lack of a suitable

mortgage products to support housing within community land trust developments has been a barrier to the community land trust model working in the United Kingdom (Johnston 2009).

### **3.3.9 Transferring rights over land**

The ability of the owner to buy or sell the land, and the conditions under which transfer of rights can take place is a key difference between housing development on individual and collective tenure land. In terms of rights to occupy a dwelling, the condominium model allows only for sale to an owner, and housing cooperative models only allow owners to hold a lease over their dwelling. However, this lease entitles the lessee to ‘perpetual occupancy of the unit’, and therefore ‘...a member of a cooperative, like the owner of a condominium, effectively has a perpetual, exclusive, and freely transferable property right in the physical unit he [sic] occupies’ (Hansmann 1991, p.27).

The community land trust model allows both home ownership and rental. Homeowners buy only a limited equity in their home, so they own the structure but not the land. A ground lease issued by the trust gives the lessee the exclusive right to use the area on which the building sits. Leases run for between 20 and 99 years, and can be inherited (Bourassa 2007). Houses can be sold by their owners, although the trust holds a ‘first right of refusal’ (Johnston 2009). However, the land is not for sale, as Johnston states:

‘The primary focus of community land trusts is to acquire, own and never sell’  
(Johnston 2009, p.1)

### **3.3.10 Conclusion**

In summary, the literature identifies three key areas where housing development on collectively-owned land differs significantly from housing development on individually-owned land. The first area is the ability to transfer rights of use and occupation, and the cost and complications that collective ownership generates when making decisions about dividing benefits and returns. The second area covers the internal risk relating to governance, and the high transaction costs associated with collective decision-making. Finally, housing developments on collectively-owned land tenure have a limited market either because of the necessity for prospective tenants to feel comfortable engaging in collective structures, and/or because of the criteria for eligibility assessed by housing organisations with a social motive. As the next section shows, these differences are also apparent in housing development on land collectively owned by indigenous people, which is further defined by ancestral connections between past and present owners and a resulting reluctance to alienate land.

### 3.4 Part Three: Government policies to encourage the development of housing on ancestral collectively-owned land

Alongside the market environment, the government environment plays an important role in decision-making about housing development, by providing regulating and incentivising different forms of development. This section narrows the focus of property development on collective land to concentrate on the central topic of research – housing development on multiply-owned ancestral land. Comparisons are often made between Australia, Canada, the United States and New Zealand because of a shared history as colonies of the British Empire. These similarities continue in contemporary policies regarding indigenous demands for increased self-determination in ‘post-settler’ societies<sup>21</sup>.

#### 3.4.1 Government-facilitated access to finance

Governments in Canada, Australia and the United States offer government guarantees to support borrowing against indigenous land where alienation is either prohibited or restricted. These guaranteed loans are complemented by a variety of interest-free loans, capability assistance, and subsidy programmes. In each country, assistance with finance is justified in similar ways:

- ‘Because the Indian Act protects property of a First Nation borrower located on reserve from mortgage and seizure, First Nation members often have difficulty accessing housing loans’ (Canada Mortgage and Housing Corporation 2008, p.1)
- ‘Land held in trust for a tribe cannot be mortgaged, and land held in trust for an individual must receive federal approval before a lien is placed on the property. As a result, tribes, [Indian Housing Authority/Tribally Designated Housing Entities], and individual Native American families have historically had limited access to private mortgage capital’ (U.S Department of Housing and Urban Development 2003, s.1.2.1)
- ‘Historically, Indigenous Australians living on Indigenous land have not been able to buy their homes because the system of property title applying to the land does not support the security requirements of lenders’ (Australia and New Zealand Banking Group Limited 2008, p.15)

**United States of America** – Title 25 of the U.S. Code ‘Indians’

**Australia** – Aboriginal Land Rights (Northern Territory) Act 1976; amended 2006

**Canada** – Indian Act 1876

#### Box 2 Legislation governing indigenous land in selected 'post-settler' countries

#### Guaranteed loan agreements

Each guaranteed loan is based on a tripartite arrangement between a lender, a borrower, and an insurer for the loan. Different players can take on each of these roles – in Canada the lender is either the Canada Mortgage and Housing Corporation<sup>22</sup> or an approved commercial bank; the borrower is one of a First Nation individual, group, or housing trust; and the insurer can be the Minister or Department of Indian and Northern Affairs, the Canada Mortgage and Housing Trust, or a First Nation group themselves (see Appendix B for diagrams of these

<sup>21</sup> A term used by Lane, who explains as follows: ‘A settler state is one formed through colonial processes. A post-settler state is one in which residents no longer consider themselves migrants from the colonial power but instead ‘natives’ of the newly formed state (Pearson 2002a). The term is usually applied to countries such as Australia, USA, Canada and New Zealand in which indigenous people form a minority of the population and where the majority no longer regard themselves as colonizers’ (Lane 2006, p.386)

<sup>22</sup> Canada’s national housing agency

permutations) (Canada Mortgage and Housing Corporation 2010). Although all currently in use, these models date from different periods and may represent shifts in thinking about the appropriate bearer of risk in indigenous housing.

In Australia and Canada, potential borrowers must be of indigenous descent and show a right to occupy the land – a ‘long-term transferable lease’ in Australia, and a Certificate of Possession or proof of a grant to use the land in Canada (Canada Mortgage and Housing Corporation 2010; Department of Families, Housing, Community Services and Indigenous Affairs 2009). In the United States, a borrower can also be a tribe or an ‘Indian Housing Authority/Tribally Designated Housing Entity’ proposing to build houses within their operating area (U.S Department of Housing and Urban Development 2003). All schemes require borrowers to be credit-worthy, although the criteria by which credit-worthiness is established is sometimes set by government and sometimes by commercial lenders. Under Australia’s Home Ownership on Indigenous Land programme, borrowers must complete a home ownership education course before progressing their loan through Indigenous Business Australia<sup>23</sup>.

Government-facilitated finance for housing may be available for owner-occupier home ownership and rental housing for landowners. The Indian Housing Loan Guarantee Programme in the United States stipulates that the loan guarantee must be used for ‘modest’ single family residential structures (1-4 units). The loans are available to acquire or rehabilitate existing housing, as well as to construct new housing or refinance an existing loan. The loans are for a maximum of thirty years, ‘...must reflect current market rates and cannot be adjustable’ (U.S Department of Housing and Urban Development 2003, s.1.3.5a). The maximum mortgage amount is based on the borrower’s debt to income ratio, and must not exceed 150% of the mortgage limit set for the area by federal government. In the United States, loans for commercial structures will not be guaranteed (U.S Department of Housing and Urban Development 2003).

There are no stipulations that housing built under these schemes must be occupied by indigenous people in perpetuity, but restrictions on transfer of rights over land may complicate the sale of houses to non-indigenous people. For instance, mortgages under the United States Indian Loan Guarantee Programme can be transferred to another eligible (i.e. indigenous) borrower; homes on individual trust land can be sold; and homes on tribal trust land can be sold but the tribe retains the right to approve or reject the transfer of the leasehold over the property to another occupier (U.S Department of Housing and Urban Development 2003). In Canada, a Fund is also available to finance ‘market housing’ on indigenous land for the general (non-owner) community (Canada Mortgage and Housing Corporation 2008).

### **Direct loans, subsidies and grants**

Canada, the United States and Australia also operate programmes to administer direct loans, subsidies, and grants to indigenous housing projects. Under the On-reserve Non-profit Housing Program (see Appendix B), the Canada Mortgage and Housing Corporation may provide direct loans for up to 100% of the total eligible capital cost of a development project, for a maximum of 25 years (Canada Mortgage and Housing Corporation 2010). These projects are subsidised according to the following formula:

$$\text{Project subsidy} = \text{loan repayment} + \text{operating expenses} - \text{revenue}$$

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<sup>23</sup>A government-established economic development organisation that promotes and encourages self-management, self-sufficiency and economic independence for Aboriginal and Torres Strait Islander peoples

This implies that the resulting project will be ‘cost-neutral’ to the First Nation housing providers. Band Councils can also apply for assistance with developing a project proposal through the Proposal Development Funding scheme. This scheme provides an interest-free repayable loan up to CA \$75,000 (US \$71,374) plus 3% of any project costs in excess of CA \$500,000 (US \$475,828) (Canada Mortgage and Housing Corporation 2010).

The Department of Housing and Urban Development in the United States allocates funding to ‘Indian Housing Authorities’ who construct houses for Native American families under the ‘Mutual Help’ scheme. The scheme appears to be directed at housing for Indian families rather than specifically targeting housing on Indian land. The price of these houses is set by the Indian Housing authority, and participants can access guaranteed loans to purchase these houses (U.S Department of Housing and Urban Development). Tribally Designated Housing Entities are also eligible for grants to provide affordable housing for Native Americans under the Native American Housing Assistance Act and Self-Determination Act of 1996 (U.S Department of Housing and Urban Development 2003).

In Australia, participants in the Home Ownership on Indigenous Land programme have access to a ‘matched savings scheme’ (Department of Families, Housing, Community Services and Indigenous Affairs 2009). Grants have played a major role in building housing on Aboriginal land in the past – according to Altman et al. many houses on indigenous land are the result of a 30 year government effort in which ‘between 500 and 100 dwellings per year have been built Australia-wide in discrete Indigenous communities...’ with funding provided mainly through government grants rather than loans (Altman, Linkhorn et al. 2005). These grants involve significant amounts of money. Altman et al. describe one small region with a projected shortfall of 760 houses over fifteen years – in 2005 it was estimated that meeting this demand would cost AU \$167.2 million (US \$150.36 million).

### **3.4.2 Taxation on indigenous land**

It is difficult to compare taxation directly across countries because of the various systems in place for levelling taxes at different levels. In Canada, the reserve lands of Indians are exempt from any tax imposed by the Federal government, under the Indian Act. It appears that the Indian Act also exempts reserve lands from any tax levied by the provincial or municipal governments.

‘The common sentiment among First Nations is that such taxation is a breach of Treaty and Aboriginal rights as well as an erosion of exemptions historically acknowledged’ (Henderson 1996)

Dust raises some interesting issues about the corresponding tax implications of creating Indian reserves within existing urban areas in Canada, noting that the Indian Act ‘...gives the council of a First Nation much the same power to make local legislation over reserve lands as Urban Councils have over urban land’ (Dust 1997). This includes the power to levy taxes and provide and services. Indian land in the United States is also exempt from state and local taxes (Ulfig 2005). The property tax is councils’ primary funding to pay for services, and ‘[e]very time a piece of property is exempted from paying taxes, the remaining properties have to pay an increased amount to cover the cost of services’ (Dust 1997, p.487). In the case described by Dust, the Saskatoon Council wanted to ensure a new Cree Nation reserve had access to all normal urban services. The council was also concerned that there should be no tax advantage for businesses to relocate to reserve land. These issues were resolved through a compromise where the owners of the reserve (the Muskeg Lake Cree Nation) retained their full tax jurisdiction over the reserve, but agreed to pay an annual lump sum to the Saskatoon

Council to cover the cost of services, and also agreed that taxes charged on the reserve would be equivalent to those charged by the Saskatoon Urban Council in the rest of the city.

In Australia, a Land Tax is levied to all property owners by each of the eight state<sup>24</sup> governments. The land tax is levied on unimproved property values above a threshold and at a rate set by each state. In most jurisdictions, the primary residence of the owner is exempt from land tax. Tasmania is the only state which explicitly exempts indigenous land from taxation. Interestingly, the Northern Territory (where 45% of land is Aboriginal-owned) currently has no land tax (Reconciliation Australia 2009). Local governments in Australia also charge rates for services, which are a tax charged according to the value of a property (Commonwealth of Australia 2010). Most types of land are covered, although it appears that rates cannot technically be charged on indigenous land covered by the Aboriginal Land Rights (Northern Territory) Act, because it is communally owned and therefore separate 'allotment charges' cannot be applied. In these cases, local government charges a 'general service charge' equivalent to or higher than property rates, in lieu of property rates (Australian Local Government Association 2010).

### **3.4.3 Targeted planning for indigenous land**

In general planning practice, the allocation of land use through planning is 'blind to matters of land ownership' (Home 2009, p.103). However, this is not true for indigenous land in Australia, Canada and the United States where a variety of devolved and co-management mechanisms are used to develop land use plans which can allow a different level and kind of development on indigenous land than in surrounding areas.

In Canada, indigenous land is held under the sovereignty of the tribe, and provincial government policies – including laws regarding land use planning, building standards and health regulations – do not apply (Dust 1997). The implications of these dual jurisdictions are illustrated again by the case in Saskatoon, where:

'The Muskeg Cree Nation was adamant that it wished to retain and exercise such limited jurisdiction as it has, and not concede jurisdiction to either the Province or Saskatoon City Council. The City were equally adamant that an urban reserve and its occupants were a part of the urban environment and needed to 'fit' that urban environment, particularly as regards land use and development, which could affect surrounding properties' (Dust 1997, p.485)

Again, however, potential conflict was averted by the Muskeg Cree Nation agreeing to control land use in a way that is consistent with the Saskatoon Zoning Bylaw, initially through conditions on leases and eventually through developing a Muskeg Lake Zoning Bylaw (Dust 1997). In the United States, a ruling by the Supreme Court has established that Indian tribes may exercise 'regulatory authority' in cases when 'conduct threatens or has a direct affect [sic] upon the tribe's health or welfare' (Hibbard, Lane et al. 2008, p.138). This has allowed some Indian tribes to exert significant influence on land use planning.

The situation is different in Australia, where local government does have the authority to create land use plans over indigenous land:

'Native title is subject to the laws of the Commonwealth and state or territory, including town planning schemes, health and building by-laws and environmental protection legislation...' (Wensing 2002).

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<sup>24</sup> There are actually six states and two mainland territories (Australian Capital Territory and the Northern Territory) which operate like states but whose legislation can be overruled by the Federal government.



Under the Native Title Act 1993, local government and indigenous landowners are encouraged to work together to manage land through ‘Indigenous Land Use Agreements’ (Wensing 2002). There is at least one example of targeted planning conditions for Aboriginal land. One section of the Northern Territory Planning Scheme – entitled ‘Aboriginal Communities and Towns’ – applies only to parcels of land specified as ‘Aboriginal community living areas’. In these areas, the land may be used or developed without specific approval from local government ‘for any purpose necessary for, or ancillary to, community life’ (Department of Lands and Planning 2010, s.12.1). The permitted activities include dwellings, shops, hospitals, offices, and education establishments. Within identified towns on Aboriginal land, no consent is needed for activities on land identified as a ‘residential area’ including constructing multiple dwellings, a group home, or clearing native vegetation (Department of Lands and Planning 2010, s.12.2).

### **3.4.4 Conclusion**

Government policies on indigenous land recognise the social and cultural implications of ancestral tenure by providing funding for development without requiring the security of the land. In the United States and Canada, the fact that taxation and planning policies do not apply to indigenous land creates the need for mechanisms to coordinate across jurisdictions. In Australia, some targeted tax and land-use plan provisions recognise indigenous self-determination or the distinct needs of Aboriginal populations. These policies form a useful background for assessing the application of similar policies in New Zealand.

## Chapter 4: Research Methodology

Within the conceptual framework set by indigenous interests in land and their interaction with market and government environments, this research explores how owners of multiply-owned ancestral Māori land develop their land for housing, and how the decisions made by developers of Māori land differ from the decisions made by developers working with land in general title. The purpose of the research is to:

- Explore the effect of Māori land tenure on decisions on develop land for housing;
- Compare the concepts used in developing housing on general land with the concepts used in developing housing on Māori land;
- Examine the effectiveness of local and central government policies to encourage the development of housing on Māori land.

I am particularly interested in the experiences of owners of Māori land developing housing in high-growth areas, because it is in high-growth areas that aspirations for housing on Māori land may coincide or conflict with local government development plans, such as growth management strategies.

### 4.1 Nature of the research

My research question is: **How do owners of multiply-owned ancestral land develop housing?** To answer this question, the research focuses on two sub-questions:

- **How is property development theory applicable to developing housing on Māori land?**
- **How do government policies affect the viability of developing housing on Māori land?**

This research is exploratory research using qualitative case studies. Primary information from these cases is complemented by information from secondary sources including local and central government studies, policies and reports.

### 4.2 Research population and sample

The research population comprises housing development projects on general and Māori land in high growth areas in New Zealand. I used the following criteria to choose my target area within New Zealand:

- Existing or proposed housing development projects on Māori land;
- Existing or proposed housing development projects on proximate general land;
- Local government policies relating to Māori land;
- Approved growth management strategy; and
- Feasible research possibilities.

After conducting a brief survey of the visibility of Māori land within growth management strategies, I contacted acquaintances in the Bay of Plenty and the Greater Wellington regions. Two case studies on Māori land in the western Bay of Plenty were suggested (M1 and M2) and I subsequently selected two commercial housing development projects on general land in nearby locations (G1 and G2, see figures 2-4 opposite). The four projects are at different stages of completion, from pre-funding to sales. The developments on general land are substantially larger scale than the developments on Māori land.

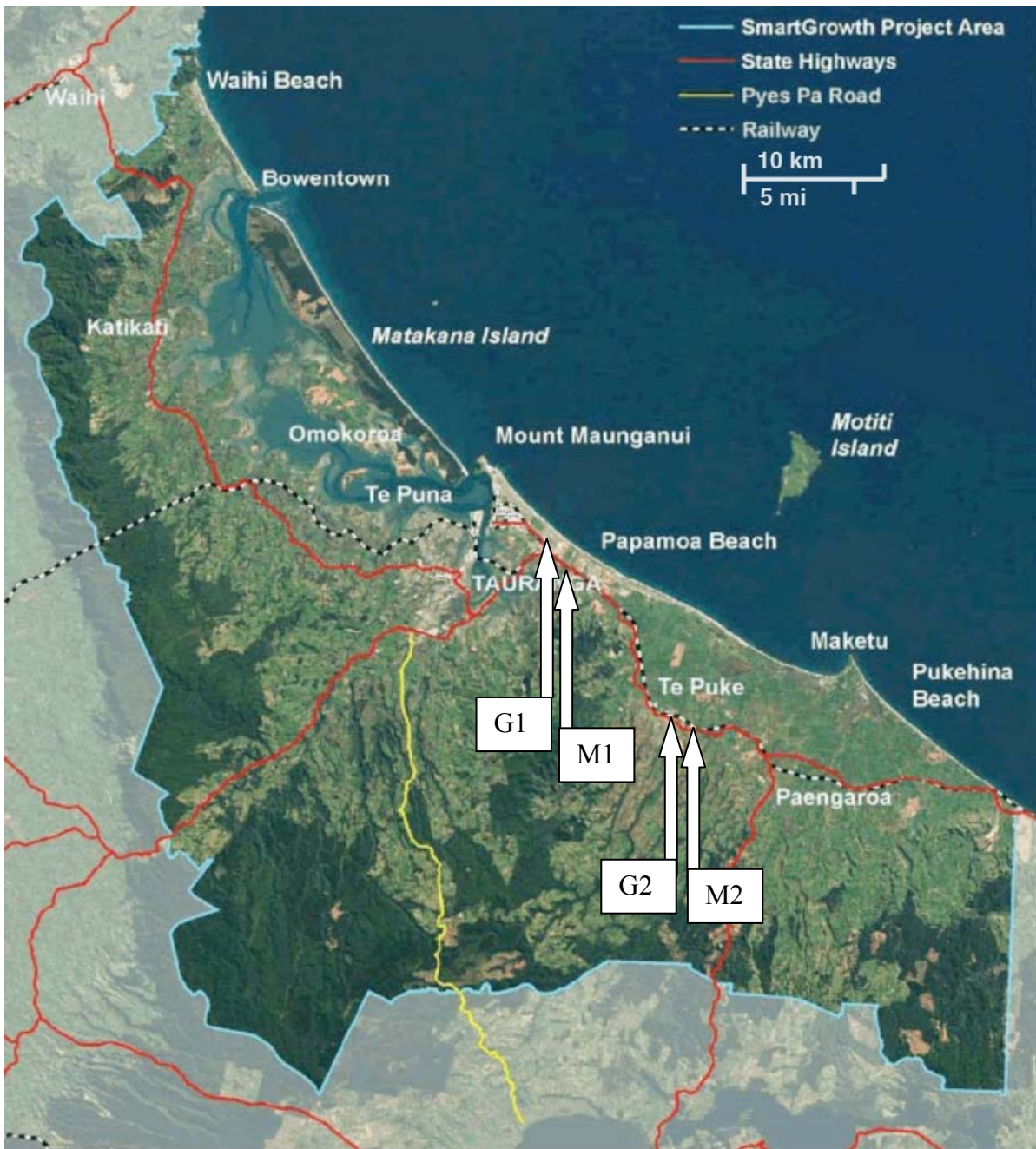


Figure 2 Map of Western Bay of Plenty sub-region showing locations of case studies (SmartGrowth 2007)



Figure 4 Satellite image showing case studies in red M1 (below) and G1 (above), Papamoia Beach



Figure 3 Satellite image showing case studies in red M2 (right) and G2 (left), Te Puke

### **4.3 Approach to research**

In order to approach housing developers on Māori land, I followed the '*tiaki*' [guided] model of working with Māori communities as explained by O'Sullivan and Dana (O'Sullivan, Dana 2008). This model suggests contacting an authoritative Māori individual to facilitate the research process. With knowledge of the two proposed case studies, I approached the chairman of Mangatawa Papamoā Blocks Incorporated and the Tapuika Iwi Authority Trust for approval to carry out research with the Mangatawa Papamoā Blocks Incorporation and Rangiuru 2G Trust (site of the Makahae Marae Papakāinga Project). He approved the research, and arranged for me to meet with the project managers of the two projects.

To identify comparable developments on general land, I contacted Tauranga City Council and Western Bay of Plenty District Council. Following their suggestions I met a representative from Coast development in Papamoā. I also interviewed a representative from Cannell Farm development near Te Puke, whose contact details were advertised on a billboard near the development.

#### **4.3.1 Case study design**

This research uses multiple case studies in order to: confirm or contrast the perceptions of property development principles across two housing developments on Māori land; compare the experiences of housing developers on Māori land across two local government districts; and to assess the effects of government policies on two housing developments on Māori land. Yin (2003) notes the need to treat multiple cases as multiple experiments. This research design ensures that Cases M1 and G1 'replicate' Cases M2 and G2 as much as possible to strengthen the 'trustworthiness, credibility, confirmability and data dependability' of both sets of data. The two case studies on Māori land propose similar size developments with similar goals, in comparable positions on the urban periphery.

To select the case studies on general land, I followed the 'information-oriented' strategy discussed by Flyvbjerg (2006, p.230), which aims to '...maximise the utility of information from small samples and single cases. Cases are selected on the basis of expectations about their information content'. I chose Coast and Cannell Farm as the two comparator case studies because they provide insights in location (each is within one kilometre of Mangatawa Papamoā and Makahae Marae respectively) and corroborate information about local government policies.

In keeping with case study theory, this research utilises multiple sources of evidence to arrive at conclusions by triangulation (Yin 2003). It was important to investigate projects on general title to test the applicability of the nine identified property development concepts in the western Bay of Plenty context. The general land case studies also allowed me to compare housing developments on Māori land to developments in similar locations operating without the opportunities and restrictions of Māori land tenure. By keeping location and local government environment constant, but changing the land tenure system, these cases represent the 'maximum variation' possible in the land tenure system in New Zealand (Flyvbjerg 2006).

