

Chapter 3A — Tangata Whenua

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This Chapter is presented as follows:

3.A.1 Introduction

This part discusses tangata whenua's associational rights with ancestral lands, the concept of kaitiakitanga and the principles of the Treaty of Waitangi.

3.A.2 Resource Management Issues

This part outlines significant resource management issues relating to tangata whenua's partnership interests in the management of the City's natural and physical resources.

3.A.3 Objectives

This part defines the objectives relevant to tangata whenua achieving their well being.

3.A.4 Policies

This part outlines how Council expects to meet its responsibilities with respect to tangata whenua. It also summarises the range of methods used to implement the policies. Methods include rules found in other Chapters of the District Plan, and non-regulatory methods that lie outside the Plan.

3.A.5 Anticipated Environmental Results

This part describes the expected environmental outcomes for matters affecting tangata whenua.

3.A.1 INTRODUCTION

3.A.1.1 Statutory Context

The Crown's recent response to Maori and Treaty interests, when it is devolving lawmaking and regulatory powers to its agents (such as territorial local authorities) mean that Manukau City Council has legal obligations with respect to tangata whenua when undertaking its delegated authority to manage the City's natural and physical resources.

The Council is obliged amongst other things to:

- recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga [Section 6(e)];
- have particular regard to Kaitiakitanga (Section 7(a)); [AM89]
- take into account the principles of the Treaty of Waitangi, (Section 8);
- take into account (when preparing or changing the District Plan) any relevant planning document recognised by an iwi authority and lodged with the Council, to the extent that its content has a bearing on resource management issues of the district (Section 74(2A)(a)). [AM89]

These provisions cumulatively indicate the significant weight to be given to tangata whenua's views with respect to the management of the City's natural and physical resources.

However it may not always be possible to protect the traditional relationship of tangata whenua with resources as it is clear in the Act that these values must be approached in the overall context of the promotion of sustainable management. In particular, the provisions of sections 6(e), 7(a) and 8 of the Act are not to be approached independently of Section 5 as ends in themselves but are to promote the Acts central purpose of sustainable management.¹

3.A.1.2 Associational Rights: Section 6 (e)

Section 6(e) of the Act which requires Council to recognise and provide for the *relationship* of Maori people and their culture and traditions with taonga addresses tangata whenua's associational rights to taonga. "Associational rights ... (are) tied to spiritual and emotive factors (and) include:

- the right of individuals to maintain an interest in a traditional area after having left it or the right of the tribe to maintain its connection or interest in an area formerly occupied for generations and from which they have moved; and
- the right to speak at a place on account of ancestral land connections.

The importance of associational rights has increased in recent years on account of land alienations and Maori urbanisation."² The High Court has indicated that the relationship with ancestral taonga can exist despite land sales and dispossessions of taonga. An activity could therefore be refused consent on the basis of it significantly affecting the relationship of Maori and their culture and traditions with their taonga.

The High Court has indicated that in considering the effects of activities on tangata whenua's relationship with land there must be some factor, or nexus between Maori culture and traditions, and the land in

1. ACC v Smith CRN 4004060455–459 19/5/95, 4 NZPTD 447

2. E T Durie, "Native Title Re-established". A Paper presented to the Joint Session 'Native Title'. Its Extent and Limitation International Bar Association, 25 Biennial Conference Melbourne, 13 October 1994 p12

question which affects the relationship of Maori people to the land. For example, the extent to which a special relationship is claimed throughout generations is one factor.

3.A.1.3 Kaitiakitanga: Section 7

Kaitiakitanga as defined in the Resource Management Act means:

“the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.”

In terms of the Act this definition indicates that “kaitiakitanga” is a specific term which refers to the exercise of guardianship by tangata whenua.

3.A.1.4 Principles of The Treaty of Waitangi: Section 8 of the Act

The development of Treaty **principles** was designed to overcome problems associated with the literal interpretation of Treaty articles, and the different English and Maori versions of the Treaty. There is no definitive list of Treaty principles. They are evolving and over time the Court of Appeal, the Waitangi Tribunal and the Government, amongst others, have articulated Treaty principles.