#### **4.3.2 Why use case studies?**

Case studies are used to illuminate a decision or set of decisions, focussing on why that decision was taken, how the decision was implemented, and with what results (Schramm 1971 in Yin 2003). It is appropriate to use case studies when the decisions under study are contemporary, and when behaviour cannot be affected by the interviewer. This research suits a case study methodology because it explores the different decisions made in each

development about questions such as how many houses to build, for whom, and when. In all four cases, decisions to develop have already been made, and the decision has happened within the last twenty years.

According to Yin (2003), case study research is useful in illustrating aspects of a theory ('analytic generalisation'). In this research, the four case studies allow reflection on property development theory and government policies as they relate to multiply-owned ancestral Māori land. It is important to note that the findings from these case studies should not be generalised to other developments, either on Māori or general land.

#### 4.4 Operationalising the research

The table below sets out the framework for answering the two research sub-questions.

<i>Research sub-question</i>	<i>Hypothesis</i>	<i>Variables</i>	<i>Operationalising variables</i>	<i>Testing the hypothesis</i>
<b>How is property development theory applicable to developing housing on Māori land?</b>	Housing developers on Māori land interpret property development concepts differently to housing developers on general land.	Effect of <b>tenure type</b> on: land acquisition; return; risk; market analysis; planning; timing; finance; costs; transfer of rights over land.	Case studies G1, and G2 develop housing on general title land.  Case studies M1 and M2 develop housing on Māori land.	Are there differences between perceptions of property development concepts <ul style="list-style-type: none"> <li>• Between general and Māori land?</li> <li>• Between theory and Māori land?</li> </ul>
<b>How do government policies affect the viability of developing housing on Maori land?</b>	Government policies significantly affect the viability of housing development on Māori land.	Effect of <b>policies</b> (zoning; growth strategy; housing toolkit; government loans and grants; Development Impact Fees; rates policies) on:  ability to meet costs and implement desired project.	Case studies M1 and M2 operate in different local government areas and under different local government policies.  Case studies M1 and M2 have different relationships with central government.	<ul style="list-style-type: none"> <li>• Do policies support development concept?</li> <li>• Do policies increase or decrease costs for development?</li> <li>• Do government policies increase or decrease access to funding?</li> <li>• Do policies emphasise protection or development?</li> </ul>

Table 2 Operationalising the research

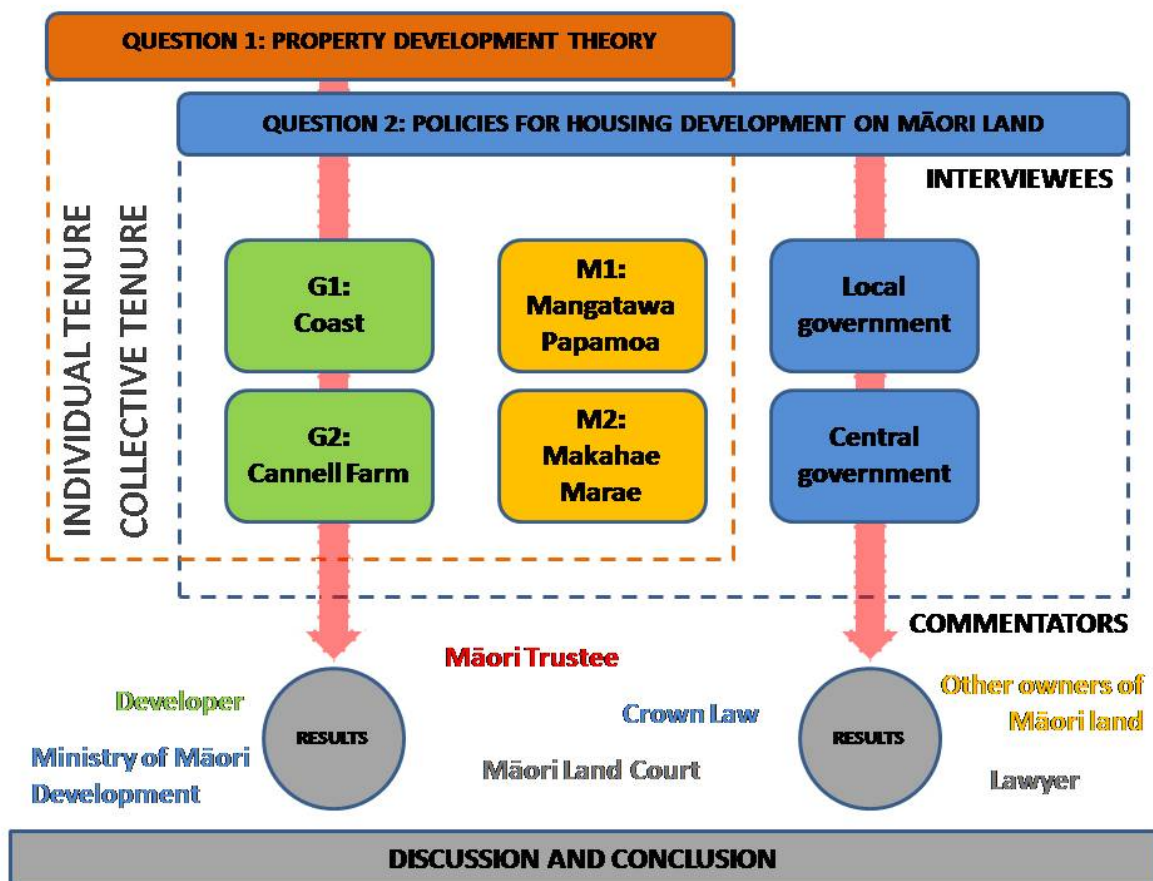
#### 4.5 Data collection

**Primary interviewees:** The first set of interviews involved interviewing one representative from each of the four case study developments. Yin (2003, pp.14) notes that case study research benefits from 'the prior development of theoretical propositions to guide data collection and analysis'. Before conducting the interviews, I consulted a standard property development textbook to compile a list of property development concepts (as discussed in the theoretical framework). I used these concepts to create a guideline to structure the case study interviews. This interview guideline was piloted with a property developer working with general land and an owner of Māori land before use in the field. Interviewees were asked to outline the parameters of their development – where, when, for whom – as well as describing how their project is financed, risks of the project, and uptake by the market (see Appendix C for interview guideline). Interviewees were also asked to comment on the effect of government policies on their development.

During my research, I had the opportunity to discuss a recently completed housing development on Māori land (the communal house and papakāinga development at Horaparaikete block) and to interview a representative from a third housing development on general land (Victoria Key in Omokoroa). These developments provided additional information for the Results chapter.

**Secondary interviewees:** The second set of interviews included meeting with representatives from Tauranga City Council, Western Bay of Plenty District Council, and central government’s Housing New Zealand Corporation. These interviews provided me with information on the intention and uptake of government policies such as *papakāinga* zoning, the Western Bay of Plenty SmartGrowth Strategy, and Māori Demonstration Partnership fund.

**Commentators:** Finally, I interviewed a number of people unconnected with the four case studies, to gain different perspectives on developing housing on Māori land. These interviewees included representatives from: the Ministry of Māori Development; government-owned KiwiBank; the Māori Land Court, and the Māori Trustee (a non-government organisation charged with managing and administering Māori land on behalf of owners). I also discussed my research with a practising lawyer in the Māori Land Court, a Counsel from the Crown Law Office<sup>25</sup>, and a number of attendees at the inaugural ‘Whenua: Sustainable Futures with Māori Land’ conference. These conversations have contributed to the Discussion chapter of this thesis. For a visual representation of the structure of data collection, see Figure 5 (below). A list of interviewees is included as Appendix E.



**Figure 5 Research overview**

In total, seventeen interviews were completed in New Zealand in June and July 2010. Interviews were between 25 and 75 minutes long and all interviews (save one) were recorded using a digital voice recorder. Interviews were arranged in advance, and each interviewee received a short summary of my research interest and possible topics of questioning. Any verbatim quote used in this thesis has been approved by the interviewee.

<sup>25</sup> The Crown Law Office provides legal advice and representation services to the New Zealand government

## 4.6 Interview analysis

Recordings from primary interviewees were transcribed in full, while recordings from secondary interviewees and commentators were summarised. All interview notes were coded to identify themes related to my research questions (Butler, Dephels et al. 1995). Other recurring themes were also identified, such as the desire to provide affordable housing.

## 4.7 Case study analysis

The following chapter – Results – follows the steps suggested by Liamputtong (2009, p.200) for analysing multiple case studies. A brief outline of each of the case studies (within-case analysis) is included as Appendix D. The chapter begins with a thematic cross-case analysis of the interpretation of property development concepts by developers on land in Māori and general title. This thematic analysis uses the coded interviews to compile sets of information and observations relating to the nine property development concepts, and then summarises and compares the experiences of developments on general and Māori land (a process which Liamputtong describes as ‘interpreting the meaning of the case’).

## 4.8 Limitations of the research

I am a non-indigenous researcher researching issues related to indigenous land and decision-making. In an effort to make my research culturally sensitive, I have been explicit with interviewees about my own background as a *Pākehā* [New Zealander of European descent] and ex-government employee; ensured my literature review includes indigenous academics and commentators; and invited indigenous subject-matter experts to review my thesis.

Possible sources of bias include:

- The research was conducted in an area where I had contacts who assisted me with identifying case studies and interviewees, which may mean that I did not fully consider other areas for possible research;
- I selected an area where I knew there were specific policies to support the development of housing on Māori land. In consequence, this research is unlikely to reflect the situation across New Zealand;
- Case-study projects were different sizes and at different stages of development;
- Classification of the effect of policies as having a for instance ‘critical’ or ‘minimal’ effect on viability was done by the researcher. If this assessment was done by the case study participants, the results may have been different.
- Although developments involve multiple decision-makers (ie, Māori land is owned by a trust or incorporation), I only interviewed one person from each development project. As Molinsky notes, there is a possibility that ‘different individuals in a family or partners in a partnership may have answered the questions differently’ (Molinsky 2006, p.12). In order to address this issue, I contacted the headquarters for each development and allowed each group to identify an interviewee who represented their interests.
- In some cases, I asked questions which required the interviewee to recall decisions made in the past. The responses to these questions can be unreliable, and where possible I checked answers to these questions against publicly available records and information provided by other interviewees.
- Some questions inquired about financial or potentially sensitive issues, and answers given may be inaccurate.

## Chapter 5: Results

This chapter documents the results gathered from interviews, organised according to the research themes. The first part of the chapter compares the characteristics of the four developments, and their interpretation of the nine property development concepts. Information given by interviewees is supplemented with information from online government databases Māori Land Online, the Māori Land Information Base, Land Online, and the commercial property information provider Zoodle. The second part of the chapter describes seven policies which affect housing development on Māori land, using information from interviews with government employees and publicly-available policy documents. Following the description of each policy I have included observations from the four primary interviewees regarding the effect of these policies on their projects. Basing my analysis on data provided by the four case studies, I have classified the seven government policies as having ‘critical’, ‘significant’, ‘minimal’ or no effect on the viability of these developments.

### 5 Part One: Interpretation of property development concepts

Using information given by the primary interviewees, this section reviews the nine property development concepts, and reports how these concepts were interpreted in each case study. Interview information from G1 and G2 contextualises the concepts in the western Bay of Plenty area, which are then compared with the interpretations of these concepts by the Project Managers on Māori land (see Figure 6 – Approach to answering question one). Results are summarised in tables and followed by a brief description to illustrate key points. Not every concept was mentioned by every interviewee, and where answers are common across cases, these answers have been merged.

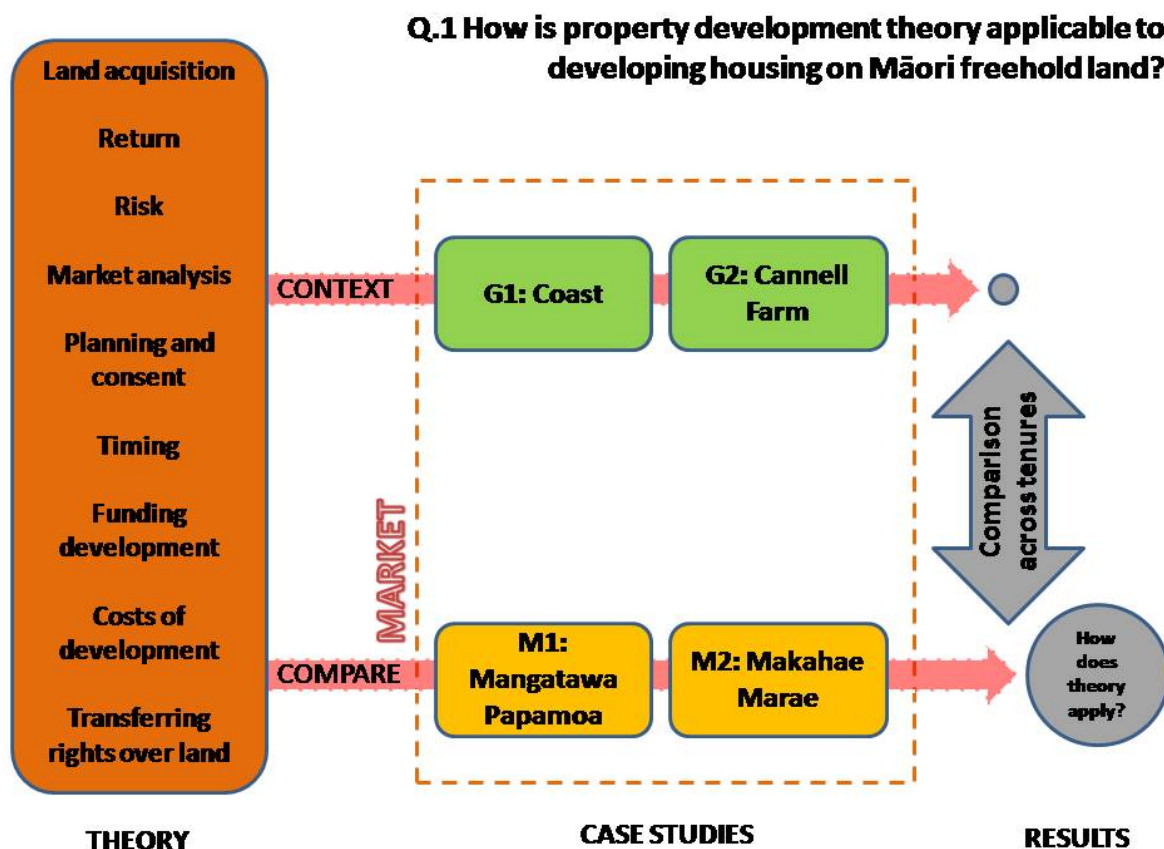


Figure 6 Approach to answering question one



### 5.1.1 Results: Land acquisition

Interviewees were asked about block size, block location, and when they acquired or decided to use the block for housing.

<i>Land acquisition</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Block size</b>	27 hectares Purchase of single vacant block.	80 hectares Purchase of single agricultural block.	10.1 hectares	11.31 hectares, 1.5 hectares designated for housing <sup>26</sup> .
<b>Block location</b>	Between Mount Maunganui and Papamoa.	Southern edge of Te Puke.	Located adjacent to marae complex, including meeting house and associated buildings.	
<b>Time of acquisition</b>	Zoned residential. Block purchased in 2004, at the same time as the release of SmartGrowth strategy, and following major development along the Papamoa strip.	Zoned residential. Block purchased around 2000, before SmartGrowth strategy identified Te Puke as a major development area <sup>27</sup> .	Marked for papakāinga by incorporation boards in 1980s.	Rangiuru 2G block partitioned in 1982 <sup>28</sup> . SmartGrowth pilot project catalyst for the current housing project. Project begun in 2003.

**Table 3 Results – Land acquisition**

Land for both projects on general land was bought in times of strong growth in the property market, in greenfield areas zoned for housing and considered to have high potential for housing development. In comparison, the Māori land for which housing is proposed has been inherited, and is multiply-owned. The blocks of Māori land are surrounded by rural land, although they are close to urban areas. Project Manager (Makahae Marae) noted that when considering the blocks owned under Māori title, the extent of land available for development is not determined just by the surveyed boundaries of the block(s), but by the fact that common owners and interests may exist across those blocks:

‘It’s a shame, because in the minds of us, it’s all the same land, but in legal title, those are the titles’ (Project Manager, Makahae Marae 2010)

He also suggested that owners of Māori land need to consider their assets as a whole, and to determine which blocks should be used for housing and which blocks should be retained for economic (i.e. agricultural) use.

Sites for the proposed housing developments on Māori land have been chosen to support existing amenities and to allow continuing economic use of the rest of the block. Historical associations with a place were also considered important:

‘Why there? I think it’s a combination of things: having an administrative body that’s willing to actually develop... and owning land. And that was considered, it’s closest to the ancestral heart of things, ‘cos it’s right next to the *marae* [community base]. It’s on a sacred *maunga* [mountain]. Previous boards back in 1980 have earmarked that for *papakāinga*. Councils have earmarked it for *papakāinga*. There’s all those sorts of reasons’ (Project Manager, Mangatawa Papamoa 2010)

Makahae Marae is an historical residential area, as elders at Makahae Marae have explained:

‘Their view was, it’s a not an unusual thing to talk about housing around this area, because what we’re on is a *pā* [village] site over a thousand years old, and we’ve

<sup>26</sup> (Hill 2007)

<sup>27</sup> (SmartGrowth 2007, p.30).

<sup>28</sup> (Hill 2007)

always lived on this land. So there's always been houses here at some point' (Project Manager, Makahae Marae 2010)

### 5.1.2 Results: Return

Three elements were identified relating to the return expected on the four development projects: the scope of investment and return; the 'bottom line' for each development project; and the expected timing of returns.

<i>Return</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Scope of investment and return</b>	Financial appraisal of the expected return on investment.		Did not mention profit motive. Cost-benefit analysis model. Housing rents and income from remaining agriculture are the primary source of income to pay off any loans.	
	Profit from land-and-house package. Most dwellings expected to sell for NZ \$400,000 (US \$284,360) to above NZ \$800,000 (US \$568,720).	Profit from selling prepared land for a higher price than combined costs. Average selling price for house and land package is NZ \$514,500 (US \$365,758) <sup>29</sup> .	Reconnection with land and family. Affordable housing. Growing up in a family community.	Affordable housing. Revitalisation of marae community. Training opportunities for young people.
<b>Bottom line for development</b>	Commercial developers, running professional development businesses.		Not mentioned.	Development must pay rates. Annual income should equal agricultural use of land (NZ \$4,500 (US \$3,199) per annum). Income to be used for maintenance.
<b>Timing of return</b>	Medium-term projects, projected to last about ten years from first to last sale.		No timeframe for expected returns mentioned.	

**Table 4 Results – Return**

The developers of general land and Māori land emphasised financial return and wider returns to the community, respectively. Developments on general land were expected to yield profit in proportion to investment over a relatively short time period, while developments on Māori land were not expected to deliver financial returns above the investment required to maintain the site and amenities. These differences amounted to a financial analysis of development on general land, as opposed to a cost/benefit analysis of development on Māori land.

Discussing the expected benefits from development, the Project Manager (Makahae Marae) stated that '...the whole philosophy and concept is to bring life back into the marae [community base]. And you do that by putting people there'. The Project Manager from Mangatawa Papamoa repeated that these kinds of housing projects are '...really a manifestation of a broader vision to get *whānau* [family] back on the land, and back in touch with each other'. Both Project Managers considered that their projects aim to provide more affordable housing for their people, either through rental or home ownership.

### 5.1.3 Results: Risk

Interviewees were asked to identify risks to the success of their project. Analysis of these risks can be divided into external risks, internal risks, and attitudes towards risk.

<sup>29</sup> Average selling price is the median price of ten house and land packages within the Cannell Farm development advertised for sale in September 2010 on Suburb View real estate search engine (Suburb View 2010a)

<i>Risk</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>External risks</b>	If, when, and for how much the developed properties would be purchased.		Different risks identified for developing rental housing for the elderly, and providing sections for owners to finance and build their own homes.	
	‘Community’ selling point relies on mixing homeownership and rental, as well as a range of ages and family types. Medium-density development a new product in the area.	Low demand for houses. Poor building quality devalues adjacent lots. Either home builder or the end purchaser does not complete transaction.	Uncertainty about funding (prior to current grant/loan).	Low demand for rental homes. Income may not cover costs of paying for infrastructure and house construction. Leasees may not pay their rent on time, or at all.
<b>Internal risks</b>	Not mentioned.	Not mentioned.	Importance of continuing support and momentum for the project from the Incorporation board, which is re-elected every three years.	Too many or too few applicants for the rental/homeownership accommodation could lead to internal tension over how housing will be allocated.
<b>Attitudes towards risk</b>	Highlighted expected relationship between increased risk and increased profit.		Main risk to be avoided is alienating the land, either through sale or through locking it into uses which limit access for future generations.	

**Table 5 Results – Risk**

The risks identified for the developments on general land fit with the theory that risks may be associated with the specific development, or with the market. Many risks were seen to be external and beyond the control of the developer.

For the developments on Māori land, external market risks were much less important than internal risks related to project momentum and getting access to funding without compromising wider owner rights over land. The Project Manager at Makahae Marae identified an internal risk component to market uptake, but suggested that if there were not enough applicants from within the shareholders’ group to fill the housing, the offer of accommodation could be offered first to members of the wider Tapuika *iwi* [extended kinship group], and then to the wider community, because ‘...at the end of the day, you need people to pay the bills’ (Project Manager, Makahae Marae 2010)

He also considered that confining the security for any loans given for development to the house itself, rather than the land, was an essential part of mitigating the risk of alienating the land through loan default and maintaining the potential of the land for future generations.

#### **5.1.4 Results: Market analysis**

Discussions about market analysis included questions about the wider property market context for each development – expected end users, their characteristics and requirements, and market demand for various types of housing – as well as perceptions of the demand for the particular location and amenities offered by each project.

The Western Bay of Plenty sub-region is very popular with older people, and the expected end users for all four developments reflected this. The two developments on general land aim to provide housing to the top of the existing market, but sales have been limited due to the effects of the financial crisis on property development.

<i>Market analysis</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>End-users</b>	Marketed to a wide range of ages. Most buyers over fifty years old. Very few first home-owners. Local buyers.	Not identified.	Target market is elderly and families with low-incomes. People associated with the landblock (owners or family) are the natural pool of prospective residents. First home-buyers.	
<b>Demand for housing</b>	Currently at least 18 listings for dwellings at Coast Range from NZ \$635,000 (US \$451,421) to NZ \$895,000 (US \$636,255) and above. Further stages include apartments from NZ \$400,000 (US \$284,360).	Currently eight sections listed for sale on Cannell Farm Drive. One house is being re-sold with an asking price of NZ \$445,000 (US \$316,350). Listed since 17 September 2009 <sup>30</sup> .	Market analysis limited to questioning owners to gauge interest in homes on trust or incorporation land, through survey or meetings. Survey carried out by Mangatawa Papamoa showed that there was high demand for <i>kuia/kaumatua</i> [elderly] housing, and high demand for housing for low-income families. Unaffordable housing is a problem for shareholders.	
<b>Demand for location</b>	One of the last remaining open blocks in the highly developed Papamoa area.	Te Puke is competition for Papamoa. Buyers include a number of current Papamoa residents.	Few existing residents.	Few existing residents.
<b>Demand for amenities</b>	Offers potential buyers ‘security’ and high-quality, low maintenance homes.	Not mentioned.	Both include facilities for healthcare, community buildings (including a meeting house and associated <i>marae</i> ), sports and recreation.	

**Table 6 Results – Market analysis**

In contrast, the developments on Māori land aim to create housing which is affordable and allows landowners who are currently renting to buy their first home. Developments include amenities which are considered important for papakāinga [housing on Māori land] communities. Changes in the market were seen as having little effect on development plans:

‘We’ve been in a financial crisis all our lives! We make do with whatever we can get’  
(Project Manager, Makahae Marae 2010)

All four developments are in desirable areas for development. The interviewee from Coast suggested that Tauranga City is ‘the number one place in New Zealand to live’, and advertising for the Coast development exclaims:

‘Papamoa Beach is a special place, a part of the North Island that has long held strong attraction as a holiday destination and is now a thriving region where people live their dream lifestyle every day. It remains remarkably unspoiled and for this reason is a destination prized among those seeking to live a lifestyle of quality. Look in one direction to rich green pasture and the rolling Papamoa hills. Look the other way to the golden sand stretching as far as you can see’ (Coast Papamoa Beach 2010)

The interviewee from Cannell Farm also highlighted the benefits of Te Puke’s location:

‘Te Puke’s not far from anywhere, of course, it’s twenty minutes to Rotorua and twenty minutes to Tauranga and ten minutes to the beach...’

Although the two developments on general land are adjacent to residential development, the two developments on Māori land lie just outside existing urban areas. The Mangatawa Papamoa block is 400 metres further inland than Coast, and both developments are ten minutes drive from schools, significant employment areas, and Bayfair Shopping Centre, and

<sup>30</sup> Advertised on [www.realestate.co.nz](http://www.realestate.co.nz)

are served by bus routes. Makahae Marae is 800 metres east of Cannell Farm, with similar access to the beach and urban areas.

### 5.1.5 Results: Planning and consent

The four case studies are in two separate local council jurisdictions – Coast and the Mangatawa Papamoa block are within the Tauranga City Council district, while Cannell Farm and the Makahae Marae blocks fall within the jurisdiction of the Western Bay of Plenty District Council. Each council prepares its own district plan to set out zones where different activities are classed as permitted, controlled, etc. These classes refer to the extent to which the activity is approved by the council for the location, and the additional conditions which may be required to gain consent. Where proposed development is not an activity permitted by right, developers must submit one or more resource consents to gain approval for their development. Both ‘operative’ (existing) district plans are currently in transition to ‘proposed’ (new) plans. Interviewees were asked about the zones set out for their land in the district plans, the permitted density for their site, and the process of getting resource consent.

<i>Planning and consent</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Plan and zone</b>	Tauranga City Plan Residential A.	Western Bay of Plenty District Plan Residential.	Tauranga City Plan Rural Marae Activity zone.	Western Bay of Plenty District Plan Rural 2.
<b>Conditions for development</b>	One house per 325sqm lot. 741 dwellings maximum allowable on block. Multi-storey apartment blocks.	One dwelling per 350sqm lot in Residential zones.	Permitted to host 30 houses, with minimum 800sqm lots.	House numbers limited by size of land block. Minimum 800sqm lots.
<b>Resource consent</b>	Approved	Approved	Being processed	No consent yet

**Table 7 Results – Planning and consent**

The developments on general land are limited by standard rules that determine the appropriate density of houses based on the location of the land and adjacent uses. For instance, the resource consent for Coast development permitted the construction of three stages, because medium-density development was in line with the existing district plan, but refused permission for the final stage because the proposed apartment towers were higher than permitted. The large lot sizes currently offered in Cannell Farm (680-800sqm) were approved under the existing plan but would not be permitted under the proposed district plan because the area is marked for higher density development.

In comparison, the developments on Māori land are governed by specific zoning for Māori land and permitted residential development is an anomaly in the wider pattern of rural development. Density and appropriate dwelling numbers are decided by negotiation. Rules in the proposed city and district plans increase the density of housing classified as a ‘permitted activity’ on Māori land. Under the new Tauranga City Council district plan, the 10.1 ha Mangatawa Papamoa block is permitted to host 30 houses, with minimum 800sqm sites. Development at the Makahae marae block will be approved under the new Western Bay of Plenty District Plan. The whole land area could host 120 houses, but only 18 are planned in the initial stage (Project Manager, Makahae Marae 2010). The development plan at Makahae Marae identifies a total land area per house of 2000sqm, but negotiation with council has resulted in a design that clusters the houses around the *marae* to create more open space.

The new Tauranga City Plan states that Rural Marae are not able to connect to reticulated services. The Project Manager from Mangatawa Papamoa noted that Tauranga City Council was asked to consider if the Mangatawa Papamoa block (which is currently zoned as a Rural Marae Activity zone) could be zoned residential, because this would require the council to

provide reticulated services to the block. This request was refused, although when evidence of a prior agreement with the Chief Executive of the council was presented, the council agreed to share costs to provide reticulated services (Project Manager, Mangatawa Papamoa 2010). One development on general land has successfully changed zoning over their land – a private plan change proposed by Coast rezoned a small area of the block for commercial development (Interviewee 2010).

### 5.1.6 Results: Timing

Interviewees were asked to discuss three aspects of timing: timing within the market or institutional opportunities; the timing of specific phases of the development; and the length of their project. Some interviewees also commented on the value of time.

<i>Timing</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Timing within the market or government environment</b>	Originally envisaged completing the first stage within eight months but may be more realistically completed in thirty months.	Sections initially prepared for sale around 2000.	Heads of Agreement for the grant and loan nearly complete. Infrastructure construction will begin in October 2010, and house building in January 2011.	Priority is applying for Māori Demonstration Partnership Fund in August 2010. If application is successful, building could begin February 2011.
<b>Phasing</b>	Four phases: First phase includes 85 houses and 124 apartments. 682 dwellings planned in total.	Released in six stages over the last ten years. As of September 2010, 119 houses had been built, and around 25 sections remained empty.	Three phases: <i>kuia/kaumatua</i> [elderly] housing; houses 11-20; houses 21-30.	Four phases: infrastructure; constructing facilities; building rental housing; constructing home-ownership dwellings.
<b>Length of project</b>	Eight years. Project conceived in 2002. Land bought in 2004. First client home built in 2010.	Ten years. Land bought around 2000.	Twenty years. <i>Papakāinga</i> development first proposed in 1980.	Eight years. Current development proposed in 2003. Development may begin next year.

**Table 8 Results – Timing**

Interviewees from developments on general land agreed that the property market in the western Bay of Plenty has slowed considerably in the last three years, and cyclical changes in demand in the property market have significantly influenced their ability to develop within planned timeframes. One interviewee remarked:

‘When we started the development it looked good, there was a lot of demand, but by the time, with delays (we were delayed 18 months longer than we thought it was going to be, for numerous reasons) and by then the market had fallen into a hole, just like it has now’

The developments on general land are divided into distinct stages, the size and scope of which depend on market uptake and the resilience of the development company.

Neither project manager from the developments on Māori land mentioned the effect of the property cycle on the timing of their developments. Instead, timelines and project phasing were driven by (sometimes ad hoc) opportunities to apply for government funding.

Obtaining titles and consents contribute significantly to the time taken to begin development. Discussing general land, one interviewee stated that: ‘... [if] you bought a bare piece of land and you put a timeframe on it, now I would say you would be struggling to get title within 15 months. By the time you went to a planner, and you asked them to draw up the plans, you

went to the council to get a consent, got the consent, and you let the contracts to do the work, and then you went back and applied for all of your certificates and wanted to get the title’

Delays in development can have significant effects on the costs of a project, especially if developments rely on debt funding. Delays can arise not only from slower than expected market uptake, but also from council or court processes. One interviewee related an incident in which council process took thirteen weeks longer than expected, reportedly costing the company NZ \$165,000 (US \$117,298) in penalty interest. The Project Manager (Mangatawa Papamoa) also noted that it took two years for the Horaparaike communal house development to get resource consent.

### 5.1.7 Results: Costs of development

Costs can be divided into costs related acquisition and preparation of the land, building costs, costs related to the planning and consenting processes, and transaction costs.

<i>Costs of development</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Land acquisition costs</b>	Bought land for development.	Bought land for development.	Did not buy land for development.	Did not buy land for development
<b>Infrastructure costs</b>	Paid for with Subdivision Impact Fees (roughly NZ \$30,000 (US \$21,327) per lot).	Paid for with Subdivision Impact Fees (NZ \$32,500 (US \$23,104) per lot).	Likely to be mixture of council and self-provision.	Likely to be mixture of council and self-provision.
<b>Building costs</b>	Recession has reduced labour costs ‘Leaky homes’ has increased compliance costs.	Not mentioned.	Not mentioned.	Hopes to use skilled tradesmen within the tribe.
<b>Reserve contribution</b>	Required by council.	Required by council.	Not required by council.	<i>Marae</i> reserves can be counted as reserve contribution.

**Table 9 Results – Costs of development**

Aside from land acquisition, developments on general land and Māori land face the same costs for infrastructure, building, and consents. Both project managers on Māori land identified infrastructure as a major cost in their development. Infrastructure can either be provided directly by the developer – in which case they bear the costs of buying and installing a distributed system – or (where location allows) infrastructure can be provided by the council, in which case the developer pays a Development Impact Fee<sup>31</sup> to contribute towards the costs of providing infrastructure for their development. One interviewee recited a breakdown of figures showing that the total cost to prepare a block for sale for housing development (not including construction) was NZ \$91,000 (US \$64,691) and that the Subdivision Impact Fee makes up 36% of these costs. In commercial development these costs are passed onto the end buyer if the market allows, but in the developments on Māori land these costs are seen as a barrier to development which has to be negotiated with the council.

The Project Manager (Mangatawa Papamoa) provided some figures about the Horaparaike communal house development which show these on-site infrastructure costs totalled at least NZ \$42,000 (US \$29,857), or 19% of the total project costs. The Project Manager (Makahae Marae) noted the importance of comparing the costs of providing infrastructure on site with

<sup>31</sup> These fees can be charged either under the Resource Management Act, in which case they are called ‘financial contributions’, or under the Local Government Act, in which case they are referred to as ‘development contributions’. Both Tauranga City Council and Western Bay of Plenty District Council refer to these fees as ‘Development Impact Fees’ or ‘subdivision impact fees’.

the costs of hooking into council systems. He considered that council services are paid for by some extent through rates levied on Māori land, and therefore developments on Māori land should seriously consider utilising them.

Both interviewees from general land projects remarked on the increase in costs in recent years:

‘When I started this, my original feasibility... was NZ \$1,400 (US \$995) for a build permit, and subdivision fees were about six grand. At the moment, subdivision impact fees are around thirty grand, and a build permit is about nineteen’ (Interviewee 2010)

The Project Manager (Makahae Marae) suggested that developers should be able to save costs on building permits if houses are standardised, while the Project Manager (Mangatawa Papamoa) identified maintenance and insurance as other ongoing costs. Because they are smaller, the developments on Māori land cannot access the same economies of scale as the developments on general land, but may have the option of using their own labour or skills to bring costs down.

Interviewees also discussed costs that can be termed ‘transaction costs’. All interviewees noted the time and effort necessary to work with council to progress their developments. Both projects on Māori land also highlighted the effort to communicate with landowners, as required by the Māori Land Court. The Project Manager (Mangatawa Papamoa) stated that at the beginning of the project, the Horaparaike land had no governance structure in place. Establishing a trust involved visiting family around the country to gain a majority consensus to establish a trust. Commenting on arrangements to buy the Coast site (which was previously held as Māori land), the interviewee from Coast noted that:

‘The Māori Land Court is there to protect Māori land, it is not there to facilitate a sale. The shareholders have to agree to sell and they have to direct the sale. There were 147 individual shareholders involved in this transaction – it is a very difficult process when you are dealing with so many different owners’ (Interviewee 2010)

### 5.1.8 Results: Funding

Discussions about funding covered the following topics: sources of funding; conditions of funding; and how the development will repay investors or lenders.

<i>Funding</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Sources of funding</b>	Equity-funded.	Debt-funded.	Awarded a NZ \$1 million (US \$0.71 million) grant and NZ \$1.1 million (US \$0.78 million) loan from Māori Demonstration Partnership fund. Loan is for 25 years, first ten years interest free.	Currently unfunded.
<b>Recouping investment</b>	Houses are sold to investors or end-users.	Sale of houses to end-users, at which point the house-builder pays in full for the land.	Repay loan through a combination of lease monies, and rental income from Housing New Zealand Corporation.	Repay loan through a combination of lease monies; rental income from the <i>kuia/kaumatua</i> [elderly] flats; and a small dividend from the homeownership houses.

**Table 10 Results – Funding**



Both interviewees from general land projects mentioned the difficulty of accessing money from banks in the current financial climate, either for prospective land purchasers or for their companies. One interviewee stated:

‘Two years ago, banks were giving money to anything. Right now, I’ve got a client who’s got NZ \$200,000 (US \$142,180), and the bank came to him and said, You need another hundred thousand... a year ago, if someone said, I’ve got NZ \$200,000 (US \$142,180), I’d start building a house’

The Mangatawa Papamoa project has loan funding and a grant, while the Makahae Marae project is currently unfunded. Combining the grant, the loan, and equity in land will finance the first stage of housing at Mangatawa Papamoa Blocks. Mangatawa Papamoa Incorporation are considering an arrangement with Housing New Zealand Corporation to lease the ten properties for market rents. It is envisaged that income from these rents will be sufficient to either pay off the loan in the ten-year interest-free period, or to pay off part of the loan and build up some equity to contribute to the next phase of the project (Project Manager, Mangatawa Papamoa 2010).

### 5.1.9 Results: Transferring rights over land

Three models of development were identified in the four case studies:

- *Land development*: Preparing land for development and transferring sections to another party to build houses
- *Housing development*: Preparing land, developing houses, and selling them to an end-user
- *Rental housing development*: Preparing land, developing houses, and renting them to an end-user

<i>Transferring rights over land</i>	<b>G1 – Coast</b>	<b>G2 – Cannell Farm</b>	<b>M1 – Mangatawa Papamoa</b>	<b>M2 – Makahae Marae</b>
<b>Model of development</b>	Housing development. No plans to keep stock as an investment or rental.	Land development. No plans to keep stock as an investment or rental.	Rental housing development and land development.	Rental housing development and land development.

**Table 11 Results- Transferring rights over land**

All four developments saw homeownership as the preferred outcome from their developments. Rental properties were undesirable in the development on general land, because they were seen to contribute less to the community. Neither group on Māori land were keen to become responsible for managing rental properties, however both will provide at least ten rental properties. The balance of the houses are hoped to be home-ownerships, where the resident will be granted an occupation licence and will then take on the responsibility for building their own house. Both projects are considering facilitating homeownership through a ‘licence to occupy’. This is a non-transferrable licence that can be granted to an owner of the land by a trust or incorporation.

## 5.2 Part Two: Effect of government policies on developing housing on Māori land

This section outlines seven current policies for Māori land, implemented by local and central government. Interviews with local government officers and central government officials were my primary source of information about the policies, supplemented with publicly available policy documents. Descriptions of the policies are followed by comments from the M1 and M2 case studies assessing the effect of each policy on the viability of their development, (see Figure 7 – Approach to answering question two). Using interviewees’ comments, I have classified the effect of each policy on project viability as:

- ‘critical’ – the project as it is could not have happened without this policy
- ‘significant’ – the project would have been negatively affected without this policy
- ‘minimal’ – the project changed little as a result of this policy
- ‘no effect’ – the project was not affected by this policy

Project viability is assessed on two measures: ability to meet the costs of development; and ability to implement the desired development.

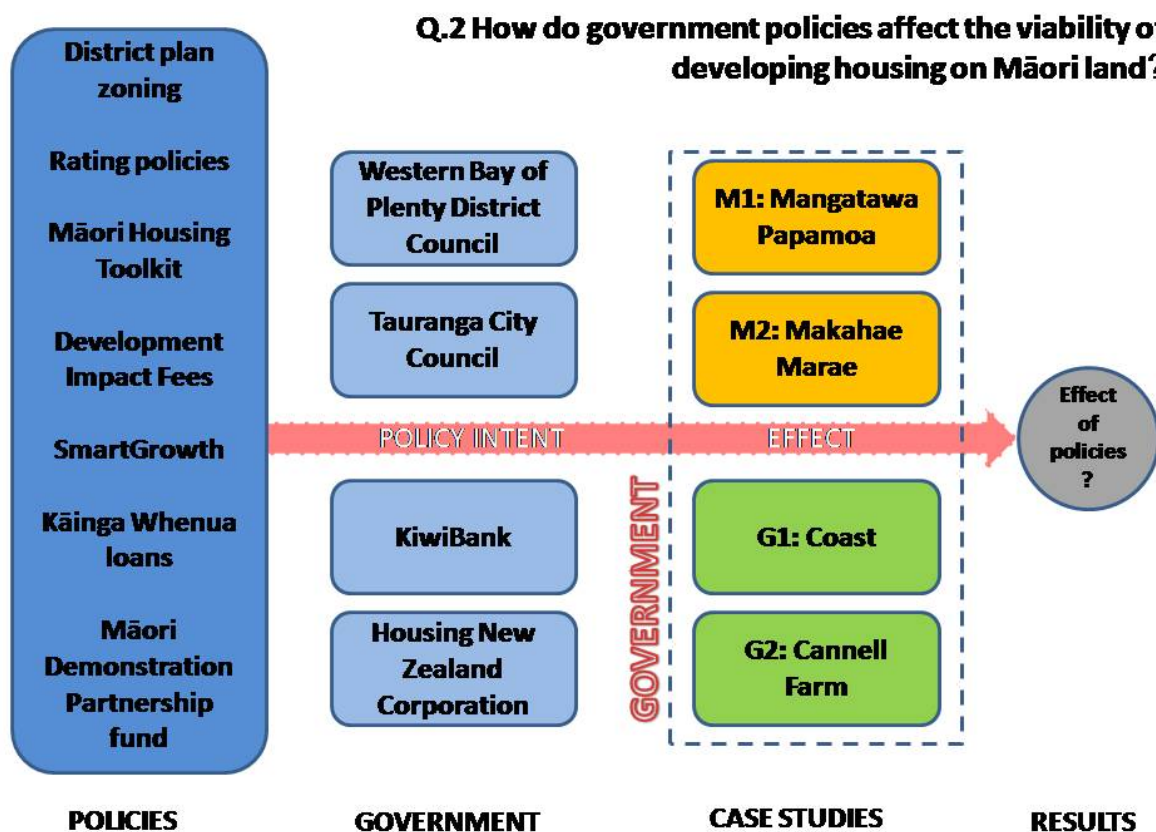


Figure 7 Approach to answering question two

## 5.2.1 Local government policies

### 5.2.2 Results: District Plan zoning

Both Tauranga City Council and Western Bay of Plenty District Council include new rules for housing on Māori land in their proposed (new) plans. These provisions are a significant change from previous *papakāinga* [housing on Māori land] provisions and permit much higher residential density development on selected Māori land blocks than in the surrounding rural areas.

*Western Bay of Plenty District Plan:* Under the Western Bay of Plenty proposed plan, *papakāinga* are no longer defined under a special zone, but are simply zoned rural. The Rangiuuru 2G land block proposed for housing at Makahae Marae is zoned ‘Rural 2’. However, the rules allow much more intensive development on multiply-owned Māori land than on land in general title that is also zoned Rural 2. Permitted development is also unusual because Makahae Marae falls outside the urban limits, where subdivision for housing development on general land is not permitted.

*Tauranga City Council City Plan:* In its new plan, Tauranga City Council has retained specific urban and rural Marae Community zones to support development of housing around existing *marae* [community bases]. Each site zoned for a Marae Community has been assessed and allocated a maximum number of permitted dwellings, with a minimum lot size of 800sqm. The development at Mangatawa Papamoa is associated with Tamapahore Marae which has been allocated 35 dwellings.

Dwellings are also permitted on multiply-owned Māori land which is not specifically zoned for *marae*, but at a much lower density – the minimum lot size is 2000sqm. This still permits higher density than the minimum lot size required for development on rural land.

*Emphasis on planned development:* Both sets of district plan rules place emphasis on the necessity of development being planned, rather than ad-hoc. *Papakāinga* developments in Western Bay of Plenty require an approved site plan, while *papakāinga* developments in Tauranga City Council need an ‘Outline Development Plan’ to proceed. These plans determine the boundary edge of the development, but landowners control the internal layout of the development. The new rules are intended to be much simpler than the existing rules.

The councils retain discretion over assessing Development Impact Fees, and whether potential effects on infrastructure and the environment are acceptable (Western Bay of Plenty District Plan 2010; Tauranga City Plan 2010). A summary of *papakāinga* provisions in both plans is included as Appendix F, along with rules regarding residential development on general land in rural areas for comparison.

#### *Comments from case studies*

The Project Manager (Makahae Marae) noted that *papakāinga* zones existed under the previous Western Bay of Plenty district plan, but it was unclear what kind of development was permitted within those zones. Both Project Managers have been involved in setting up a *Papakāinga* Focus Group, which has been instrumental in getting the new district plan provisions into both councils’ plans:

‘[W]e have just completed successfully influencing both Districts’ proposed plans, Western Bay and TCC, with a whole new raft of rules around rurally zoned Māori land, so that you can put on ten houses as a starting point, just with a blobby site plan, nothing that a consultant has to draft up’ (Project Manager, Manatawa Papamoa 2010)

The work of the Papakāinga Focus Group also involved coming up with a definition for ‘*papakāinga*’ for the western Bay of Plenty that emphasises the need for supporting amenities and community facilities within the development. For the Project Manager from Mangatawa Papamoa, the motivation to improve provisions for *papakāinga* in the district plans came in part from her experience with the Horaparaikeete communal house development:

‘... under [Tauranga City Council], you can only have two houses per title, and there were already three here. And we had to apply for resource consent, and that was a very long, drawn-out process. And at that time, [Tauranga City Council] were not helpful at all. They didn’t get the concept, they didn’t understand, the planner we worked with was very difficult, had no cultural empathy...’

The two projects on general land acquired land zoned for residential development, and their developments fall within the permitted densities of the respective council zones. The high density development permitted under the Tauranga City Council Residential A zone was crucial for allowing Coast development to build a large number of dwellings, which in turn allows the developer to meet their objective of creating a medium-density development and to profit from the income generated by nearly 700 dwellings. In contrast, the low-density lot sizes offered at Cannell Farm would not be permitted under the new Western Bay of Plenty plan, however the subdivision was approved under the existing plan.

<i>District plan zoning</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	No effect	No effect	Critical	No effect
<b>Ability to implement desired project</b>	Critical	Critical	Critical	Critical

**Table 12 Results – Effect of District plan zoning**

### **5.2.3 Results: Development Impact Fees**

Development Impact Fees to recoup the costs of infrastructure are also treated differently by the two councils. It is unclear exactly how much the developments on Māori land will be charged for development and financial contributions.

*Western Bay of Plenty development impact fees policy:* Western Bay of Plenty District Council levies financial contributions under the Resource Management Act. The purpose of financial contributions are to fund the District’s infrastructure, and the proposed plan notes that ‘[f]inancial contributions from development are seen as a key part of [the] strategy to make sure that new development is not subsidised by existing ratepayers’ (Western Bay of Plenty District Council 2010, ch.11).

Financial contributions are calculated with respect to the infrastructural works set out in the council’s approved development programmes, based on a ‘Household Equivalent’ estimate of demand placed on the planned infrastructure. Financial contributions are a condition of consents to subdivide land, and consents to intensify or change land use. Contributions are assessed as a dollar figure and invoiced at the time of consent, commonly subdivision consent.