In law, the principles of the Treaty of Waitangi have greater legal status than the Treaty itself. Two strong themes that have been emerging as Treaty principles and have been discussed in the different forums are those of **partnership** and **active protection**.

Partnership requires each party to “act reasonably” and “in good faith”. Active and early consultation is a partnership responsibility. In terms of Section 8 of the Act, however, it is recognised that consultation does not necessarily lead to agreement. Consultation does not give a right of veto and failure to achieve agreement does not necessarily invalidate consultation. Active protection involves positive forward planning to guard against the creation of future problems (i.e. it is more than just confronting problems as they arise).

Another Treaty principle identified by the Court of Appeal¹ and Waitangi Tribunal is that of tribal **rangatiratanga**.

Rangatiratanga includes the authority to control how resources will be managed, used, developed and protected. Caring and restoring the health of Papatuanuku and Ranginui is consistent with rangatiratanga because rangatiratanga confers not only status but also responsibility to ensure that the natural world and its resources are maintained into the future (not only for future generations but also for the continuance of the universe, Papa and Rangi).

Implicit in both rangatiratanga and taonga is a disciplinary code for how people interact with the natural world. It confers a responsibility to act in a manner which maintains the mauri and life energy force of the natural world in other words the ‘tapu’ of those elements upon which our survival depends.²

3.A.2 RESOURCE MANAGEMENT ISSUES

The following resource management issues have been identified in consultation with tangata whenua.

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1. NZ Maori Council v Attorney – General [1987] 1 NZLR 641
 2. See Hauraki Maori Trust Board, ‘Submission on the Parliamentary Select Committee on Resource Management Bill’ in *Report to the Minister of Conservation on Tikapa Moana* 1992, Appendix 7 p.2

3.A.2.1 Managing the City's resources in a way that enables tangata whenua to provide for their own well being requires recognition of and provision for customary authority and rights guaranteed by the Treaty of Waitangi.

The Waitangi Tribunal has reported¹ that *“for Tainui ... (the) loss of land, land which is now some of the most economically productive in New Zealand has led to an almost landless proletariat which still broods over the manner of their dispossession (and that) the elders ... argue that the Treaty of Waitangi ... should be interpreted according to their rights ... ”*.

There are also those of Tainui who did not sign the Treaty of Waitangi whose rights are based on customary authority.

These rights are the source of tangata whenua's well being. The ability to exercise rangatiratanga and kaitiakitanga, authority and control over resources are political rights and use rights. Tangata whenua's well being also includes associational rights such as ahi kaa (keeping the fires warm). If tangata whenua are unable to exercise their customary rights, rights that were guaranteed to them by the Treaty of Waitangi, their well being is adversely affected.

In addressing this matter, Council must meet its obligations under the Act and apply section 8 in the context of the promotion of sustainable management in section 5. Exercise of transfer of powers may assist in some cases. Many issues, however, are appropriately resolved by the Crown.

3.A.2.2 Tangata whenua's taonga, and tangata whenua's relationship with taonga can be adversely affected by developments even though customary authority and the principles of the Treaty of Waitangi guaranteed protection of taonga.

Tangata whenua's traditional relationship with the environment makes places sacred, with some places more sacred than others. Sacred places may include, for example:

- a place that has had contact with the dead
- a battlefield
- a burial place
- a place where a tupapaku landed from a canoe, rested, was place for tangi
- a house site of great mana
- a place of refuge
- a place of contemplation
- a mountain from which territory was claimed
- where a famous song or chant was first uttered
- where a vision occurred
- where a rite was performed

The relationship of tangata whenua (the genealogical connection) with their ancient mother Papatuanuku and father Ranginui including the Atua or Kaitiaki of their taonga, including the taonga themselves makes it imperative that those that have legislative responsibilities over such physical and spiritual realms uphold customary rights.

1. Report of the Waitangi Tribunal, “Findings on the Manukau Claim” 1985 p 46

3.A.2.3 The resource management policy framework has not always afforded the interests of tangata whenua appropriate priority and respect, even though the Treaty of Waitangi includes such intentions.