*Tauranga City Council development impact fees policies:* Tauranga City Council uses both development contributions under the Local Government Act, and financial contributions under the Resource Management Act, to target different resource users. The purpose of financial contributions is to ‘...provide for the taking of money and/or land to mitigate the effects of development within the City’ (Tauranga City Council 2009b, ch. 11.1). Most costs of infrastructure are recouped under the Development Contributions policy, but the Resource

Management Act is used to collect contributions from exempted parties (such as the Crown), as well as contributions for community infrastructure and reserves infrastructure.

Development contributions are charged for new dwellings or household units, to cover capital expenditure for city-wide and local infrastructure (Tauranga City Council 2010a). Development contributions are determined by calculating the anticipated demand created by each Household Unit within a specific development. Development contributions can be paid in money or, in some cases, land. There are three steps to determining whether a development is required to pay development contributions:

- Council determines whether the project will generate demand for reserves, network infrastructure, or community infrastructure;
- Council assesses whether the project will require Council to incur capital expenditure to provide appropriate infrastructure to meet demand generated by the project;
- Council checks that the policy provides for payment of a development contribution (Tauranga City Council 2010a)

*Comments from case studies*

Neither project on Māori land has got to the stage where they are required to pay development impact fees. Although the projects will not be subdivided for development, Development Impact Fees will be payable at the time of building consent (Senior Planner, Tauranga City Council 2010). The Project Manager from Mangatawa Papamoa stated that the owners would ‘really push’ Tauranga City Council to discount financial/development contributions on the development. She noted that Tauranga City Council has agreed not to request reserve contributions for recreation and community use from developers of housing on Māori land. Project Manager (Makahae Marae) also hoped for concessions on Development Impact Fees, but noted the potential political difficulties of negotiating a discount:

‘[I]t’s about putting the argument to the councillors and the mayor and that about why we think, if we built houses here, we shouldn’t be charged development impact fees... or find a way to lessen them, so it’s affordable’

The interviewee from Western Bay of Plenty District Council noted that it should not be assumed that every proposed papakāinga developments cannot pay Development Impact Fees. Therefore, they are reluctant to set a precedent by reducing contributions but will consider reducing fees on a case-by-case basis (Group Manager, Western Bay of Plenty District Council 2010).

Interviewees from general land projects stated that Development Impact Fees are high, and make up a significant contribution to costs of development.

<i>Development Impact Fees</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	Likely to be significant	Likely to be significant	Significant	Significant
<b>Ability to implement desired project</b>	No effect	No effect	No effect	No effect

**Table 13 Results – Effect of Development Impact Fees**

## 5.2.4 Results: SmartGrowth Strategy

SmartGrowth Western Bay of Plenty is a growth strategy developed by the three councils in the Western Bay of Plenty sub-region – Tauranga City Council, Western Bay of Plenty Council, and the regional council Environment Bay of Plenty. The 50-year Strategy and Implementation Plan was launched in May 2007, and identifies urban growth areas, growth corridors, and urban limits within which the bulk of growth over the next fifty years is planned to take place (see Figure 8 opposite). 75% of this growth is planned to take place in the Tauranga City Council area, and 25% in the Western Bay of Plenty area (SmartGrowth 2007, p.27). Papamoa and Te Puke are both identified as ‘major development areas’. Papamoa is expected to host 40,000 new residents by 2051 (29% of total growth in the area). Inland, Te Puke is expected to accommodate 4% of total growth in the sub-region (SmartGrowth 2007, p.30). Elements of the Strategy have become regulation through the Environment Bay of Plenty Regional Policy Statement, under the Resource Management Act.

A earlier survey of urban growth strategies in New Zealand showed that only half the urban growth strategies studied mention the development of Māori land as part of the wider urban settlement pattern. Of these four strategies, SmartGrowth provided the most comprehensive consideration of how development would happen, and where (Livesey forthcoming). The Strategy includes a specific section on *Tangata Whenua* [indigenous people] which emphasises the desire to retain land; forecasts the Māori population to triple over the next 50 years; and notes that within the Strategy:

‘Provision for papakāinga housing [on Māori land] for up to 16,000 people is made, with uptake increasing after 2011 when development, ownership and funding issues are resolved. This development includes complementary business and community activities and services’ (SmartGrowth 2007, p.35).

In Section 7.2.8, the Strategy sets out further growth issues for *tangata whenua* [indigenous people] – including that ‘past growth and development has taken place at a significant costs to Tangata Whenua’ – and a number of principles for development, based on balancing resource development and resource protection.

### *Comments from case studies*

The interviewee from Western Bay of Plenty District Council noted that the figure of 16,000 people living on Māori land was extrapolated from land availability:

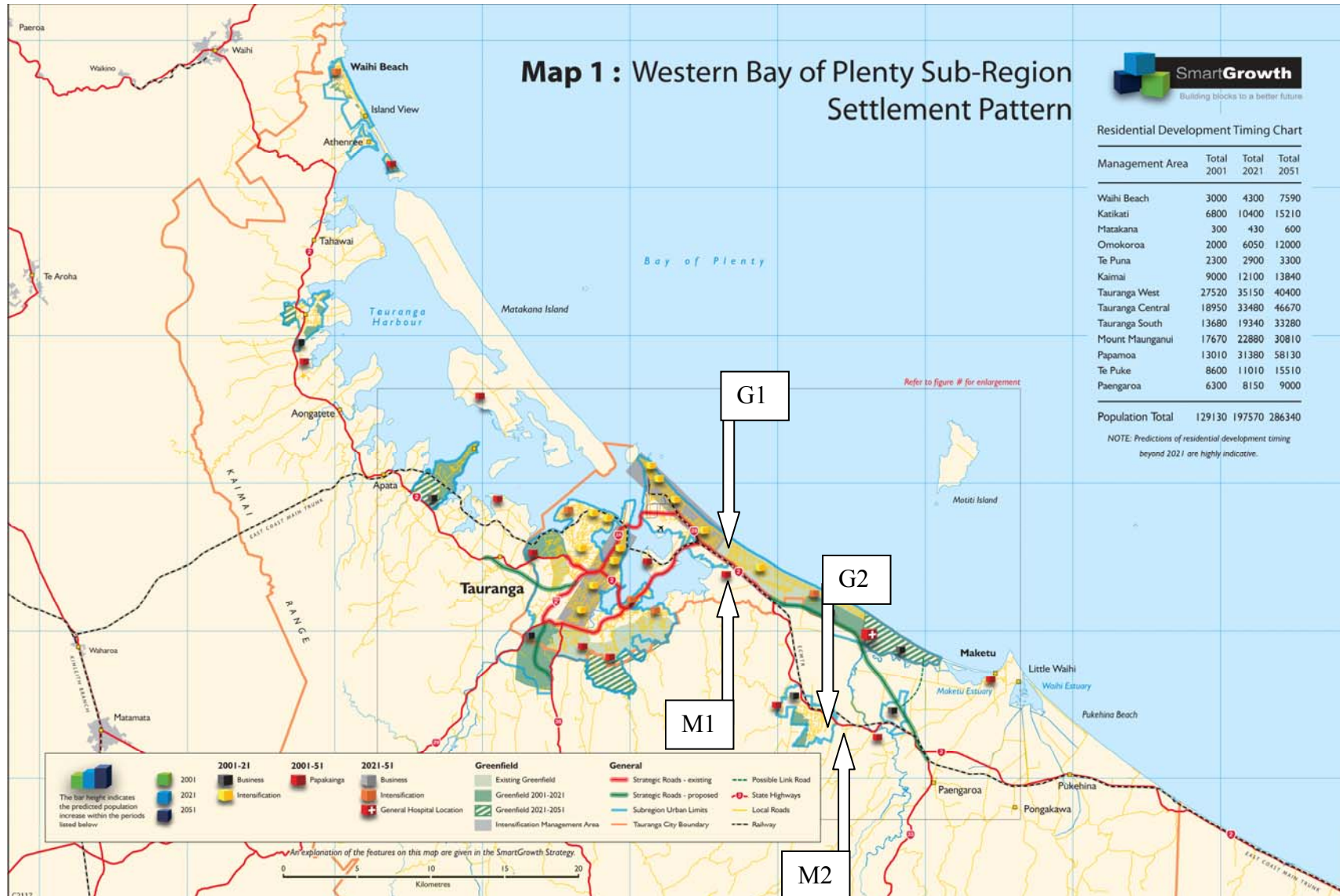
‘When you look at the bigger picture of the figures, in terms of available land, there’s a lot of land available that can be used, that’s the whole argument. So having a target like that – and it’s [for] 2051 – is not unreasonable for the available land that’s actually there’ (Group Manager, Western Bay of Plenty District Council 2010)

However, the interviewee from Tauranga City Council was a little more cautious –

‘The numbers that they came up with were a big guesstimate, and the ideal – if planning rules allowed development, if infrastructure was there, if... there was a lot of big ‘if’s’. And you’ll find that with the papakāinga housing, there’s still big ‘if’s’ there’ (Paetakawaenga, Tauranga City Council 2010)

The Project Manager (Makahae Marae) stated that SmartGrowth triggered Tapuika’s involvement in papakāinga housing by initiating a pilot *papakāinga* project. However, working with the long timeframes set by the SmartGrowth Strategy can be difficult:

‘That’s the problem with SmartGrowth. It identifies early in the day, but it takes a long time to get there. So, you can’t really wait twenty-five years to build houses, waiting



**Figure 8 SmartGrowth settlement pattern and population forecasts (SmartGrowth 2007)**

for a pipe to go through. But you need to be smart about what systems [you could] have in place that could eventually hook into that system’ (Project Manager, Makahae Marae 2010)

Another interviewee noted that the SH2 realignment had solved some access problems for the Mangatawa Papamoa block, and that services were now provided to the block. However, it was also acknowledged that the process could have negatively affected the Mangatawa Papamoa block in other ways (Senior Planner, Tauranga City Council 2010).

More efficient land use through high-density development, such as that permitted at Coast, is a crucial aspect of the SmartGrowth Strategy. For this reason, the Council has strongly supported the development, including an endorsement by the Mayor of Tauranga City. In comparison, low-density development – as exemplified by Cannell Farm – is discouraged under the SmartGrowth Strategy.

<i>SmartGrowth Strategy</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	Minimal	Minimal	Critical	Minimal
<b>Ability to implement desired project</b>	Minimal	Significant	Critical	No effect

**Table 14 Results – Effect of SmartGrowth Strategy**

### **5.2.5 Results: Rates policies**

Local council levy rates on property owners to fund their provision of services, capital expenditure, and operations. These rates are divided into general rates, which every landowner pays, and targeted rates, which are levied for specific services and only payable by the households or businesses that receive those services. Every local government has the authority to set their own rates. Both Tauranga City Council and Western Bay of Plenty have policies to remit or postpone rates on Māori land, under specific circumstances.

#### *Tauranga City Council*

Tauranga City Council levies Uniform Annual General Charges (uniform charge), rates for water and wastewater (charge for service), and district rates (based on a percentage of capital value Tauranga City Council 2010b). The Tauranga City Council ‘Remission and Postponement of rates on Māori freehold land’ policy lists a number of objectives, including:

- Acknowledging circumstances where there is no occupier or person gaining economic or financial benefit from the land;
- Granting remission of the unoccupied portion of a landblock, where a block of land is partially occupied;
- Facilitating the development of the land for economic use (Tauranga City Council 2009a)

Under Tauranga City Council policy, rates can either be remitted – no rates are payable on the land – or postponed by discretion of the rates department for a time period negotiated by the ratepayer and the Council. Council officers have delegated authority to remit up to NZ \$10,000 (US \$7,109) of rates per property, annually (Tauranga City Council 2009a).



Landowners can apply to have their rates remitted or postponed based on evidence including: income derived from the block; occupation of the land; service connections to the land; and potential for development. Where land is unoccupied and it is impractical to contact owners, all charges may be remitted.

*Western Bay of Plenty District Council*

Western Bay of Plenty District Council’s ‘Rates relief and postponement on Maori freehold land’ policy aims to ‘recognise the special issues associated with the ownership of Maori freehold land’ (Western Bay of Plenty District Council 2009, p.203). The policy lists four justifications to remit or postpone rates on Māori land:

- ‘For the purpose of economic development...to encourage development because of the lack of ability to borrow’
- ‘Avoiding alienation of Māori land, where blocks are small, unproductive and unoccupied’
- ‘To support the traditional use of dwellings on part of multiple-owned Maori land and to recognise the level of community services provided’
- ‘Relationship of Māori with their culture, traditions and ancestral lands’ (Western Bay of Plenty District Council Long Term Plan, p.273-4).

Under these policies, ‘a lot’ of Māori land is exempted from rates (Group Manager, Western Bay of Plenty District Council 2010)

*Comments from case studies*

Both Makahae Marae and Mangatawa Papamoa blocks are currently leased for agricultural use, with the arrangement that the lessee pay the rates. Neither block currently benefits from rates remissions policies, and rates on both blocks will increase to residential levels when houses are built on the blocks. However, the Project Manager (Mangatawa Papamoa) noted that under Tauranga City Council, there is a policy that if people are living on the land, rates can be remitted for the area unoccupied by housing.

One interviewee from a general land project mentioned that paying rates can be difficult for property developers in the initial stages of a project, because residential rates are payable as soon as the land is subdivided, rather than when the houses are occupied.

<i>Rating policies</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	Minimal	Minimal	Minimal	Minimal
<b>Ability to implement desired project</b>	No effect	No effect	No effect	No effect

**Table 15 Results – Effects of Rating policies**

## **5.2.6 Results: Māori Housing Toolkit**

The SmartGrowth Strategy identifies the need to build capacity among owners of Māori land to develop their own land. Accordingly, development of a Māori Housing Toolkit was included in the Strategy’s specific project actions to address Tangata Whenua growth issues. This toolkit, showing the key steps in developing

Māori land, was intended to be produced in parallel with the pilot project at Makahae Marae and available for use by *iwi* and *hapū* [kinship groups] across the sub-region. The Māori Housing Toolkit – Te Keteparaha mo nga Papakāinga – is a joint project of the SmartGrowth group, with involvement from Housing New Zealand Corporation, the Ministry of Māori Development and the Māori Land Court in a Joint Agency Group.

The Māori Housing Toolkit aims to ‘assist Māori Land Trusts with their aspirations to develop and build homes on multiple owned Māori land for the beneficial owners’ (SmartGrowth 2009, p.1) The process to develop housing is divided into five steps, and ‘[e]ach step is broken down into achievable actions, questions, decisions and the next step in a timely manner’ (SmartGrowth 2009, p.1). The development of the Toolkit draws on documentation of the pilot project at Makahae marae. The first three steps of the Toolkit have been released, and the final two steps will be released as the pilot project progresses.

The Chair of the Joint Agency Group who developed the toolkit considers that the process of developing the toolkit has helped remove barriers to working with government agencies – ‘[w]e’re looking to create better information, it’s a one-stop, consistent service-type approach, of what you can do and what you should be doing and what we can commit to’ (Group Manager, Western Bay of Plenty District Council 2010). The ‘planned development’ advocated by the toolkit is a critical step to making development happen, because it encourages landowners to assess demand, achieve economies of scale, and to make a business case for funding or council assistance (Group Manager, Western Bay of Plenty District Council 2010)

*Comments from case studies*

As the SmartGrowth papakāinga pilot project, Makahae Marae worked closely with the Joint Action Group to develop the Māori Housing Toolkit. Project Manager (Makahae Marae) saw the value of the Toolkit not as providing a blueprint for other developments, but ‘...recording what the difficulties are, finding solutions for those, and then putting them into a guide or a toolkit ...it gives [others] an indication that if you go this way, then... rather than six months, you might get your applications through in three’ (Project Manager, Makahae Marae 2010)

The Project Manager (Mangatawa Papamoa) considered that a toolkit may have helped council to better understand the concept behind previous papakāinga developments. She noted that the Toolkit provides a benchmark for other landowners to measure their progress against.

There is no toolkit provided for developers of general land.

<i>Māori Housing Toolkit</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	No effect	Minimal	No effect	No effect
<b>Ability to implement desired project</b>	Minimal	Significant	No effect	No effect

**Table 16 Results – Effect of the Māori Housing Toolkit**

## 5.2.7 Central government policies

### 5.2.8 Results: Māori Demonstration Partnership fund

The Māori Demonstration Partnership fund is a new programme launched in 2009 by Housing New Zealand Corporation. Māori Demonstration Partnership funding comes from the Housing Innovation Fund, a contestable fund aimed at increasing the social housing stock through partnerships with third-sector (i.e. not-for-profit) housing providers, a sector which is currently very small in New Zealand.

In comparison with Kāinga Whenua loans, the fund is targeted to groups, rather than individuals. Funding is contestable and applicants are assessed on both the project and the group's capability to carry it out. Successful applicants are supported to develop their capability to manage social housing stock, including training on tenancy asset management plans. Advice is also available from design and credit experts at Housing New Zealand Corporation.

Under this programme, Housing New Zealand Corporation can give a grant to partners of up to 33% of the total project cost. This grant can be supplemented by a loan for another 17% of the project cost, which is interest-free for the first ten years. The Māori partner must contribute 50% equity to the project, in the form of land or money.

#### *Comments from case studies*

Both Mangatawa Papamoa Blocks Incorporated and Makahae Marae applied for funding from the Māori Demonstration Partnership in the 2009/2010 round. Mangatawa Papamoa was awarded NZ \$1.1 million (US \$0.78 million) as a grant, and NZ \$1 million (US \$0.71 million) as a loan. Makahae Marae were not successful, but aim to submit another application for the second funding round in August. This proposal will split the project into two parts, with the first funding focussed on infrastructure and a second proposal to gain funding for the actual houses.

The Project Manager from Makahae Marae reflected that there have been a number of programmes to assist owners of Māori land to develop housing, with limited success, including the Papakāinga Housing Scheme. In comparison, the Māori Demonstration Partnership fund is seen to be an initiative from the new National Government to get models 'working on the ground'. The Project Manager (Mangatawa Papamoa) stated the importance of government funding, noting that '... a lot of Māori organisations are asset-rich, cash-poor. So we have the land but we don't have the money. Investors see us as risky, and so we need these government initiatives to help kick-start these things'.

Neither interviewee from general land mentioned the effect of the Housing Innovation Fund or other government funding programmes on their developments.

<i>Māori Demonstration Partnership funding</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	Critical	Potential effect	No effect	No effect
<b>Ability to implement desired project</b>	Significant	Potential effect	No effect	No effect

**Table 17 Results – Effect of Māori Demonstration Partnership funding**

## 5.2.9 Results: Kāinga Whenua loan scheme

In May 2009 a new mortgage insurance product was launched by Housing New Zealand Corporation and KiwiBank, targeted at owners of Māori land who can't access finance to build, relocate or purchase a house on their land. Created in response to a directive from the new Minister of Housing, the Kāinga Whenua Loan combined the Corporation's existing Welcome Home Loan (a mortgage insurance to encourage banks to lend to first-home owners with low or no deposit) and the – largely dormant – Papakāinga Housing Scheme, for which funding ceased in 2009 (Product Manager, Housing New Zealand Corporation 2010).

Under the Kāinga Whenua Loan scheme, buyers who meet the eligibility criteria set by Housing New Zealand Corporation, and the credit-worthiness criteria set by the government-owned KiwiBank, can apply for a mortgage up to NZ \$200,000 (US \$142,180) to pay for resource and building consents, construction and associated infrastructure costs for building a home on Māori land. Housing New Zealand Corporation's eligibility criteria include that the borrower has: proof of household income below NZ \$85,000 (US \$60,426) a year; been employed for at least 12 months at a location within a reasonable distance from the proposed house site; an intention to live full-time in the house; not owned a house before, or cannot access finance for the house from conventional mortgage lenders; a licence to occupy the land; and a good credit history. The house must also be removable, above a certain size, and have reasonable construction costs. KiwiBank secures the mortgage through a 'Specific Security Agreement' over the house, rather than a charge over the land (Manager Credit Improvement, Kiwibank 2010). No deposit is required for loans under NZ \$200,000 (US \$142,180), and the loan is for a maximum of 30 years.

The loan is based on a tripartite agreement between the borrower, the trust or incorporation that owns the land (the landowners), and Housing New Zealand Corporation as the guarantor. This tripartite agreement arrangement was developed for the previous Papakāinga Housing Scheme loan product (Product Manager, Housing New Zealand Corporation 2010). Among other things, this tripartite agreement records:

- That the borrower holds a 'licence to occupy' granted by the trust/landowners in accordance with the rules of the Māori Land Court;
- That any house built on the site is owned by the borrower, and not by the trust/multiple landowners; and
- That the borrower agrees to give Housing New Zealand Corporation security over the house, and the right for Housing New Zealand Corporation to exercise that security by removing the house from the land for resale, in the case of default on the loan.

The loan is approved by KiwiBank, in collaboration with Housing New Zealand (Manager Credit Improvement, Kiwibank 2010). Once the loan is approved, standard bank lending conditions apply, but the loan cannot be topped up. If the borrower defaults, KiwiBank transfers the loan to Housing New Zealand, who assesses whether KiwiBank have fulfilled all their conditions and pays the outstanding loan amount to KiwiBank. Housing New Zealand bears the

responsibility and costs of recovering and selling the house, and pursuing the borrower for the balance of the loan.

By early July 2010 one Kāinga Whenua loan had been approved, to buy an existing house (Manager Credit Improvement, Kiwibank 2010)

*Comments from case studies*

Both Project Managers were interested in using Kāinga Whenua loans to support the home ownership stage of their developments. The project manager at Makahae marae stated an intention to inquire whether a trust could apply for a Kāinga Whenua loan, which could then be used to build rental housing. Other interviewees also pointed out that, although the loan can be used to cover resource and building consent costs, and some infrastructure costs (e.g. installing a septic tank), the loan cannot be used to cover financial or development contributions required by council (Senior Planner, Tauranga City Council 2010). Project Manager (Makahae Marae) commented on the Kāinga Whenua loans:

‘I think there was a lot of inquiries, I think there was a big roll-out of it. And it seemed like God-sent, you know. Oh, this is great! But when you get into the detail of these sorts of things, the realities start to kick in ... If we can get the infrastructure, then these [Kāinga Whenua loans] become viable’

Although Welcome Home loans are available to potential buyers of housing on general land, neither interviewee mentioned that this policy has affected their project. This may be because housing at both Cannell Farm and Coast is above the average house price in the region, and may not be accessible or targeted to first home buyers.

<i>Kainga Whenua</i>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>Ability to meet costs</b>	No effect in stage 1; likely to be critical in later stages.	Potential effect in stage 1; likely to be critical in later stages.	No effect.	No effect.
<b>Ability to implement desired project</b>	No effect	Negative	No effect	No effect

**Table 18 Results – Effect of Kāinga Whenua loan scheme**

### **5.2.10 Conclusion**

This chapter demonstrates the differences between housing development on Māori land and on general land in the Western Bay of Plenty, in terms of the interpretation of property development concepts and the effect of a range of government policies on the viability – both financial and conceptual – of each case study. It is apparent from these results that housing development on Māori and general land has more differences than similarities, which accounts for the distinctly different effect of targeted and non-targeted policies on developments in similar locations. The implications of these results for the three research questions are discussed on the following chapter.

## **Chapter 6: Discussion and conclusions**

Results gathered from the four case studies provide useful insights into the process of housing development on Māori land. I will begin this discussion with a short description of the context for property development in the Western Bay of Plenty, based on a comparison between property development theory as outlined in the theoretical framework, and the two case studies on general land. This discussion is followed by a discussion of the question of the applicability of property development principles to housing development on Māori land, considering the context of the Western Bay of Plenty and the nature of the developments under study. The discussion highlights the differences between development on general and Māori land, and also identifies similarities with housing development on other collective tenure models.

The second half of this chapter focuses on the perceived effectiveness of government policies in supporting development on the two case study developments on Māori land, and a critical assessment of the extent to which these policies which successfully address the nature of Māori interests in land, as described in the chapter on Context. Finally, I conclude the thesis by considering government policies have resulted in relatively few housing developments on Māori land, and the role of government policies in balancing the protective nature of Māori land legislation to support development.

### **6.1 Development in the Western Bay of Plenty**

The results gathered from the case studies G1 and G2 indicate that housing development on general land in the Western Bay of Plenty closely matches the expectations of property development theory. Both projects are entrepreneurial developments which aim to profit from an increase in land value by preparing land for development and/or from developing housing on land previously in agricultural use. Both see selling houses freehold to be the best business strategy. The land was bought in times of strong growth in the property market, in areas zoned for housing and considered to have high potential for housing development. Aggressive growth planning by the local authorities means that there is a lot of land zoned for residential use, and high- and medium-density development is encouraged.

The Western Bay of Plenty has been an area of strong growth in the last twenty years, which is reflected in the amount of development activity, and translates into expectations of high profit and high demand. Both developments aim to provide housing to the top of the existing market and were expected to yield profit in proportion to investment over ten years. In both cases, many risks were seen to be external and beyond the control of the developer. For instance, the effect of the 2009-10 financial crisis on these projects highlights the vulnerability of debt-funded development to changes in costs, timing, and demand. Due to the crisis, sales were limited and development progress slower than expected in both developments.

These observations set the context for a discussion of housing development on multiply-owned ancestral land in the Western Bay of Plenty.

## 6.2 Applicability of property development principles to housing development on multiply-owned ancestral land

This research adds evidence to the proposition that owners of Māori land have an interest in their land based on historical, spiritual and cultural associations with origin and place. These interests lead to a different perceptions of land and the process of property development, as seen in these case studies of housing development on land in the western Bay of Plenty. The table below illustrates these differences in a simplified way.

<i>Property development concepts</i>	<b>General land: Cases G1 and G2</b>	<b>Māori land: Cases M1 and M2</b>
<b>Land acquisition</b>	Bought	Inherited
<b>Return</b>	Profit	Not-for-profit
<b>Return (project analysis)</b>	Financial analysis of profit	Cost-benefit analysis
<b>Risk</b>	Financial risk	Tenure risk
<b>Market analysis</b>	Meeting demand	Utilising supply
<b>Planning and consenting</b>	Zoned for urban use	Zoned for rural use
<b>Timing</b>	Market timing	Funding timeframes
<b>Funding (capital)</b>	Capital and loans	Grants and loans
<b>Funding (ongoing)</b>	Sales	Rents
<b>Costs</b>	Land, infrastructure, labour, construction. Few transaction costs.	Infrastructure, construction. Many transaction costs.
<b>Transferring rights over land</b>	Sale	Rental and occupation

**Table 19 Simplified contrast between case studies on land held in general and Māori title**

In addition, the developments on Māori land bear some similarities to models of housing on collective land tenure. This comparison is represented in Table 20. Using these two points of comparison – housing development on general land, and housing development on collectively-owned land – I will briefly describe the applicability of each of the property development concepts to housing development on Māori land, and the implications of this analysis for the nature of housing development on Māori land.

### 6.2.1 Land acquisition

The key feature of ‘acquiring’ land acquisition for housing development on Māori land is that land is not ‘acquired’ for the purpose of housing, nor is its value assessed in terms of potential housing development. Unlike property developers on general land, owners of Māori land have little choice about where their land for housing development is located.

### 6.2.2 Return

The two housing developments on Māori land did not aim to realise a financial return by selling land, a philosophy also apparent within housing development on land held by a community land trust. As discussed above, a common question regarding community land trust models is to what extent the landowner can expect to benefit from housing development, and to what extent the homeowner can expect to realise capital gains on the sale of their home. There is at least one significant difference between housing development on Māori land and a community land trust – within a community land trust model the homeowners are not the landowners, but within a Māori land trust or incorporation, the homeowners are a subset of the landowners.

<i>Property development concepts</i>	<b>Housing development on collectively-owned land</b>	<b>Housing development on Māori land: Cases M1 and M2</b>
<b>Land acquisition</b>	Bought to protect from gentrification. Residential demand determines location.	Land acquired through inheritance. History determines location.
<b>Return</b>	Land and house value separated. Model determines capital gain for landowner/homeowner. Profit/affordable housing motives.	No capital gain on land value. Return on land limited to agricultural use. Affordable housing motive.
<b>Risk</b>	Collective fiscal responsibility. Exploitation of common pool resources.	Changes in governance. Equity and allocation of benefits.
<b>Market analysis</b>	Control over selection of tenants. Self-selecting tenants.	Natural pool of owner/occupants. Lifestyle choice.
<b>Planning and consenting</b>	Value of land for development determined by planning regulation.	Value of land not determined by planning regulation. Permitted development negotiated.
<b>Timing</b>	Market cycle determines demand .	Response to government funding opportunities.
<b>Costs of development</b>	Cost savings through collective action. Costs of decision-making.	No cost of land. Development costs a barrier. Costs of decision-making and Māori Land Court processes.
<b>Funding development</b>	Individual or collective mortgage. Specialised mortgage products.	Individual and collective mortgages. Collective grants.
<b>Transferring rights over land</b>	Homeownership and shares; rental home and shares; rental or homeownership on trust land .	No sale of land. Rent or own on trust or incorporation land; owner-occupants are shareholders.

**Table 20 Simplified comparison between housing development models on collectively-owned land and case studies of housing development on Māori land**

It is worth noting that some income could be realised for owners of Māori land through charging homeowners for the right to live on the land. As the project manager from Makahae Marae noted, people who live on the land will be expected to pay something for their right to occupy shared land, and to contribute to the *marae* community. This payment can be seen as recognising the fact that there is an alternative, income-generating use for the land (agriculture) and using land for housing means it cannot be used for agriculture. However, returns to individuals from agriculture on Māori land are not necessarily significant, and the implications of their loss for an owner's annual income may be slight. The average annual income for a beneficial owner of Māori land administered through trusts and incorporations is just NZ \$130.43 (US \$92.78) (Annual Report of the Maori Trust Office April 2005 – March 2005, cited in Hitchcock 2008). Comparing this figure to the total average income in New Zealand for 2005 – NZ \$30,473 (US \$21,663) – gives support to Gilling's statement that current returns to owners of Māori land cannot '...remotely be considered as a meaningful alternative to being able to live and support oneself on one's land' (Gilling 2007, p.29).

However, not every owner of Māori land can live on their land. Theoretically, in fact, the ratio of Māori people to hectares of Māori land has fallen from around 1:150 in 1806 to 1:3 in 2006. Hectares of land per person will continue to drop as the Māori population rises (Durie, 2010). Practically, the right of residence is limited to the number of people who can live in the number of houses permitted on the block. The fact that landowners agree to forego economic return in



exchange for the chance for some of their people to live on the land supports the finding that the 'return' expected on investment in housing on Māori land is wider than a financial rate-of-return, and includes social and cultural benefits (Senior Adviser, Ministry of Maori Development 2010).

It is more difficult to assess the likely return to the owner of a house on Māori land, if they sell their house. The potential for homeowners to resell houses with the price of the land capitalised into the price of the house illustrates the paradox of affordable housing. If the price of homeownership is lowered by removing the cost of the land, housing can be on-sold for a windfall gain, and becomes less 'affordable' for the next occupant. If the price of on-selling is restricted – for instance, through a resale formula such as those used in community land trust agreements – the homeowner may not realise capital gain, therefore missing out on the wealth-creating benefits of homeownership.

These difficulties notwithstanding, the potential for collective tenure to lower entry-costs into the housing market means that housing on collective land often has social capital or not-for-profit objectives. These objectives are obvious in the two developments on Māori land. The emphasis on social and cultural outcomes, rather than financial return, suggests that the two developments on Māori land could be considered not-for-profit developments, rather than commercial housing developments. The interaction between social and economic imperatives is analysed by Brozek, who places 'all nonprofit and for-profit organizations along a continuum from social to financial returns' (Brozek 2009, p.7). She identifies the extent to which an organisation relies on outside funding as a proxy for its similarity with a non-profit model.

### **6.2.3 Risk**

The internal risks identified in the housing developments on Māori land are similar to the risks of collective fiscal responsibility and allocation of benefits seen in collective housing projects. As trustees of the land and prospective investors (of time and effort if not necessarily capital) in housing developments, Māori land trusts and incorporations are ultimately responsible to all their beneficiaries and shareholders. If an incorporation or trust is loaned funding for a housing development, there is the potential for the costs to be spread over all owners, while the benefits only go to a few. This is because housing is an exclusive benefit which cannot be extended to all landowners.

These risks are much higher with collective funding for rental housing (as seen in Māori Demonstration Partnership funding), than for mortgages granted individually to landowners (i.e. the Kāinga Whenua loan). Risks taken by developers of rental housing include that the housing could have high rates of vacancy, or that occupants may not pay the rent. In housing cooperatives, the risk of vacancy is borne by the landowner, while the risk of non-payment is mitigated by screening potential applicants. The Mangatawa Papamoa Blocks Incorporation have found another strategy to address these risks, and are considering an agreement with Housing New Zealand Corporation to lease the rental units funded by the Māori Development Partnerships at a market rate (Project Manager, Mangatawa Papamoa 2010). The Incorporation and Housing New Zealand Corporation would work together to set eligibility criteria and identify appropriate

residents. This arrangement shifts the risk of vacancy or non-payment to Housing New Zealand Corporation<sup>32</sup>.

Where land ownership is concerned, the attitude towards risk expressed by the project managers on Māori land is considerably more conservative than the interviewees from developments on general land, and bears similarities with the community land trust philosophy, although based on different values. Trustees of Māori land are reluctant to alienate or risk alienating their land because the land is seen to be held in trust for owners, now and in the future. This implies that owners of Māori land consider a mortgage as a significantly higher risk than other landowners would, and some owners may not consider any kind of mortgage against Māori land as a responsible or appropriate option. Furthermore, the Māori Land Act encourages owners to be reticent towards risk through alienation provisions which means that even if owners are willing to risk ownership of the land, the Court has the discretion to weigh up whether taking that risk is in the best interests of all owners. Recognising that owners of Māori may not want to risk ownership of the land by mortgaging it with a commercial bank (which may or may not accept the land as security), central government offers programmes that lend money without requiring the security of the land.

#### **6.2.4 Market analysis**

Literature discussing housing development on collective land tenures notes that although housing cooperatives and community land trusts can select residents, residents are also ‘self-selecting’ to the extent that they have to be prepared to enter into a collective lifestyle, and to accept the limited capital gains associated with shared-equity homeownership. Both cases of housing development on Māori land are developed with a natural pool of prospective tenants or homeowners in mind – that is, the owners of the land and their families. Living in a papakāinga development with your extended family is also a ‘lifestyle choice’ which requires learning how to live together as a close community (Senior Adviser, Ministry of Maori Development 2010). It is likely that these considerations will affect the size of the market for housing on Māori land.

#### **6.2.5 Planning and consenting**

These case studies demonstrate that owners of Māori land have a different relationship with councils and different expectations of zoning policies than developers on general land, either in an individual or collective tenure situation. For owners of Māori land, zoning does not dictate the value of the land as a location for housing. In both case studies, district plan zoning for land was negotiated with local government to fit the development aspirations of landowners. These negotiations are based on a relationship which reflects the status of owners of Māori land as *mana whenua* [local indigenous people].

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<sup>32</sup> Although if Housing New Zealand Corporation factors these risks into their calculations, this may result in a ‘market rent’ for the houses below the rent paid for an equivalent property not subject to the restrictions of occupation on Māori land.

### **6.2.6 Timing**

Development on general land is timed to meet market cycles and reduce interest costs on debt-funding, while development on Māori land is timed to access opportunities for government funding. Bourassa (2007) notes that the timing of the market cycle can have significant effects on the relative affordability of full-equity and shared-equity housing, affecting the market for affordable housing on collective land. Changes in housing affordability due to the wider economic environment may also influence demand for housing on Māori land, at any specific point in time.

### **6.2.7 Costs of development**

Apart from the significant fact that there are no costs for land acquisition for development on Māori land, costs for housing development on general land and Māori land appear to be roughly the same. However, council costs such as Development Impact Fees are seen as a major barrier to housing development on Māori land, and both project managers indicated they would try to reduce these costs through negotiation (Project Manager, Makahae Marae 2010; Project Manager, Mangatawa Papamoa 2010).

Higher transaction costs relating to collective decision-making are apparent in developments on collectively-owned land. Development on Māori land also incurs these costs – one commentator pointed out that for some issues 75% of owners are required to be present to make a binding decision (Maori Trustee, Waiariki 2010). The difficulty of meeting these kinds of requirements stems in part from the inability of trusts to contact many of their beneficiaries or shareholders. Further transaction costs are incurred because of the role of the Māori Land Court in approving decisions. According to one project manager, the main problem is the ‘...length of time it takes within the Court procedures. So a lot of things that generally when you’re working with general land, would take a week with a lawyer, with Māori land it seems to take six months before you get a hearing... timeframes are always pushed out’ (Project Manager, Makahae Marae 2010). It was also noted that a single owner can stall a development process by complaining to the Māori Land Court (Maori Trustee, Waiariki 2010).

### **6.2.8 Funding development**

Finance for housing development on Māori land is provided in a similar way to finance for housing developments on other collectively-owned land. Loans or grants can be approved either for an individual, or for a group. The collective nature of land ownership means that specialist mortgage products which do not require the security of the land are required to access debt-funding in housing cooperatives as well as on Māori land.

### **6.2.9 Transferring rights over land**

The ability to transfer rights over Māori land is significantly less flexible than the ability to transfer rights over general land, but is similar to interests granted in developments on collectively-owned land. Under the rental model financed by the Māori Development Partnership funding at Mangatawa Papamoa, the Mangatawa Papamoa Blocks Incorporation will own the units, and lease them out to residents (possibly through Housing New Zealand Corporation). This is very similar to a

housing cooperative model, except for the fact that the owner-occupiers make up only a small proportion of the total shareholders in the Incorporation, rather than comprising the entire management board.

In comparison, the homeownership model proposed for both Mangatawa Papamoa Blocks and Makahae Marae bears more similarity to a community land trust. To meet the requirements of the Kāinga Whenua loan scheme, prospective borrowers must hold a 'licence to occupy'. The 'licence to occupy' is a mechanism where the trust or incorporation can grant a licence to a specific person to occupy a specific portion of the landblock for a certain period of time (including life interests). No payment is generally required for the licence, but the licence holder must find their own funding to construct and maintain the house.

Under the Kāinga Whenua loan scheme, resale of the house is allowed, but not rental. In the past, Housing New Zealand Corporation has shown a 'good-faith' attitude to this restriction and has never forced an owner to re-finance or sell their house as a result of breaking this condition (Product Manager, Housing New Zealand Corporation 2010). Anecdotally, the Māori Land Court may also 'turn a blind eye' to the fact that houses are not occupied by the person who holds the licence to occupy. This suggests that there may be some flexibility (albeit informal) in determining who can occupy a house built under the Kāinga Whenua loan scheme.

### **6.3 Implications of applicability of property development principles**

This research shows there are significant differences between the theory of property development, and the interpretations of concepts such as return, risk, and transferring rights over land in the housing developments case studies on Māori land. Many of these differences can be explained by comparison with other models for housing development on collectively-owned land. One key difference between housing on Māori and other forms of collectively-owned land is the relationship between the landowners and the homeowners, which stems from the ancestral and inalienable nature of the land. The other crucial difference is that development on Māori land is not undertaken for profit.

The research suggests that the not-for-profit nature of developments such as the papakāinga projects at Makahae Marae and Mangatawa Papamoa Blocks may be critical to local and central government decisions to create targeted provisions and programmes for housing development on Māori land. Besides their responsibility to support Māori development as set out in the Treaty of Waitangi and confirmed through the Resource Management and Local Government Acts, local and central government agencies appear to have a tacit expectation that housing on Māori land – as permitted within the new district plans and supported by government-secured funding – will be non-commercial. For instance, Tauranga City Council will waive financial contributions for selected developments on Māori land, provided the housing is for landowners and wider family members (Tauranga City Council Proposed Plan 11.2.9.d).

This may be a reasonable assumption at the current time, however as time passes owners of Māori land may not want to be locked into providing 'social' housing, or even housing for their owners alone. Māori housing organisations may evolve

into more entrepreneurial models. Hill (2007) suggests that development and housing are ‘core business’ for Tapuika iwi and Ngāti Tūheke hapū, and both project managers see the current development as the first phase of a more extensive project. Future housing developments that include commercial elements could use profit from these commercial dwellings to subsidise housing aimed at the lower-income market. Not all providers of housing on Māori land rely on government funding, and some Māori organisations are currently financing housing through other commercial ventures on the land (Senior Adviser, Ministry of Maori Development 2010). It remains to be seen whether a possible change from non-profit to entrepreneurial model would result in changes in attitudes towards return, risk, and other property development concepts. Importantly, this research suggests a shift away from non-profit development may also cause government to reconsider the nature of its support for housing development on Māori land.

#### **6.4 Effect of policies on viability of housing development on Māori land**

The significant differences between the case studies of housing development on general land and Māori land, and the role of tenure – both multiple ownership and ancestral connection – in generating those differences is recognised to different extents in targeted policies which aim to support housing development on Māori land.

This section discusses the effect of those policies on the financial viability of the housing developments at Mangatawa Papamoa Blocks and Makahae Marae. The design of these policies means they not only affect the cost of development on Māori land, but also influence the kind of development possible on Māori land. As discussed in the context for this research, Awatere et al. (2008) set out a number of possible characteristics of papakāinga – including communal spaces, housing for a range of ages and so on – all of which are included in settlement plans for the two case studies on Māori land. The second half of this section assesses the effect of these policies in supporting aspirations for papakāinga development, as described by the case study participants.

##### **6.4.1 Ability to meet costs of development**

Of the seven policies analysed, one policy – Māori Demonstration Partnership funding – is assessed as ‘critical’ to allowing projects on Māori land to meet the costs of development, while the effect of a second policy – the Kāinga Whenua loan scheme – cannot yet be assessed but is predicted to be ‘critical’. On the other side of the equation, decisions which councils will make about whether to charge full or partial development impact fees is predicted to be a significant factor in how much development will cost. The other four policies were assessed as having minimal or no effect on the financial viability of the two projects (see Table 21).

<b>Effect on viability: Ability to meet costs</b>				
<b>Policy</b>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>District plan zoning</b>	No effect	No effect	Critical	No effect
<b>Development Impact Fees</b>	Likely to be significant	Likely to be significant	Significant	Significant
<b>SmartGrowth Strategy</b>	Minimal	Minimal	Critical	Minimal
<b>Rating policies</b>	Minimal	Minimal	Minimal	Minimal
<b>Māori Housing Toolkit</b>	No effect	Minimal	No effect	No effect
<b>Kainga Whenua loan scheme</b>	No effect in stage one; likely to be critical in later stages	Potential effect in stage one; likely to be critical in later stages	No effect	No effect
<b>Māori Demonstration Partnership funding</b>	Critical	Potential effect	No effect	No effect

**Table 21 Viability – Ability to meet costs**

### **6.4.2 Māori Demonstration Partnership fund**

The Māori Demonstration Partnership fund provides grants and loans to organisations, which can be interest-free. Removing interest from the development equation has a significant effect on costs – assuming a (low) interest rate of 5% on the whole sum, the NZ \$1.1 million (US \$0.78 million) loan granted to Mangatawa Papamoa Blocks Incorporated, with no interest for ten years, is effectively a grant of NZ \$691,784 (US \$492,135). The money received from the Māori Demonstration Partnership fund can be spent on any development costs, including infrastructure and development impact fees. Therefore, this funding is critical to the viability of the Mangatawa Papamoa project.

The Māori Demonstration Partnership fund model is similar to the government-guaranteed loans described in the United States and Canada<sup>33</sup>. However, one important difference between these models is that the Māori Demonstration Partnership fund is contestable (applicants are judged on relative merit and successful applicants receive funding from a limited pool of money), while the United States and Canadian funds do not appear to be contestable (that is, applicants are assessed on merit and available funding is not capped). Contestable funding increases the uncertainty of finance for developments on Māori land, as noted in Hill (2007). In addition, the requirement for significant equity and capability biases the Fund towards larger entities, which may be observed in the success of Mangatawa Papamoa Blocks Incorporation in the first funding round, at the expense of Makahae Marae.

### **6.4.3 Kāinga Whenua loan scheme**

The Kāinga Whenua loan scheme could have a critical effect on the viability of housing development on Māori land, if it allows owners of land to get a mortgage for building that they could not without the scheme. According to KiwiBank, Kāinga Whenua loans are targeted to a situation which doesn't occur on general

<sup>33</sup> The On-Reserve Home-ownership loan insurance without ministerial loan guarantee, in particular.

land. If a block of general land isn't subdivided, the developer would normally go to a commercial lender for property development finance, and subdivide the land as a commercial undertaking. If the block is subdivided, then a developer might approach the bank for a construction loan. Because Māori land is not subdivided as a commercial undertaking, property development finance is not applicable, and because offering land as security for a loan is not acceptable, neither is standard mortgage lending (Manager Credit Improvement, Kiwibank 2010). Kāinga Whenua loans are intended to fill this gap.

However, several commentators noted that Kāinga Whenua loans are only available for housing construction, and not for Development Impact Fees or consent costs. Construction loans are based on a fixed-price contract with a builder, which determines the timing and quantum of payments. This means further sources of funding are required to pay up-front costs, which may limit the usefulness of this funding to owners of Māori land.

#### **6.4.4 Development Impact Fees**

As noted earlier, neither project on Māori land has yet been assessed for or paid Development Impact Fees. However, both project managers stated an objective to negotiate Development Impact Fees with the relevant councils. The Western Bay of Plenty sub-region is a high-growth area with rising land prices and growing infrastructure demands. These demands translate into costs for councils, which are recouped through Development Impact Fees. Accordingly, Development Impact Fees in the Western Bay of Plenty are perceived to be very high, even on general land. One interviewee stated:

‘You cannot justify paying anything for land at the moment... Because by the time you take the costs of development, and the council fees, and you start compounding interest on outlay, if the land was given to you you'd lose money’

The interviewee from Tauranga City Council gave another perspective on rising Development Impact Fees, noting:

‘Impact fees, contributions, those things are another big area of concern for [owners of Māori land], because it's kind of like the egg-and-chicken situation – if they don't hurry up and build, it's going to be too costly for them to build’ (Paetakawaenga, Tauranga City Council 2010)

A rough assessment indicates development impact fees for the Mangatawa Papamoa development could total around NZ \$22,000 (US \$21,321) per dwelling<sup>34</sup>. The Western Bay of Plenty District Plan contains some provisions to waive or reduce financial contributions, where levying financial contributions would create ‘...identified wider community detriment or a detriment to a particular sector of the community would be created’ (Western Bay of Plenty District Council 2010, Ch.11.2.2.8). It was noted that this ‘public good’ consideration could potentially be applied to housing development on Māori land

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<sup>34</sup> This calculation is based on the development paying a City Wide Infrastructure development contribution of NZ \$9,513.29 (US \$6,763) for each two bedroom dwelling, and a Local Infrastructure Development Contribution of NZ \$12,390 (US \$8,808) per dwelling, as requested for developments in the Papamoa area. This figure has not been confirmed by council staff.