While tangata whenua are indigenous peoples their concerns can be overlooked in the interests of serving the majority. However, as indigenous peoples they have customary rights guaranteed by the Treaty of Waitangi. The Waitangi Tribunal has indicated in its findings on the Manukau Claim that the intention of both texts of the Treaty of Waitangi is to afford the Maori interest an appropriate priority and respect when their interest in their taonga is adversely affected.

3.A.3 OBJECTIVES

3.A.3.1 To have regard to tangata whenua's right to exercise rangatiratanga and kaitiakitanga over ancestral lands, waters, sites, waahi tapu and other taonga.

(This objective relates to Issue 3.A.2.1)

Explanation/Reasons

Section 8 of the Act requires the Council in undertaking its functions under the Act to take into account the principles of the Treaty of Waitangi.

There is no definitive list of Treaty principles. These have been evolving over time as new cases come before the Court of Appeal and the Waitangi Tribunal. A strong theme is that of partnership. The principle of tribal rangatiratanga has been identified by the Waitangi Tribunal. The Government has also identified the principle of iwi self-management.

Facilitating rangatiratanga ensures that a fundamental principle of the Treaty of Waitangi is taken into account. S7(a) of the Resource Management Act 1991 expressly requires particular regard to be given to kaitiakitanga. In Maori cultural terms, kaitiakitanga is an instrumental part of rangatiratanga. Section 5(2) of the Act also requires Council to manage resources in a way that enables well-being. The exercise of rangatiratanga and kaitiakitanga contributes to tangata whenua's well being and helps ensure the mauri, or life force of taonga is healthy and strong. Tangata whenua as kaitaki must do all in their power to restore the mauri of taonga to its original strength.

3.A.3.2 To enable tangata whenua's right to exercise rangatiratanga and kaitiakitanga over ancestral lands, waters, sites, waahi tapu and other taonga.

(This objective relates to Issue 3.A.2.2)

Explanation/Reasons

The Waitangi Tribunal has indicated that the Treaty of Waitangi obliges the Crown not only to recognise the Maori interests specified in the Treaty of Waitangi but to actively protect them. The Tribunal has stated that the omission to provide that protection is as much a breach of the Treaty as an act that removes those rights. In particular, the Waitangi Tribunal has indicated that the omission of the Crown to provide protection to tribes in the use, ownership and enjoyment of lands and fisheries is contrary to the principles of the Treaty of Waitangi (see Findings on the Manukau Claim p 100).

Section 6(e) of the Resource Management Act also requires Council when managing resources to recognise and provide for the relationship of Maori and their culture and traditions with taonga.

3.A.3.3 To ensure appropriate priority is afforded to the relationship of tangata whenua and their culture and traditions with their ancestral taonga.

(This objective relates to Issue 3.A.2.3)

Explanation/Reasons

The Waitangi Tribunal in the Manukau Claim has indicated that the intention of both texts of the Treaty is to afford an appropriate priority and respect to Maori people (pages 78 and 91). It has noted that the Treaty represented an exchange of gifts. The gift of the right to make laws, and the promise to do so as to accord the Maori interest an appropriate priority. The Treaty establishes the regime for biculturalism not uniculturalism.

3.A.4 POLICIES

3.A.4.1 Tangata whenua should be enabled to fully participate in resource management processes and actively consulted in a way that:

- (a) Fosters partnerships and relationships with representative tangata whenua authorities (including iwi authorities);
- (b) Avoids models which lead to adversarialism;
- (c) Recognises and respects marae authority and affiliations;
- (d) Respects the role of kaumatua;
- (e) Acknowledges historical circumstances and impacts on resource needs;
- (f) Respects tikanga Maori (Maori customary values and practices).
- (g) Acknowledges the rights of hapu to speak and act on matters that affect them.

Explanations/Reasons

(This policy seeks to achieve Objective 3.A.3.1).

Consultation has been considered as both a principle of the Treaty of Waitangi and a duty to ensure the principles are given effect to. The Parliamentary Commissioner has indicated in her "Guidelines for Local Authority Consultation with Tangata Whenua" (1992) that a local authority must ensure that those groups who are consulted are representative and have a mandate to speak on behalf of tangata whenua.