(Group Manager, Western Bay of Plenty District Council 2010). Other assessment criteria for waiving or reducing fees include the ‘...quantum of the contribution(s) and the market’s ability to pay’ (Western Bay of Plenty District Council 2010, Ch. 11.3.2 d)i)). However, the Tauranga City Council Development Contributions Policy gives less scope for waivers:

‘There will be no postponement or remission of development contributions except in exceptional circumstances at the discretion of the Chief Executive...’<sup>35</sup> (Tauranga City Council 2010a, p.12)

An interviewee from Tauranga City Council confirmed that the council’s policy is that ‘growth pays for growth’ (Senior Planner, Tauranga City Council 2010). Some waivers for financial contributions (under the Resource Management Act) exist on condition that the development does not require subdivision, and that the purpose of the development is to provide ‘housing for the shareholders of each block of multiple-owned Maori land and/or their wider families’ not for commercial use (TCC Proposed Plan 11.2.9.d) This research did not involve calculating the Development Impact Fees payable for the developments at Mangatawa Papamoia Blocks and Makahae Marae, but comments from both project managers indicate the fees are likely to add significantly to costs.

Reserve contributions are not required for development on Māori land, which has fairly significant financial implications for development – the Tauranga City Council usually requires reserve contributions either in land or money, equivalent to 7.5% of the value of total additional sections. Western Bay of Plenty council has no policy to waive reserve contributions, but notes that Māori reserves (like the Marae reserve at Makahae Marae) can be accepted as making an equivalent contribution to meeting open space requirements (Western Bay of Plenty District Council 2010, Ch. 11.3.2)

### 6.4.5 Rating policies

It is interesting that rates were not mentioned by either project manager as a significant issue. The debate over whether rates should be paid on Māori land dates back to the signing of the Treaty of Waitangi, and has moved from a general acceptance at that time that Māori should not pay rates on their land (because they were seen to have *tino rangatiratanga* [self-determination] similar to the self-government exercised by the Cree nation in Canada) to the contemporary expectation that Māori land should be rated like other land, taking into account the adjusted<sup>36</sup> value of the land and the availability of services (Dewes, Walzl 2007). It is possible that the issue of rates payment is more important on land that is unproductive, rather than on arable land as considered in the housing projects under study. The fact that rates are more commonly waived on unproductive land can be seen as incentivising non-use, rather than as a barrier to development. It is also likely that the quantum of rates payable on land (even at residential levels) is

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<sup>35</sup> Or in special circumstances outlined in the Development Contributions Policy, which do not include land being ancestral or multiply-owned (Tauranga City Council 2010a)

<sup>36</sup> The ‘Mangatu decision’ guidelines issued by the Valuer-General in 2000 suggest that valuations of Māori land should be discounted by up to 15% to reflect the effect of multiple ownership and sites with special significance on the monetary value of the land. Rating calculations are made using these adjusted values (Dewes, Walzl 2007).



insignificant compared to the sums of money involved in construction and Development Impact Fees especially if rates are discounted. These upfront costs are seen as presenting a barrier to housing development, while rates may be perceived as an ongoing challenge faced by an owner of Māori (or general) land.

#### 6.4.6 Ability to implement desired project

Of the seven policies analysed, one – district plan zoning – was assessed as being critical to allowing the owners of Māori land to include the elements which contribute a ‘*papakāinga*’ development, including locating development on ancestral land, and supporting the construction of affordable housing, community buildings, *kaumatua* [elderly] flats, communal gardens, minor commercial activities, education and medical facilities, and so on. The SmartGrowth Strategy was also assessed as having a significant effect, while the Māori Housing Toolkit had a significant effect on one project, and a minimal effect on the other. The Māori Demonstration Partnership fund can be seen to have a significant effect on the viability of one project, and a potentially significant effect on the other. Because of its emphasis on individual ownership and limited ability to assist with housing affordability, I have assessed the Kāinga Whenua loans scheme as having a potentially negative effect on the ability of owners of Māori land to implement projects that correspond to a ‘*papakāinga*’ concept.

<b>Effect on viability: Ability to implement desired project</b>				
<b>Policy</b>	<b>Effect on M1 Mangatawa Papamoa</b>	<b>Effect on M2 Makahae Marae</b>	<b>Effect on G1 Coast</b>	<b>Effect on G2 Cannell Farm</b>
<b>District plan zoning</b>	Critical	Critical	Critical	Critical
<b>Development Impact Fees</b>	No effect	No effect	No effect	No effect
<b>SmartGrowth Strategy</b>	Minimal	Significant	Critical	No effect
<b>Rates policies</b>	No effect	No effect	No effect	No effect
<b>Māori Housing Toolkit</b>	Minimal	Significant	No effect	No effect
<b>Kāinga Whenua loan</b>	No effect	Negative	No effect	No effect
<b>Māori Demonstration Partnership Fund</b>	Significant	Potential effect	No effect	No effect

Table 22 Viability – Ability to implement desired project

#### 6.4.7 District plan zoning

From the two case studies on Māori land, it appears that increasing the density of housing permitted on Māori land and allowing the construction of community facilities is critical to the viability of a *papakāinga* development. The new district plans developed by Tauranga City Council and Western Bay of Plenty District Council allow houses to be built without partitioning the land, and allow a significant community (up to thirty households, or approximately 80 people) to develop around existing community assets. These provisions contrast favourably with Davey and Kearns’ observation in 1994 that ‘...some district planning schemes still require partition of land and reserve contributions, in direct contradiction to the *papakāinga* concept’ (Davey, Kearns 1994, p.78).

Design-wise, the new district plans give landowners significant autonomy over the settlement layout. Both projects have chosen to cluster buildings together and use surplus land for communal spaces. There is also potential for sharing

infrastructure services and providing for infrastructure on-site, where possible. Both these options can reduce costs for development (Project Manager, Mangatawa Papamoa 2010). Most significantly, the existence of a targeted zone for Māori land allows owners of Māori land to develop residential buildings in rural areas. If these zones did not exist, the only avenue for owners wanting to return to live on their land would be to apply to the council for a private plan change – a process which can be very expensive.

#### **6.4.8 SmartGrowth Strategy**

The SmartGrowth Strategy appears to have been a critical factor in the development at Makahae Marae, but to have had net minimal impact on the Mangatawa Papamoa development. SmartGrowth provided the catalyst for the Makahae Marae project, and the Joint Agency Group set up to support the pilot project there has devoted significant time and resources to the project (Hill 2007).

According to Tauranga City Council, the involvement of *tangata whenua* [indigenous people] was crucial to the development of the SmartGrowth Strategy, and through this process the three councils ‘...all received the same message [from Māori] – we want something done about our own development, on our own land’ (Paetakawaenga, Tauranga City Council 2010). The project manager from Makahae Marae agreed that being involved in SmartGrowth has given *tangata whenua* [indigenous people] the opportunity to articulate their own growth needs, because ‘...through being involved in SmartGrowth... we could start to plan where our future employment for our people could be, where the housing should be, and what lands shouldn’t have housing on’.

#### **6.4.9 Māori Housing Toolkit**

The importance of building the capacity of owners of Māori land to carry out development led to the development of the Māori Housing Toolkit. The Toolkit, which is based on the experiences of the SmartGrowth pilot project at Makahae Marae, has been a focus point for agencies to work together to support development. The Joint Agency Group toolkit process has produced a ‘Tapuika Housing Needs Report’, an assessment of the Tapuika iwi governance structure, and a geo-technical assessment report (Hill 2007). These documents have been significant in supporting Makahae Marae to create a proposal for development funding.

#### **6.4.10 Māori Demonstration Partnership Fund**

As mentioned earlier, funding from the Māori Demonstration Partnership pool has been critical to meeting costs at Mangatawa Papamoa Blocks, and could also contribute funding for development at Makahae Marae. Māori Demonstration Partnership funding also has significant potential to assist landowners to provide affordable housing. Housing New Zealand Corporation, the government agency responsible for the Māori Demonstration Partnership funding, expects housing developed on Māori land to be more affordable than commercial housing, because the cost of the land is not included in the cost of development. Hill too believes that:

‘Developments on multiple-owned Maori land remove a significant cost, the land value, from the affordability equation, and are... a significant

opportunity... for reducing housing stress and increasing affordability for Maori in regions where land is available' (Hill 2007, p.64).

However, government policies to provide funding for housing do not necessarily make housing more affordable. Both the Māori Demonstration Partnership fund and the Kāinga Whenua loan scheme (as well as finance programmes in Australia, Canada and the United States) provide loans at market interest rates, although in several schemes the interest is written off for a set period. It is true that housing on multiply-owned Māori land is likely to be cheaper than buying general land and building an equivalent house on it, notwithstanding the possible transaction costs, increased prices from lost economies of scale and the need to resolve infrastructure challenges. But access to homeownership does not necessarily lead to improved housing affordability over the long term, because the house can theoretically be resold at a market rate, as noted in the literature regarding housing cooperatives (e.g. Bourassa 2007). Although the sale of *papakāinga* housing at market rates may be regarded as unlikely, one interviewee reported a *papakāinga* project elsewhere in the North Island where large-scale on-selling has occurred. In this case, land was sold at a relatively low price to *iwi* [extended kinship group] members to build housing in the late 1980s. Twenty years later, only 10-20% of houses remain in the hands of tribal members, and the rest have been sold on the general market (Māori land owner, 2010)<sup>37</sup>.

In short, creating affordable housing over the long-term is a difficult challenge on general or Māori land. Māori Demonstration Partnership funding assists land owners to buy homes more cheaply now, but without restrictions on sale (such as those used in a community land trust) it cannot guarantee – or assist trustees to guarantee – that *papakāinga* housing will remain affordable for the second or third generation of purchasers.

#### **6.4.11 Kāinga Whenua loan scheme**

The difference between facilitating access to finance and providing affordable housing is further illustrated by the Kāinga Whenua loan scheme. The government guarantee for Kāinga Whenua loans is aimed at overcoming banks' unwillingness to lend against the security of Māori land, rather than a potential buyer's inability to save for a deposit. Loans are taken out for the full value of the construction, and interest is charged at market rates. As one interviewee stated:

'Kāinga Whenua isn't social housing, it's about home ownership' (Product Manager, Housing New Zealand Corporation 2010)

The design of the Kāinga Whenua loan may also work against the aspirations of owners of Māori land implementing a *papakāinga* development, because it emphasises individual rather than collective responsibility in three ways. Firstly, loans are granted for construction of a single house, rather than a group of houses, which may make it difficult to coordinate a multi-dwelling development. Loans must also be drawn down against a fixed building contract, restricting borrowers to building 'self-contained' dwellings which may limit the ability and incentive for the borrower to contribute to shared infrastructure and community

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<sup>37</sup> It seems likely that this land wasn't held under Māori title at the time of sale.

spaces. Secondly, applicants are assessed on their individual financial capacity, rather than the capacity of the group, which negates the potential of collective housing in sharing risk among a wider group to lower entry barriers to homeownership, a stated objective of both developments on Māori land (Saegert, Benitez 2003). Finally, the requirement set by Housing New Zealand and KiwiBank for occupants to hold a licence to occupy and to use the dwelling as their primary residence limits the flexibility of a trust or incorporation to manage housing on their land through short-term or joint<sup>38</sup> occupancy of ‘homeownership’ houses, as well as limiting the potential for occupants to rent out their homes – an identified disadvantage of housing cooperatives (Johnston 2009).

This research suggests that the limited ability of these loans to assist with housing affordability and the individual rather than collective focus of the Kāinga Whenua loan scheme challenges the effectiveness of this policy in supporting papakāinga development. The scheme appears to not have been designed for papakāinga housing, but is an attempt to transpose a model for single dwellings on individual general land to a multi-dwelling, multiple ownership situation. This shortcoming may reflect the origins of the Kāinga Whenua loan scheme, as a possible political ‘quick-fix’ rather than a policy initiative.

## **6.5 Implications of effect of policies on viability of housing development**

The assessment of these policies suggests that housing development on Māori land, as proposed in the two case studies in the western Bay of Plenty, is not viable without significant government support through targeted zoning policies, funding initiatives, and capability support, in addition to the consultation and involvement in government plans and policies required through legislation.

As noted before, the interests of owners of Māori land in developing housing on their land result in similar development models to those used for housing on other collective land tenures. The potential of using collectively-owned land to reduce the entry costs of housing by removing the price of land from the costs of housing is reflected in the prevalence of socially-motivated housing cooperative programmes, and also in the not-for-profit nature of housing on Māori land, as described in this research. The reluctance to sell land with ancestral connections is recognised in government policies to provide funding without requiring the land to be offered as security. Several policies – the SmartGrowth Strategy, district plan zoning, the Māori Housing Toolkit, and the Māori Demonstration Partnership funding – also appear to acknowledge the importance of occupying ancestral land, and support the development of *papakāinga*-style housing on multiply-owned ancestral land ‘by right’ of *mana whenua* [local indigenous people] status. Other policies are less successful in accounting for the nature of development on Māori land.

This research suggests there is scope for local government to recognise the ‘public good’ outcomes of affordable housing development on Māori land, by reducing or

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<sup>38</sup> For instance, a couple cannot be granted a licence to occupy. If the spouse who is an owner of the land passes away, the trust could evict the surviving spouse. I have only heard anecdotal reports of this situation occurring.

waiving the Development Impact Fees charged for housing developments. Reduction of these fees would essentially result in a cross-subsidy between development on general land and development on Māori land. This cross-subsidy could be justified by the fact that development on general land – as illustrated in this thesis – aims to provide housing to the high end of the market, and those developers can and will pay Development Impact Fees because they expect to be able to pass costs on to the end-users in a high-growth market. However, owners of Māori land developing housing on their land cannot pass these costs onto the end-users without compromising the objective of providing affordable housing, an objective held by local government as well as owners of Māori land. A mismatch between ‘growth pays for growth’ and not-for-profit philosophies is the reason why Development Impact Fees are considered a barrier to housing development on Māori land, and not just part of the ‘business case’. It is noted that local governments already operate a cross-subsidy policy between general and Māori land through rates remissions policies. Finally, reducing or waiving Development Impact Fees recognises the fact the Kāinga Whenua loans as currently offered by Housing New Zealand Corporation cannot be used to pay Development Impact Fees.

### **6.5.1 Further research**

This discussion suggests a number of further topics which need to be addressed by further research. One topic concerns the extent to which the conclusion that housing on Māori land is ‘not-for-profit’ is supported by owners of Māori land. If this conclusion is accepted, further research could be done to assess the implications of the ‘not-for-profit’ status of these developments within the legal, regulatory and policy frameworks for housing development in New Zealand. Any new policies or legislation to encourage not-for-profit housing provision could also be reviewed to ascertain their likely effect on encouraging housing development on Māori land.

Secondly, the critical importance of supportive district plan provisions to the viability of these two case studies suggests the need for a nationwide survey of district plan provisions to support housing on Māori land (replicating and extending the work done by Hartshorne in 1997). This survey could be done in conjunction with further research on the extent to which growth strategies recognise aspirations to develop housing on Māori land, as piloted by Livesey (forthcoming).

Although the Māori Demonstration Partnership and Kāinga Whenua programmes offer some funding, it appears that the strategies for accessing finance and improving capability recommended by the Affordable Housing ‘Solutions Study’ (which included taking out mortgages against leased dwellings; partnering community housing organisations; and utilising ‘sweat equity’ schemes such as Habitat for Humanity) have not been explored by the two housing developments under study. This suggests that further research could assess the practicality and potential of these strategies to complement the funding provided by the Māori Demonstration Partnership and Kāinga Whenua programmes. Comparison between the housing developments on Māori and general land highlights the apparent isolation of housing development on Māori land from wider economic conditions, and considering the reported resilience of homeowners on collectively-

owned land to the recent economic crisis (Johnston 2009), any further study on the market for housing on Māori land should take this resilience into account.

This research has not focussed on the dynamics within a Māori organisation considering housing development on Māori land, nor how different structures or relationships affect the success of housing development projects. These are interesting topics for further research – for instance, it would be instructive to assess whether the incorporation model or the *ahu whenua* trust model better facilitates housing development, keeping in mind the possibility of developments including a commercial element in the future.

Finally, the tension between protection and development identified within the environment for housing on Māori land – and discussed more fully in the concluding section – is also observable in other indigenous land tenures in post-settler countries. That this tension is a common phenomenon suggests that it may be enlightening to carry out a more comprehensive analysis of the utility and future prospects of land in ‘formalised’ customary land tenures between different countries such as Mexico, Canada, or Scotland. This analysis could contribute to ongoing discussion worldwide about the relative merits of individual and collective land tenures.

## 6.6 Conclusion

At the beginning of this thesis, I asked the question – **why have efforts from successive local and central governments not resulted in more housing on multiply-owned ancestral Māori land?** – and suggested three possible reasons for the limited housing development on Māori land: that the market environment does not support housing development on Māori land; that government policies do not adequately address the differences between developing housing on Māori and general land; or that the legislative framework for Māori land places too much emphasis on protecting the land from alienation, and not enough emphasis on development.

The two housing developments examined in this thesis are ‘success stories’ in which owners have (nearly) realised their dream. The two case studies at Mangatawa Papamoa and Makahae Marae show that the provisions in the Māori Land Act 1993 around alienation and decision-making mean that developing housing on multiply-owned ancestral Māori land is a very different proposition than developing housing on general land. When viewed in a market environment, owners of Māori land wishing to develop housing have a number of advantages – existing ownership of the land, targeted planning – but also disadvantages, such as a limited ability to access finance or to transfer rights of occupation. However, this thesis highlights many similarities with housing on other collectively-owned land, and suggests that there is a market (albeit limited) for housing on multiply-owned ancestral land. Furthermore, housing development on ancestral multiply-owned land can operate within the housing market, although in a different way to development on land in general, individual title.

To different degrees, the policies developed by central and local government are designed to address these differences in developing Māori land. It is apparent that it is not just owners of Māori land who are interested in developing housing on their land to meet cultural, economic and other needs, but that local and central government also have vested interests in increasing the amount of housing on Māori land. Local governments are interested opening up land for residential purposes in the popular Western Bay of Plenty area, in order to accommodate and continue to attract population growth. Central government have strategic objectives to improve homeownership and housing affordability across the country, and improving access by Māori to housing is an area that needs critical attention. These case studies demonstrate the significant effort and attention that local and central government have given to supporting housing on Māori land in the Western Bay of Plenty through district plan provisions and direct funding. Similar efforts to reduce costs by waiving or reducing Development Impact Fees are suggested.

However, not every policy rewards development – for instance, policies to remit rates on undeveloped land can be seen as promoting protection of land ownership at the expense of land utilisation. More significantly, the Māori Land Act promotes protection of the ownership of the land, but contributes little besides administrative structures to support development. The tension between these forces of protection and development is encountered and managed by the owners of Māori land when they attempt to implement projects such as housing (see Figure 9). This may explain in part the heavy reliance on government funding

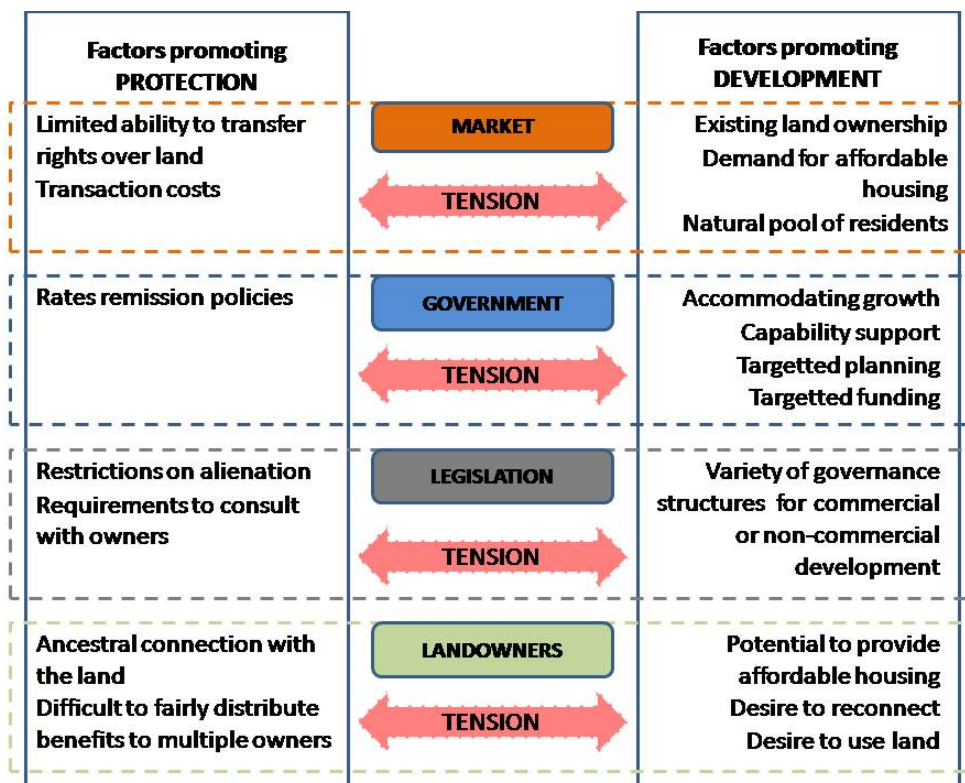


Figure 9 Tension between protection and development of Māori land

observed in proposals for housing development – targeted government policies are the corollary of targeted land tenure legislation.

Finally, landowners themselves must resolve internal struggles between developing affordable housing for current owners, and preserving access and use of the land for future generations. These struggles to balance ‘development for today’ and ‘protection for tomorrow’ are reinforced by social and cultural norms emphasising the centrality of ancestral land in Māori identity and legacy.

There is no single answer to why government policies to date have been relatively unsuccessful in encouraging housing development on Māori land. This research suggests that the balance between protection and development – apparent not just within the Māori Land Act but also within the Resource Management Act, SmartGrowth Strategy, and rating policies – is still being worked out. Like Hitchcock (2008), I do not promote any erosion of the protective mechanisms within the Māori Land Act, but instead place emphasis on the importance of planning for housing development on Māori land through the tools provided by the Resource Management and Local Government Acts. Targetted and well-designed targeted local and central government policies are critical to increasing the viability of housing development on Māori land.

These case studies of housing development on Māori land illustrate that the protection and development of Māori land are not mutually exclusive. Both developments are being realised within the protective legislation of the Māori Land Act and with the support of targeted government development policies. In both cases, landowners are managing the tension between protection and development to allow occupation of multiply-owned ancestral land, now and into the future.



## Bibliography

- Local Government (Rating) Act*. 2002. Wellington, New Zealand: New Zealand.
- Te Ture Whenua Maori (Maori Land) Act*. 1993. Wellington, New Zealand: New Zealand.
- Resource Management Act*. 1991. Wellington, New Zealand: New Zealand.
- ALLEN, D.W. and LUECK, D., 1995. Risk Preferences and the Economics of Contracts. *The American Economic Review*, 85(2), 447-451.
- ALTMAN, J.C., LINKHORN, C. and CLARKE, J., 2005. *Land Rights and Development Reform in Remote Australia*. Discussion Paper No. 276/2005. Canberra: Centre for Aboriginal Economic Policy Research.
- ANDERSON, R. and BARNETT, C., 2006. *The Indigenous Land Claims in New Zealand and Canada: From Grievance to Enterprise*. Public Policy Paper 39, Public Policy Paper Series. University of Regina, Canada: The Saskatchewan Institute of Public Policy.
- ANDERSON, T.L. and LUECK, D., 1992. Land tenure and agricultural productivity on Indian reservations. *Journal of Law and Economics*, XXXV (October 1992), 427-454.
- AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED, 2008. *Home Ownership and Indigenous Australians - Final report and response*. Melbourne, Australia: Australia and New Zealand Banking Group Limited.
- AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION, 30 August 2010, 2010-last update, The collection of property rates in Australia - a state-by-state description [Homepage of Australian Local Government Association], [Online]. Available: <http://www.alga.asn.au/policy/finance/austax/11.propertyrates.php> [09/03, 2010].
- AWATERE, S., PAULING, C., ROLLESTON, S., HOSKINS, R. and WIXON, K., 2008. *Tū Whare Ora - Building Capacity for Māori Driven Design in Sustainable Settlement Development*. Hamilton, New Zealand: Landcare Research New Zealand Ltd.
- BARNES, G., 2009. The evolution and resilience of community-based land tenure in rural Mexico. *Land Use Policy*, 26(2), 393-400.
- BASSETT, E. and JACOBS, H., 1997. Community-based tenure reform in urban Africa: the community land trust experiment in Voi, Kenya. *Land Use Policy*, 14(3), 215-229.
- BENNION, T., 30 June 2010. *Interview with Tom Bennion, Bennion Law*. Wellington, New Zealand: Bennion Law.
- BOAST, R., 2004a. The Evolution of Maori Land Law 1862 -1993. In: R. BOAST, A. ERUETI, D. MCPHAIL and N.F. SMITH, eds, *Maori Land Law*. Second edn. Wellington, New Zealand: LexisNexis NZ Limited, pp.65-119.
- BOAST, R., 2004b. Māori Customary Law and Land Tenure. In: R. BOAST, A. ERUETI, D. MCPHAIL and N. SMITH, eds, *Māori Land Law*. 2 edn. Wellington, New Zealand: LexisNexis NZ Limited, pp.21-39.

BOURASSA, S.C., 2007. Community Land Trusts and Housing Affordability. In: G.K. INGRAM and Y.H. HONG, eds, *Land Policies and their Outcomes*. 1 edn. Cambridge, Massachusetts: Lincoln Institute of Land Policy, pp.333-366.

BOURASSA, S.C. and HONG, Y.H., 2003. Why Public Leasehold? Issues and Concepts. In: S.C. BOURASSA and Y.H. HONG, eds, *Leasing public land: policy debates and international experience*. 1 edn. Massachusetts: Lincoln Institute of Land Policy, pp.3-36.

BOURASSA, S.C. and STRONG, A.L., 2002. Restitution of Land to New Zealand Maori: The Role of Social Structure. *Pacific Affairs*, 75(2), 227-260.

BROWN, H.J., PHILLIPS, R.S. and ROBERTS, N.A., 1981. Land Markets at the Urban Fringe: New Insights for Policy Makers. *Journal of the American Planning Association*, 47(2), 131-144.

BROZEK, K.O., 2009. Exploring the continuum of social and financial returns: when does a non-profit become a social enterprise? *Community Development Investment Review*, 5(2), 7-17.

BUITELAAR, E., 2004. A transaction-cost analysis of the land development process. *Urban Studies*, 41(13), 2539-2553.

BUTLER, L., DEPHELPS, C. and HOWELL, R.E., March 1995, 1995-last update, Focus Groups: A Tool for Understanding Community Perceptions and Experiences [Homepage of Partners in Education and Research, Washington State University.], [Online]. Available: <http://cru.cahe.wsu.edu/CEPublications/wrep0128/wrep0128.html> [13 February, 2010].

CANADA MORTGAGE AND HOUSING CORPORATION, 2010-last update, On First Nations. Available: <http://www.cmhc-schl.gc.ca/en/ab/onre/index.cfm> [08/17, 2010].

CANADA MORTGAGE AND HOUSING CORPORATION, 2008. *CMHC Loan Insurance On-Reserve*. Ontario, Canada: Canada Mortgage and Housing Corporation.

CAPITAL STRATEGY and SGS ECONOMICS AND PLANNING, 2007. *Affordable Housing in the Bay of Plenty Region - A Solutions Study*. Wellington, New Zealand: Centre for Housing Research, Aotearoa New Zealand and Department of Labour.

CASE, K.E., 2010. Housing, Land and the Economic Crisis. *Land Lines*, 22(1), 8-13.

CHIEF REGISTRAR, MĀORI LAND COURT, 2010. *Interview with Julie Tangaere, Māori Land Court*. Wellington, New Zealand: Maori Land Court.

COAST PAPAMOA BEACH, 06/30, 2010-last update, Location Overview [Homepage of Frasers Papamoa Pty. Ltd.], [Online]. Available: <http://www.coastpapamoabeach.co.nz/Coastal-Vision/Location/Overview/> [08/11, 2010].

COIACETTO, E., 2001. Diversity in Real Estate Developer Behaviour: A Case for Research. *Urban Policy and Research*, 19(1), 43-59.

- COMMONWEALTH OF AUSTRALIA, 2010. *Australia's Future Tax System*. Final Report Part Two - Detailed Analysis, Volume Two. Canberra, Australia: Australian Treasury.
- DALE-JOHNSON, D. and BRZESKI, W.J., 2003. Long-Term Public Leaseholds in Poland: Implications of Contractual Incentives. In: S.C. BOURASSA and Y.H. HONG, eds, *Leasing public land: policy debates and international experience*. 1 edn. Massachusetts: Lincoln Institute of Land Policy, pp.251-276.
- D'ARCY, E. and KEOGH, G., 2002. The market context of property development activity. In: S. GUY and J. HENNEBERRY, eds, *Development and Developers*. 1 edn. Oxford, UK: Blackwell Science Ltd., pp.19-34.
- DAVEY, J.A. and KEARNS, R.A., 1994. Special needs versus the 'level playing-field': Recent developments in housing policy for indigenous people in New Zealand. *Journal of Rural Studies*, 10(1), 73-82.
- DAVIS, J.E., 2009. Community Land Trusts: the developer that doesn't go away. *Around the House, Shelter NSW, Sydney*, 77(1), 7-9.
- DE SOTO, H., 2000. *The Mystery of Capital*. New York: Basic Books.
- DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS, 8 May 2009, 2009-last update, Homeownership On Indigenous Land [Homepage of Department of Families, Housing, Community Services and Indigenous Affairs], [Online]. Available: <http://www.facs.gov.au/sa/indigenous/progserv/housing/Pages/HomeOwnershipOnIndigenousLand.aspx> [09/03, 2010].
- DEPARTMENT OF INTERNAL AFFAIRS, 2007. *Funding Local Government - Report of the Local Government Rates Inquiry*. Wellington, New Zealand: Department of Internal Affairs.
- DEPARTMENT OF LANDS AND PLANNING, 25 May 2010, 2010-last update, Northern Territory Planning Scheme [Homepage of Northern Territory of Australia], [Online]. Available: <http://www.nt.gov.au/lands/planning/scheme/index.shtml> [08/20, 2010].
- DEWES, W. and WALZL, T., 2007. *Issues Paper on the impact of rates on Māori Land*. Wellington, New Zealand: Prepared for the Local Government Rates Inquiry.
- DOEBELE, W., 1987. The Evolution of Concepts in Urban Land Tenure in Developing Countries. *Habitat International*, 11(1), 7-22.
- DURIE, M., 1998. *Te Mana, Te Kāwanatanga - The Politics of Māori Self-Determination*. 1 edn. Victoria, Australia: Oxford University Press.
- DURIE, M., 2010. *Ahuwhenua Inc*. Presentation to Whenua - Sustainable Futures on Maori land conference edn. Rotorua, New Zealand.
- DUST, T.M., 1997. The impact of aboriginal land claims and self-government on Canadian municipalities. *Canadian Public Administration*, 40(3), 481-494.
- EVANS, A.W., 2004. *Economics, Real Estate and the Supply of Land*. First edn. Oxford: Blackwell Publishing.

- FLYVBJERG, B., 2006. Five misunderstandings about case-study research. *Qualitative Inquiry*, 12(2), 219-245.
- GIBBONS, T., 2008. Body Corporate Rules: Tensions. *Waikato Law Review*, 16, 167-193.
- GILLING, B., 2007. *'The Most Fundamental Desire of Maori Landowners': Land Management and Governance Options for Maori from the 1950s*. 1 edn. Wellington, New Zealand: Treaty of Waitangi Research Unit.
- GROUP MANAGER, WESTERN BAY OF PLENTY DISTRICT COUNCIL, 2010. *Interview with Steve Hill, Western Bay of Plenty District Council*. Tauranga, New Zealand: Western Bay of Plenty District Council.
- HANSMANN, H., 1991. Condominium and Cooperative Housing: Transactional Efficiency, Tax Subsidies, and Tenure Choice. *The Journal of Legal Studies*, 20(1), 25-71.
- HARDIN, G., 1968. The Tragedy of the Commons. *Science*, 162(December), 1243-1248.
- HAUGHTON, G., ALLMENDINGER, P., COUNSELL, D. and VIGAR, G., 2010. Introduction. In: G. HAUGHTON, P. ALLMENDINGER, D. COUNSELL and G. VIGAR, eds, *The New Spatial Planning - Territorial management with soft spaces and fuzzy boundaries*. 1 edn. Routledge, pp.1-23.
- HAYWARD, J., 1997. Appendix: The Principles of the Treaty of Waitangi. In: A. WARD, ed, *National Overview*. Volume 2 edn. Wellington, New Zealand: Waitangi Tribunal, pp.475-494.
- HEATLEY, P.H., 3 February 2010, 2010-last update, Unlocking tribal land for housing [Homepage of Press Release, New Zealand National Party], [Online]. Available: <http://www.national.org.nz/Article.aspx?articleId=31953> [14 February, 2010].
- HENDERSON, B., Janury 15 1996, 1996-last update, A Brief Introduction to Aboriginal Law in Canada [Homepage of Bloorstreet.com], [Online]. Available: <http://www.bloorstreet.com/200block/brintro.htm> [09/03, 2010].
- HENNEBERRY, J. and ROWLEY, S., 2002. Developers' decisions and property market behaviour. In: S. GUY and J. HENNEBERRY, eds, *Development and Developers*. 1 edn. Oxford, UK: Blackwell Science Ltd., pp.96-114.
- HIBBARD, M., LANE, M.B. and RASMUSSEN, K., 2008. The Split Personality of Planning : Indigenous Peoples and Planning for Land and Resource Management. *Journal of Planning Literature*, 23(2), 136-151.
- HILL, S., 2007. *Regional Co-ordination and Integrated Service Delivery in Action: A Joint Approach to Facilitating Development of Housing on Multiple-Owned Maori Land*. Master of Public Management edn. Victoria University Wellington.
- HITCHCOCK, J., 2008. Financing Maori Land Development: The Difficulties Faced by Owners of Maori Land in Accessing Finance for Development and a Framework for the Soutlion. *Auckland University Law Review*, 14, 217-243.

- HOME, R., 2009. Land ownership in the United Kingdom: Trends, preferences and future challenges. *Land Use Policy*, 26(Supplement 1), S103-S108.
- HONG, Y., 2007. Assembling Land for Urban Development: Issues and Opportunities. In: Y. HONG and B. NEEDHAM, eds, *Analyzing Land Readjustment: Economics, Law, and Collective Action*. 1 edn. Massachusetts: Lincoln Institute of Land Policy, pp.3-34.
- HOUSING NEW ZEALAND CORPORATION, 2005. *Building the Future: The New Zealand Housing Strategy*. Wellington, New Zealand: Housing New Zealand Corporation.
- IAQUINTA, D. and DRESCHER, A., 2000. *Defining Periurban: Understanding Rural-Urban Linkages and Their Connection to Institutional Contexts*. Food and Agriculture Organisation of the United Nations.
- INTERVIEWEE, C., 2010. *Interview with Steve Short, Coast Papamoa Beach Director*. 13 July 2010 edn. Tauranga, New Zealand: Frasers Papamoa Pty. Ltd.
- ISAAC, W., 2010. *Governance Structures for Māori Land*. Presentation to Whenua - Sustainable Futures on Maori land conference edn. Rotorua, New Zealand: .
- JACOBS, H., 2009. In: G.K. INGRAM and Y.H. HONG, eds, *Property Rights and Land Policies*. Cambridge, USA: Lincoln Institute of Land Policy, pp.52-69.
- JOHNSTON, C., 2009. *Community land trusts: what are they?* Shelter Brief 39. Sydney, Australia: Shelter NSW Incorporated.
- KAWHARU, I.H., 1977. *Maori land tenure - studies of a changing institution*. First edn. New York: Clarendon Press.
- LANE, M.B., 2006. The role of planning in achieving indigenous land justice and community goals. *Land Use Policy*, 23(4), 385-394.
- LIAMPUTTONG, P., 2009. *Qualitative research methods*. Third edition edn. Melbourne, Australia: Oxford University Press.
- LINKHORN, C., 2006. *Maori Land and Development Finance*. Discussion Paper No. 284/2006. Canberra: Centre for Aboriginal Economic Policy Research, Australian National University.
- LINKHORN, C., 30 June 2010. *Interview with Craig Linkhorn*. Wellington, New Zealand: Crown Law Office.
- LIVESEY, B., forthcoming. Māori freehold land and urban growth strategies. In: K. STUART, ed, *Indigenous knowledge and sustainable development*. Wellington, New Zealand: Centre for Sustainable Cities.
- MANAGER CREDIT IMPROVEMENT, K., 29 June 2010. *Interview with Donovan Morgan, Kiwibank*. Wellington, New Zealand: Kiwibank Limited.
- MANUKAU CITY COUNCIL, 2002. *Manukau Operative District Plan 2002*. Operative edn. New Zealand: Manukau City Council.
- MĀORI LAND COURT, 2010a. *National Māori Land Court Panui*. April edn. Wellington, New Zealand: Department of Justice.

- MĀORI LAND COURT, 2010b. *National Māori Land Court Panui*. June edn. Wellington, New Zealand: Department of Justice.
- MĀORI LAND COURT, 2010c. *National Māori Land Court Panui*. August edn. Wellington, New Zealand: Department of Justice.
- MĀORI LAND TENURE REVIEW GROUP, 2006. *Māori Land Tenure Review*. Wellington, New Zealand: Hui Taumata Action Taskforce.
- MĀORI TRUSTEE (WAIARIKI), 2010. *Interview with Tina Ngatai, Māori Trustee*. Rotorua: Maori Trustee Office.
- MOKO MEAD, S., 1997. *Landmarks, Bridges and Visions – Aspects of Maori Culture*. Wellington, New Zealand: Victoria University Press.
- MOLINSKY, J.H., 2006. *Landowners on the Metropolitan Fringe: Results from a Survey of Owners in Four US Metropolitan Areas*. Lincoln Institute of Land Policy Working Paper. Massachusetts: Lincoln Institute of Land Policy.
- MOORFIELD, J.C., 01/01, 2010-last update, Te Aka Māori-English English Māori Dictionary [Homepage of Te Whanake], [Online]. Available: <http://www.maoridictionary.co.nz/> [09/04, 2010].
- MORAD, M. and JAY, M., 1997. The Reform of Maori Land Tenure and the Quest for Sustainability in New Zealand. *Development Bulletin*, 41, 44-46.
- MORLEY, S., 2002. The financial appraisal of development projects. In: S. GUY and J. HENNEBERRY, eds, *Development and Developers*. 1 edn. Oxford, UK: Blackwell Science Ltd., pp.73-95.
- MURPHY, L. and CLOHER, D.U., 1995. Economic restructuring, housing policy and Maori housing in Northland, New Zealand. *Geoforum*, 26(4), 325-336.
- NATIONAL HOUSING TRUST, 2010-last update, Institute for Community Economics [Homepage of National Housing TRust], [Online]. Available: <http://www.nhtinc.org/ice.php> [09/07, 2010].
- OSTROM, E., 2003. How types of goods and property rights jointly affect collective action. *Journal of Theoretical Politics*, 15(3), 239-270.
- O'SULLIVAN, J. and DANA, T., 2008. Redefining Maori economic development. *International Journal of Social Economics*, 35(5),.
- PAETAKAWAENGA, Tauranga City Council, 2010. *Interview with Mererina Murray, Tauranga City Council*. Tauranga: Tauranga City Council.
- PATERSON, D.E., 2001. Some thoughts about customary land. *Journal of South Pacific Law*, 5(1),.
- PAYNE, G. and FERNANDES, E., 2001. *Legality and Legitimacy in Urban Tenure Issues*. Massachusetts: Lincoln Institute of Land Policy.
- PHIZACKLEA, D., 2002. *Land Capacity*. Phase 2 SmartGrowth report. Tauranga, New Zealand: SmartGrowth Western Bay of Plenty.

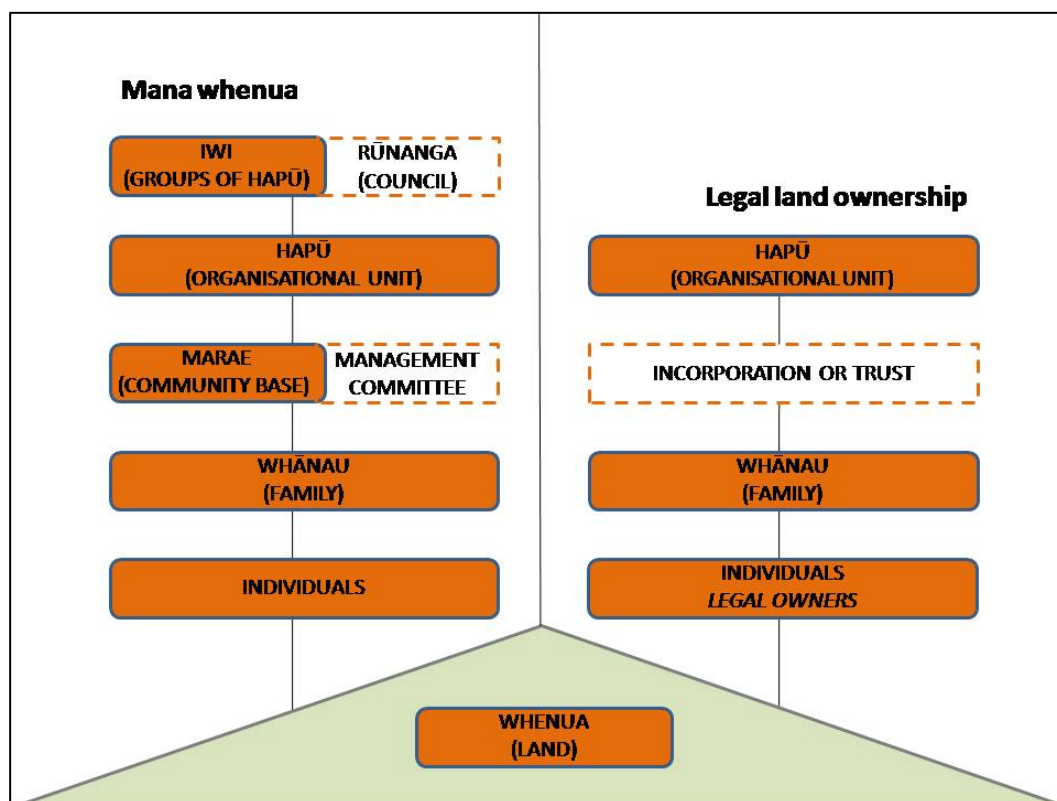
- PRODUCT MANAGER, HOUSING NEW ZEALAND CORPORATION, 2010. *Interview with Mike Webber, Housing New Zealand Corporation*. Wellington, New Zealand: Housing New Zealand Corporation.
- PROJECT MANAGER, Makahae Marae, 2010. *Interview with Dean Flavell, Makahae Marae Papakainga Project*. Western Bay of Plenty, New Zealand: Tapuika Iwi Authority Trust.
- PROJECT MANAGER, Mangatawa Papamoa, 2010. *Interview with Victoria Kingi, Mangatawa Papamoa Blocks Incorporated*. Tauranga, New Zealand: Mangatawa Papamoa Blocks Incorporated.
- RECONCILIATION AUSTRALIA, February 2009, 2009-last update, Q & A Factsheet - Aboriginal Land Rights [Homepage of Reconciliation Australia], [Online]. Available: <http://www.reconciliation.org.au/home/reconciliation-resources/facts---figures/q-a-factsheets> [08/28, 2010].
- ROLLESTON, S. and AWATERE, S., 2009. Nga hua papakainga: Habitation design principles. *MAI Review*, 2(Article 2), 1-13.
- SAEGERT, S. and BENITEZ, L., 2003. *Limited Equity Housing Cooperatives - A review of the literature*. New York: Taconic Foundation.
- SENIOR ADVISER, MINISTRY OF MĀORI DEVELOPMENT, 19 July 2010. *Interview with Pauline Tangohau, Ministry of Maori Development*. Rotorua, New Zealand: Ministry of Maori Development.
- SENIOR PLANNER, TAURANGA CITY COUNCIL, 2010. *Interview with Nick Logan, Tauranga City Council*. Tauranga: Tauranga City Council.
- SMALL, G. and SHEEHAN, J., 2005. Selling Your Family: Why customary title is incomparable to Western conceptions of property value, R. REED, ed. In: *Proceedings from the PPRES Conference - 2005*, 2005, Pacific Rim Real Estate Society (PPRES) pp1.
- SMARTGROWTH, 2009. *Te Keteparaha Mo Nga Papakāinga - Māori Housing Toolkit*. 1 edn. Tauranga, New Zealand: SmartGrowth Western Bay of Plenty.
- SMARTGROWTH, 2007. *SmartGrowth 50 Year Strategy and Implementation Plan*. Western Bay of Plenty, New Zealand: SmartGrowth Implementation Committee.
- SMARTGROWTH COMBINED TANGATA WHENUA FORUM, 2004. *Constraints and Opportunities on Multiple Owned Maori Land in the Western Bay of Plenty Subregion (draft report for discussion)*. Tauranga, New Zealand: SmartGrowth Western Bay of Plenty.
- SMITH, N., 2004. Land Utilisation and Development. In: R. BOAST, A. ERUETI, D. MCPHAIL and N. SMITH, eds, *Māori Land Law*. 2 edn. Wellington, New Zealand: LexisNexis NZ Limited, pp.201-206.
- STATISTICS NEW ZEALAND, 2006, 2006a-last update, Housing Indicators - Indicator 1: Occupancy rate [Homepage of Statistics New Zealand], [Online]. Available: [http://www.stats.govt.nz/browse\\_for\\_stats/people\\_and\\_communities/Households/housing-indicators/1-occupancy-rate.aspx](http://www.stats.govt.nz/browse_for_stats/people_and_communities/Households/housing-indicators/1-occupancy-rate.aspx) [09/11, 2010].