Policy 1 ensures that consultation and participation of tangata whenua in resource management is in keeping with the Parliamentary Commissioner's Guidelines. It is also in keeping with Maori Land Court Decisions pursuant to Section 30(1)(b) of Te Ture Whenua Act 1993 which relates to principles for determining tangata whenua representation.

Essential elements of consultation have been defined by the High Court and include sufficient information being provided to the consulted party, sufficient time for participation and consideration of information, and genuine consideration of advice received.

Methods

- Requirement (in General Procedures and Rules Chapter 5) to ensure that the assessment of effects for development includes an assessment of effects on tangata whenua;
- Council contracts for resource management services with representative tangata whenua authorities;
- Co-management with tangata whenua of taonga that are in Council's ownership (e.g. areas zoned public open space such as Mangere Mountain, Hampton Park Otara);
- Appointment of tangata whenua as Planning Commissioners;
- Appointments to Council staff, e.g. Maori Liaison Officer;
- Memoranda of Understanding with representative tangata whenua authorities;
- Investigate opportunities for resource management committee hearings to be held on marae where appropriate;
- Allow harvesting of indigenous plants on public open space for cultural purposes through harvesting permits (e.g. Imrie Avenue Reserve, Mangere);
- Support resource management initiatives of tangata whenua;
- Investigate transfer of powers to tangata whenua pursuant to Section 33 of the Act;
- Services — e.g. Training and Education on Resource Management Act;
- Educational workshops for Council officers in Tikanga Maori , Te Reo Maori and the Treaty of Waitangi.

3.A.4.2 Adverse effects of development on tangata whenua's taonga and tangata whenua's relationships with taonga are to be avoided, remedied or mitigated.

Explanation/Reasons

(This policy seeks to achieve Objectives 3.A.3.2 and 3.A.3.3)

The principles of the Treaty of Waitangi which the Council must take into account pursuant to Section 8 of the Act include active protection of taonga. Section 6(e) of the Resource Management Act requires the recognition and provision for the relationship of Maori people with their taonga. The High Court has indicated that the relationship with ancestral taonga can exist despite land sales and disposessions of taonga. Even where taonga are still in tangata whenua's ownership the relationship with it can still be adversely affected by the nature of surrounding development.

Methods

- Involvement of tangata whenua authorities in the vetting of resource consent applications for assessment of effects.
- Taking into account iwi planning documents in resource consent processes (Chapter 5 — General Procedures and Rules).
- Scheduling of waahi tapu (Chapter 6 — Heritage).

- Support, for example through administrative services, signage for rahui (prohibition) or whakatupu (growing time) as appropriate to allow replenishment of traditional kaimoana areas (e.g. Eastern Beach, Bucklands Beach Peninsula).
- Activity Tables (e.g. Quarrying Activities are controlled activities Chapter 17 — Special Areas and Activities).
- Purchase of waahi tapu in private non-Maori ownership for Public Open Space.

3.A.4.3 Provision should be made to enable tangata whenua to live on, develop and use ancestral lands in accordance with tikanga Maori (Maori customary values and practices).

Explanation/Reasons

(This policy seeks to achieve objective 3.A.3.1, 3.A.3.2)

Historical developments have limited tangata whenua use rights over their own land. It is considered in the public interest to enable Maori people to live in accordance with their cultural values as guaranteed by the Treaty of Waitangi. This may sometimes differ from other matters that are seen to be in the public interest, for example the need to limit the encroachment of housing in rural areas. However, special provision to enable Maori people to develop their land in a different way is seen to be in accord with political, use and associational rights as guaranteed by the Treaty of Waitangi. It also recognises the Council's statutory responsibilities in terms of Section 6(e) of the Act.

Methods

- Papakainga zones
- Provision for Papakainga housing in Rural Areas
- Support to marae and associated customary activities

3.A.5 ANTICIPATED ENVIRONMENTAL RESULTS

- Involvement and active participation of tangata whenua in resource management processes;
- Protected waahi tapu and other taonga;
- Tangata whenua access to taonga;
- Establishment of marae, kohanga, kura kaupapa and other Maori cultural institutions;
- Greater public awareness of tangata whenua (customary rights and relationships with taonga);
- Enhanced environmental quality.