- STATISTICS NEW ZEALAND, 2006, 2006b-last update, Housing Indicators - Indicator 8: Ownership of Dwellings - tables [Homepage of Statistics New Zealand], [Online]. Available: [http://www.stats.govt.nz/browse\\_for\\_stats/people\\_and\\_communities/Households/housing-indicators.aspx](http://www.stats.govt.nz/browse_for_stats/people_and_communities/Households/housing-indicators.aspx) [08/17, 2010].
- STATISTICS NEW ZEALAND, 2006, 2006c-last update, Māori Population Estimates at 30 June 1991 - 2009 [Homepage of Statistics New Zealand], [Online]. Available: [http://www.stats.govt.nz/browse\\_for\\_stats/population/estimates\\_and\\_projections/maori-population-estimates.aspx](http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/maori-population-estimates.aspx) [09/11, 2010].
- STEPHENSON, J., 2001. Recognising Rangatiratanga in Resource Management for Maori Land: A Need for a New Set of Arrangements? *New Zealand Journal of Environmental Law*, 5(2001), 159-193.
- STEWART, B., 2010. *Reserved Judgement of Judge S R Clark*. A20100001602 edn. Waikato-Maniapoto District: Maori Land Court.
- TAURANGA CITY COUNCIL, 2010a. *Development Contributions Policy (Part B)*. Annual Plan 2010 - 2011 edn. Tauranga, New Zealand: Tauranga City Council.
- TAURANGA CITY COUNCIL, 1 July 2010, 2010b-last update, Rates Schedule of Charges [Homepage of Tauranga City Council], [Online]. Available: [http://www.tauranga.govt.nz/knowledgebase/tabid/624/qid/585/tctl/1332\\_ViewQuestion/Default.aspx](http://www.tauranga.govt.nz/knowledgebase/tabid/624/qid/585/tctl/1332_ViewQuestion/Default.aspx) [09/03, 2010].
- TAURANGA CITY COUNCIL, 2009a. *Remission and Postponement of Rates on Maori Freehold Land*. Adopted 23 June 2009 edn. Tauranga, New Zealand: Tauranga City Council.
- TAURANGA CITY COUNCIL, 2009b. *Tauranga City Plan*. Proposed edn. Tauranga, New Zealand: Tauranga City Council.
- TE ARANGA STEERING COMMITTEE, 2008. *Te Aranga Māori Cultural Landscape Strategy*. Second edn. New Zealand: Te Aranga Steering Committee.
- TE PUNI KŌKIRI, 2010. *Māori Housing Trends 2010*. Fact Sheet 002-2010. Wellington, New Zealand: Te Puni Kōkiri.
- TURNER, G., 2004. *Report to the Surveyor-General on Maori Land Utilisation - Issues and Opportunities. A Resource Paper*. Wellington, New Zealand: Department of Land Information.
- U.S DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, 2003. *Section 184 Indian Housing Loan Guarantee Programme - Processing Guidelines*. U.S Department of Housing and Urban Development.
- U.S DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Not specified, Mutual Help Homeownership Opportunity Programme for Indian Areas [Homepage of U.S Department of Housing and Urban Development], [Online]. Available: <http://portal.hud.gov/portal/page/portal/HUD/programdescription/muthelp> [09/03, 2010].



- ULFIG, M.A., 2005. Note: State and Local Tax Exemption of reacquired Indian lands: City of Sherrill vs. Oneida Indian Nation. *The Wayne Law Review*, 55, 1629.
- WALDEGRAVE, C., KING, P., WALKER, T. and FITZGERALD, E., 2006. *Māori Housing Experiences: Emerging Issues and Trends*. Wellington, New Zealand: Centre for Housing Research, Aotearoa New Zealand.
- WALKER, R., 2004. *Ka Whawhai Tonu Matou: Struggle Without End*. Revised edn. Auckland, New Zealand: Penguin Books.
- WENSING, E., 2002. *Indigenous Land Use Agreements (IULAs) involving local government*. Native Title Issues Paper #4. Australian Capital Territory, Australia: Australian Local Government Association.
- WESTERN BAY OF PLENTY DISTRICT COUNCIL, 2010. *Western Bay of Plenty District Plan*. Proposed - Annotated Plan edn. Tauranga, New Zealand: Western Bay of Plenty District Council.
- WESTERN BAY OF PLENTY DISTRICT COUNCIL, 2009. *Long Term Council Community Plan 2009-2019*. Adopted 30 June 2009 edn. Tauranga, New Zealand: Western Bay of Plenty District Council.
- WILKINSON, S. and REED, R., 2008. *Property Development*. 5 edn. Oxon, UK: Routledge.
- WIXON, K., 2008. *Papakāinga Development Guide*.
- YIN, R.K., 2003. *Case study research: design and methods*. Third edn. California: Sage Publications.

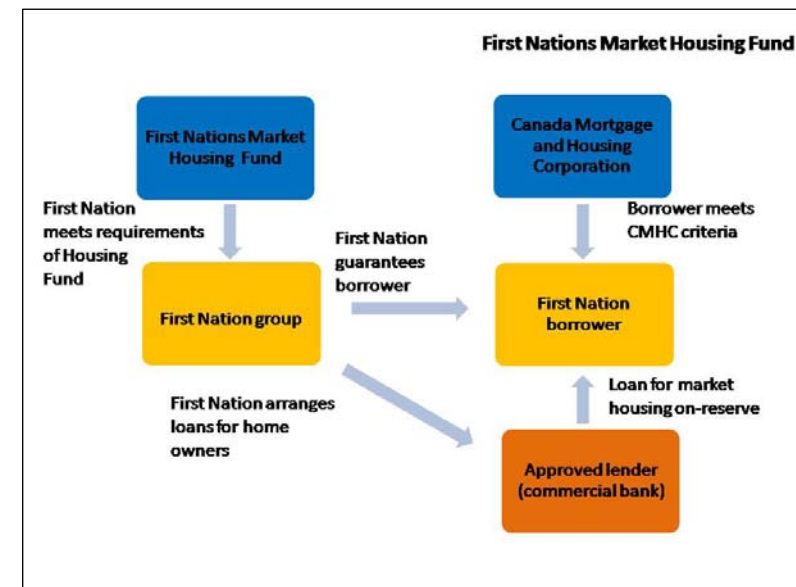
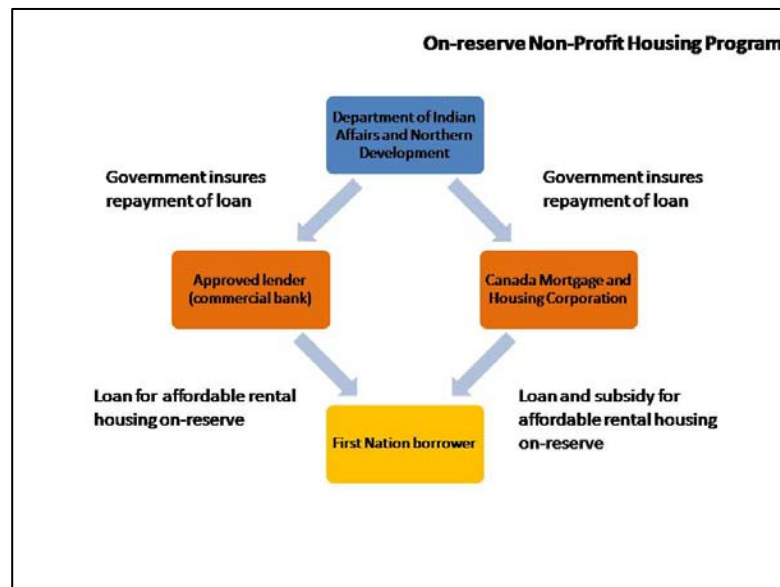
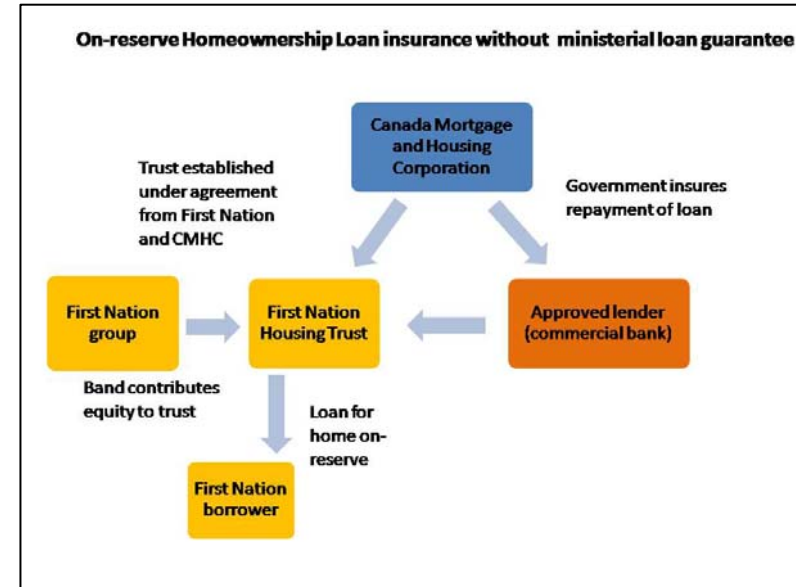
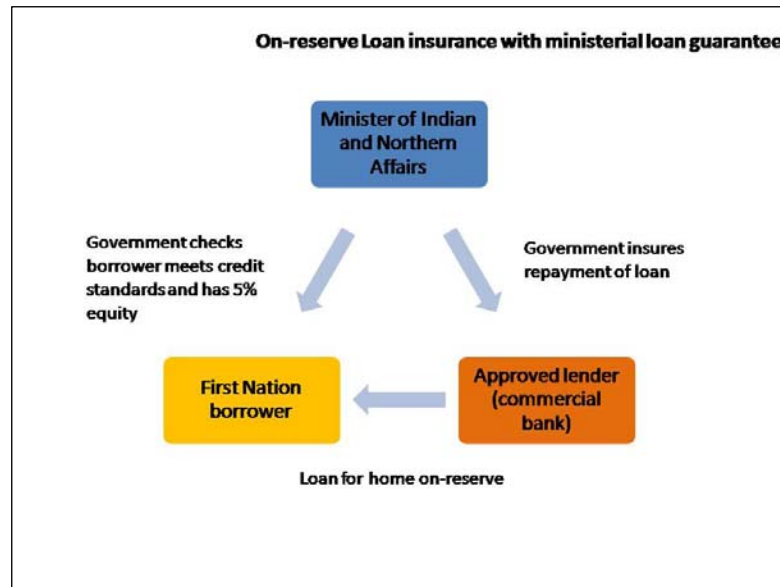
## Annex A – Generalised organisational structure for Māori land



Author, 2010

Note: This schematic is intended as a guide for readers unfamiliar with Māori social organisation. It must not be taken as a representation of the organisational structure for any particular landblock. No hierarchy is implied between levels. As defined by Moorfield (2010), *mana whenua* means ‘territorial rights, power from the land - power associated with possession and occupation of tribal land’.

## Annex B – Examples of government-guaranteed loan mechanisms



## Annex C - Interview guidelines

The following interview guideline was used to guide conversation in the four interviews with case study representatives. Some questions were not applicable to all case studies.

<i>Project</i>
Tell me about your plans for this landblock
How many houses will be built?
What will be the layout and design of the development?
How's the landblock used at the moment? Do you get any income from the block?
<i>Land acquisition</i>
When did you acquire this land?
When did you decide to do a housing development on this land?
<i>Return</i>
What opportunity did you see here for development?
How will you recoup your investment?
<i>Risk</i>
What risks are involved in this development?
How serious are those risks?
<i>Market analysis</i>
Tell me about property development in this area
What is the effect of the financial crisis on your development?
Who is the development for?
How will it be decided who will live here?
What is the demand for these houses?
<i>Planning and consenting</i>
What activity is your land zoned for in the district plan?
What is planned for this area under the SmartGrowth strategy?
How has this affected your project?
Are you making use of papakāinga zoning?
<i>Timing</i>
What is the timeframe of the project?
Is the project phased?
<i>Funding</i>
How is the project funded?
Was it easy to get a loan to develop this project?
How will the loan be repaid?
Are you making use of Māori Demonstration Partnership funding, Kāinga Whenua loans, or other government funding?
Have you had other support from government agencies?
<i>Costs</i>
What effect do local government rates have on your development?
What effect do Development Impact Fees have on your development?
Are rates remitted on this land under a rates remission policy?
What were the main barriers to development?
What is the governance structure for the block?
<i>Transferring rights over land</i>
Will the houses be sold for homeownership or retained for rental or investment?
Why have you chosen this development model?
<b>END</b>

## Annex D – Outline of case studies

<b>Case study M1: Mangatawa Papamoa block</b>	
<b>Location</b>	The Mangatawa Papamoa block is an area of land on the hills behind Papamoa. The block is adjacent to Tamapahore Marae, and there are a number of families living along the road to the block, as well as existing <i>kaumatua</i> [elderly] housing. The area also hosts a commercial nursery, the office of the Mangatawa Papamoa Incorporation, and a health centre associated with the <i>marae</i> [community base]. The block looks out over the Papamoa residential area – although the land is separated from other housing by State Highway 2 – and to the coast. Although in a rural zone, the site is a short drive to shops and the beach.
<b>Land titles</b>	The site is 10.1 hectares, currently in open fields. The site is all held in one block by a Māori land incorporation, Mangatawa Papamoa Blocks Incorporated.
<b>Proposed project</b>	The proposed project envisages thirty houses, staged in lots of ten over three years. The initial stage is ten rental houses for the elderly, followed by housing designed for families in the second two stages. Each house will be situated on a 850sqm site. The housing will be clustered and supported with community amenities. The project also includes a shared vegetable garden, sports field, and a day-care facility for children.
<b>Infrastructure</b>	Although the incorporation considered treating sewerage on-site, the owners have decided to hook into the main sewerage pipes. The development will also be connected to mains electricity, telephone, internet, and possibly gas, although they will have their own water tanks for water supply.
<b>Status</b>	This project was awarded a NZ \$1 million (US \$0.71 million) grant and a NZ \$1.1 million (US \$0.78 million) loan from Housing New Zealand Corporation through the Māori Demonstration Partnerships Fund. Trustees are currently negotiating the Heads of Agreement for the funding from Housing New Zealand Corporation. As of September 2010, the group has applied for resource consent which is currently being processed. No building has begun.

<b>Case study M2: Makahae Marae Papakāinga Project</b>	
<b>Location</b>	Makahae Marae is a collection of buildings on a rise just east of Te Puke, with views out over the landscape to Papamoa Hill, Maketu, Tuhua Island, and the coast. The edge of Te Puke township is approximately 800 metres away, and the next town is Waitangi. Although some families live on the road leading to the <i>marae</i> [community base], there are only a couple of residents currently living on the land. The area has been used for housing since early Māori settlement, but the last house on the site was removed in 2003 (Project Manager, Makahae Marae).
<b>Land titles</b>	The area proposed for housing is split into three titles. The block which hosts the existing <i>marae</i> buildings is a Marae Reserve (Rangiuru 2H block), while the other two (Rangiuru 2F and 2G) are held by an <i>ahu whenua</i> trust (the Rangiuru 2G Ahuwhenua Trust). The Rangiuru 2G block is bisected by State Highway Two, which runs through a cutting through the rise. The Waiari stream forms the northern boundary of the block. These blocks are the remnant of a larger landholding which has been eroded through takings for public works.
<b>Proposed project</b>	The proposed project involves eighteen houses in total. Housing is only proposed on the land near the marae, while the rest of the land will remain in maize. Only one stage is planned at the moment, although the land could hold up to 120 houses eventually. A concept plan and subdivision-type plan have been prepared. The project will include four two-bedroom <i>kaumatua</i> [elderly] flats, six rental houses, and eight houses available for sale. Each house will have the same land area, and the stand-alone houses will all have three or four bedrooms. It is envisaged that the houses will be clustered on the land towards the <i>marae</i> [community base], at a medium density. This has involved negotiating with the council to allow houses to be clustered to allow better connections, more open space, and minimise expenditure on infrastructure. The project includes moving a road to create access to the adjacent blocks, for future development stages. The project also includes a communal building, a facility available to health workers, walking tracks, planting native trees and an arts and crafts centre.
<b>Infrastructure</b>	The <i>marae</i> community has had a long-running protest against the waste treatment plant on the nearby Waiari stream, and are considering treating their waste water on-site. It is also necessary to increase the capacity of electricity coming into the block. The <i>marae</i> is only served by the rural fire service and need to use rainwater tanks to

	provide water for emergency use.
<b>Status</b>	This project is the pilot project for the SmartGrowth strategy. They do not yet have funding for the development, and are currently preparing a proposal for loan funding through the Māori Development Partnerships Fund. It is proposed to split this loan into two stages – an initial stage to lay the infrastructure and a second stage to build the <i>kaumatua</i> [elderly] and rental housing.

<b>Case study G1: Coast</b>	
<b>Location</b>	Coast is a large development planned for a site between the popular coastal areas of Mount Maunganui (colloquially known as ‘The Mount’) and Papamoa. Low-density urban development extends down the coast, away from the major centre Tauranga.
<b>Land titles</b>	The 27 hectare block stretches from State Highway 2 to the coast, and is a large wedge-shaped site with a small chunk reserved by the previous landowners in the north-east corner. The block was previously Māori land, sold to the current developer in 2003. The status of the block was changed from Māori title to general title before the sale.
<b>Proposed project</b>	The project is medium-density, including stand-alone houses, townhouses, and apartments up to five storeys high. 682 dwellings are planned for the site, in four stages. The initial stage is situated in the middle of the block, and comprises 85 houses and 124 apartments. Most houses are either three bedrooms and an office, or four bedrooms. Coast is marketed as having ‘sixty percent building, forty percent land’ and includes landscaping, a man-made lake, and a park. The building is planned to house a shop, cafe and the offices of the real estate management company. Public walkways and cycle tracks will connect the houses to the beach, and a new flyover is planned to link the main road through the subdivision (‘Coast Boulevard’) with State Highway 2. Lot sizes vary from 186sqm to 624sqm. Floor areas within the houses will range from 130sqm to 270sqm.
<b>Infrastructure</b>	Due to huge growth in the area the local power authority is unable to provide sufficient electricity for the development, and are planning to construct a new substation. The site has access to reticulated infrastructure.
<b>Status</b>	As of September 2010, nine showhomes and two client house are now under construction.

<b>Case study G2: Cannell Farm</b>	
<b>Location</b>	Cannell Farm is a subdivision on the eastern side of Te Puke, 28 kilometres southeast of Tauranga City. The development extends the urban area of Te Puke into a valley next to State Highway 2, terminating at No. 1 Rd.
<b>Land titles</b>	The land was originally farmed by the Cannell family before being bought by the current owners ten years ago. At that point, the block was 80 hectares.
<b>Proposed project</b>	This project is a land development project. Under this model, the land is prepared by the developer and on-sold to house builders, who build the dwellings. The developer exercises some control over the housing through covenants which set out a minimum floor area and minimum standards for cladding and roofing. The lot sizes range from 680sqm to 800sqm. Initially 70 sections were prepared for sale, but sales have been slower than expected. The development has been broken into five stages releasing eight, five, thirteen, seventeen and four sites respectively, with the last two stages released simultaneously.
<b>Infrastructure</b>	The infrastructure for the first seventy sections was put in before the land was subdivided, and can be extended to further sections if necessary. The site has access to reticulated infrastructure. Swamp conditions mean that some of the land cannot be built on, and other areas need to be reserved for stormwater paths, as well as stormwater storage and mitigation.
<b>Status</b>	A total of 134 lots have been released to date, and 119 houses have been built on the site. 8 sections are currently for sale, along with the remainder of Cannell Farm.

## **Annex E – List of interviewees**

- Donovan Morgan – Manager Credit Improvement, Kiwibank (29 June 2010)
- Craig Linkhorn – Crown Counsel, Crown Law Office (30 July 2010)
- Tom Bennion – Barrister and Solicitor, Bennion Law (30 July 2010)
- Julie Tangaere – Chief Registrar, Te Kooti Whenua Māori/Māori Land Court (1 July 2010)
- Jason Clarke – Senior Policy Analyst, Te Puni Kōkiri/Ministry of Māori Development (1 July 2010)
- Richard Burrell – Director, Building Solutions (5 July 2010)
- Mike Webber – Product Manager, Housing New Zealand Corporation (9 July 2010)
- Interviewee – Māori land owner (9 July 2010)
- Dean Flavell – Project Manager, Makahae Marae Papakāinga Project (12 July 2010)
- Steve Short – Coast Papamoa Beach Director, Frasers Property (13 July 2010)
- Mererina Murray – Paetakawaenga, Takawaenga Māori Unit, Tauranga City Council (14 July 2010)
- Nick Logan – Senior Planner, Tauranga City Council (14 July 2010)
- Victoria Kingi – Project Manager, Mangatawa Papamoa Blocks Incorporated (14 July 2010)
- Interviewee – Cannell Farm development, Te Puke (14 July 2010)
- Brian Goldstone – Victoria Key development, Omokoroa (14 July 2010)
- Tom Kemp – Senior Project Manager, Housing New Zealand (14 July 2010)
- Steve Hill – Group Manager Customer & Business Services, Western Bay of Plenty District Council (15 July 2010)
- Pauline Tangohau – Senior Adviser, Relationships and Information, Te Puni Kōkiri/Ministry of Māori Development (19 July 2010)
- Tina Ngatai – Regional Manager, Office of the Māori Trustee (Waiariki) (20 July 2010)

## Annex F – District plan provisions for housing in rural areas

Tauranga City Council – City Plan (proposed) <i>Relevant provisions</i>		Western Bay of Plenty District Council – District Plan (proposed) <i>Relevant provisions</i>	
Chapter 16: Rural zones		Chapter 16: Rural	
Rural zone and Future Urban zone (General land)		Rural land (General land)	
Permitted activity:	1 dwelling per lot, with one secondary dwelling	Permitted activity:	1 dwelling per lot
Discretionary activity:	Additional dwellings  Subdivision can only take place with an approved structure plan	Controlled activities:	1 minor dwelling 1 dwelling per lot where no dwelling currently exists Subdivision for farming (min. 40ha), rural production (8ha), and other non-residential purposes (4ha)
		Non-complying activity:	Additional dwellings
Rural Marae Community Zone (Māori freehold land) <sup>39</sup>		Rural land (Māori freehold land)	
Permitted activity:	Number of dwellings per lot specified for each Rural Marae Community Zone (2 – 50)	Permitted activity:	1 dwelling per lot 2- 5 dwellings (unsealed road)
Controlled activity:	3 – 10 dwellings in a zone where 2 dwellings is a permitted activity (with approved outline development plan)	Controlled activities:	6- 10 dwellings (sealed road) (with approved site plan)
Restricted discretionary activity:	11- 30 dwellings (with approved outline development plan)	Restricted discretionary activity:	11 – 30 dwellings (with approved site plan)
Discretionary activity:	Over 30 dwellings in a zone where 2 dwellings is a permitted activity	Discretionary activity:	Over 30 dwellings (with approved structure plan)
Non-complying activity:	More dwellings than specified for a zone where 35-50 dwellings is a permitted activity  Maximum development density: 1 dwelling per 800 sqm, or a greater area if needed to service the dwelling for on-site effluent treatment  <i>Associated permitted activities include: accessory buildings; school; health centre; home-based businesses; recreational and community facilities etc.</i>		Net land area per dwelling: 2000 sqm  <i>Associated permitted activities include: communal building up to 200sqm (five dwellings), and up to 400sqm (ten dwellings); health centre; school etc.</i>

<sup>39</sup> Note: Under Tauranga City Plan (proposed) *papakāinga* development is also permitted on Māori freehold land that is not zoned as a Rural Marae Community Zone, and within Urban Marae Community Zones.



<b>Rural Residential zone</b>		<b>Lifestyle zone (Greenfield areas)</b>	
Permitted activity:	1 dwelling per lot, with one secondary dwelling	Permitted activity:	1 dwelling per lot
Discretionary activity:	More than two dwellings per lot	Controlled activity:	One minor dwelling More than one dwelling per lot
	Net land area per dwelling: 3000 sqm	Discretionary activity:	Subdivision for additional dwellings
	<i>Associated permitted activities include: accessory buildings, home based businesses, minor public recreation facilities; primary production; produce stalls etc.</i>		Net land area per dwelling: 3000 sqm
			<i>Associated permitted activities include: one accessory building under 200sqm</i>