

### 3.1 Introduction

This chapter states the broad issues which are of resource management significance to Tangata Whenua, and objectives and policies which stem from those issues. Tangata Whenua interests relating to particular issues or resources are set out in other chapters. It is necessary for other chapters to be read in conjunction with this chapter.

Under the RM Act and Hauraki Gulf Marine Park Act 2000 the RPS is required, among other things:

- (i) as a matter of national importance, 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));
- (ii) to have particular regard to kaitiakitanga (section 7(a));
- (iii) to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (section 8);
- (iv) to have regard to recognised relevant Iwi planning documents and any regulations relating to the conservation and management of taupure or fisheries (sections 61(2)(a)(ii)&(iii));
- (v) to state matters of resource management significance to Iwi authorities (section 62(1)(b)).
- (vi) to recognise the historic, traditional, cultural, and spiritual relationships of the tangata whenua with the Hauraki Gulf and its islands.

An understanding of traditional concepts is fundamental to the application of RM Act provisions regarding traditional Maori interests and values. While these differ between tribal groups a brief explanation is offered here. Traditional approaches to resource management focus on maintaining and enhancing the mauri of ancestral taonga. Taonga generally refers to something highly prized and treasured, tangible or intangible, that contributes to Maori intellectual, physical or spiritual wellbeing. The term equates roughly to the concept of a resource, but incorporates a range of social, economic and cultural associations (the courts and the Waitangi Tribunal have maintained broad and flexible descriptions of the term taonga). Mauri is normally described as the life-essence, life-force or power which, through the

creation of the natural world, exists in all things. Taonga are intimately linked by mauri. Mauri binds the spiritual and physical elements of taonga together, enabling existence within the bounds of their own creation. When something dies the mauri is no longer able to bind the physical and spiritual elements together and thereby give life. Without mauri nothing can survive. Tikanga – customary values and practices have been developed and observed over many centuries to sustain the mauri of all things, and continues to provide the basis for traditional approaches to resource management.

In the preparation of the RPS, consultation has been carried out with the following Tangata Whenua groups:

- Huakina Development Trust (a management committee of Tainui Marae and Papakainga, and the Environmental Authority of the Tainui Maori Trust Board);
- Awaroa ki Manuka (representing Ngati Te Ata);
- Ngai Tai ki Tamaki Trust Board;
- Ngati Paoa Whanau Trust;
- Ngati Whatua o Orakei Maori Trust Board;
- Te Hao o Ngati Whatua (representing the five Ngati Whatua marae surrounding the Kaipara Harbour in the Auckland Region);
- Te Kawerau a Maki Trust;
- Ngati Wai Trust Board.

In addition to the above, the Hauraki Maori Trust Board is also a significant Iwi authority of the Auckland Region. Only Tangata Whenua or their representatives have the right to determine matters of resource management significance to them. These have been identified through a series of hui, meetings, written statements and Iwi planning documents.

Tangata Whenua representation may be subject to change. Where Tangata Whenua representation remains unclear, matters of representation will need to be referred back to Tangata Whenua processes for clarification, and wider consultation will be necessary. For these and other consultation issues, parties should refer to the Proposed Guidelines of the Parliamentary Commissioner for the Environment for consultation with Tangata Whenua (June 1992).

### **3.2 Matters of Significance to Iwi Authorities**

The matters of resource management significance to each Tangata Whenua group of the Auckland Region are diverse. They are summarised in the following.

#### **3.2.1 Relationships with ancestral taonga are being adversely affected by inappropriate processes and activities**

Relationships with ancestral taonga continue to evolve and differ between Tangata Whenua groups. Maori regard the natural world holistically, and consider themselves to be an integral part of it. All things are interrelated and interconnected via whakapapa or genealogy.

All taonga must be managed as a whole and cannot be separated. Adverse effects on ancestral taonga damage the wellbeing of Tangata Whenua as Kaitiaki of those taonga.

The effects of Auckland's continued growth and development on the Tangata Whenua of the Region and on their relationship with their ancestral taonga are significant. The Tangata Whenua identify as adverse effects, constraints on the ability to manage their taonga according to tribal customs and preferences, the widespread loss of natural and cultural heritage, and reduction of access to remaining heritage. Also, development in the Region has had adverse effects on water resources and associated habitats. In addition, the little Maori land remaining in the Region is fragmented into small isolated blocks.

The number and variety of activities affecting the mauri of ancestral taonga has increased significantly since traditional times. A combination of both traditional and modern approaches is likely to be required to maintain and enhance the mauri of natural and physical resources today.

Despite improvements in recent years, Tangata Whenua continue to be concerned that their relationship with ancestral taonga is adversely affected and that these effects are not being avoided, mitigated, or remedied.

#### **3.2.2 There is a need for direct and effective involvement of Tangata Whenua in the sustainable management of their ancestral taonga**

Tangata Whenua have developed traditional practices for the sustainable management of most natural and physical resources. These are encompassed by kaitiakitanga, mana, and tikanga – all terms which are referred to in the RM Act. Only Tangata Whenua can exercise kaitiakitanga over their taonga, and therefore determine how kaitiakitanga and rangatiratanga should be expressed.

The RM Act and related legislation provides significant opportunities for the direct and effective involvement of Tangata Whenua in the sustainable management of their ancestral taonga. At present, however, the effective and efficient application of such provisions has yet to be fully realised.

Tangata Whenua have recognised a number of factors which inhibit implementation of statutory provisions which enable Tangata Whenua involvement.

These include:

- misunderstanding of Tangata Whenua interests, values and approaches to the sustainable management of taonga;
- the lack of awareness about the rights and responsibilities of Tangata Whenua, and the extent to which these are recognised by legislation and case-law;
- the limited resources available to Tangata Whenua to enable them to play an effective part in resource management processes, and to pursue and protect their interests;
- the lack of systems and procedures to ensure the early involvement of Tangata Whenua in statutory processes;
- the lack of understanding by Tangata Whenua of local authority structures, functions and procedures.

### 3.2.3 The Treaty of Waitangi needs to be recognised in the sustainable management of ancestral taonga

The management of natural and physical resources in the Region has not always been in accordance with the Treaty. Findings of the Waitangi Tribunal thus far demonstrate that Crown breaches of the Treaty in the Auckland Region have resulted in:

- the alienation of land and other resources which were guaranteed to Tangata Whenua;
- loss of the use and enjoyment of resources as a result of pollutive discharges to ancestral waters;
- the over-riding of the customary rights and responsibilities over ancestral taonga.

Tangata Whenua hold that customary rights and responsibilities over their taonga have never been extinguished. Tangata Whenua have continually opposed Crown laws and actions seen to be in breach of the Treaty of Waitangi agreement which confirms and guarantees customary rights. (See Appendix E for full text of Treaty of Waitangi.)

Tangata Whenua consider a significant resource management issue to be the Crown's exercise of presumptive ownership, management and control over ancestral taonga. In many instances the Crown has individualised title, and granted use rights in respect of taonga (e.g., minerals, water, and land) to individuals and organisations. The Crown receives income as a result of those actions.

Such matters cannot be remedied through resource management processes. However, it is important that decisions under the RM Act are made with an awareness of these issues where they exist. So far as possible, care should be taken not to prejudice relationships of the Tangata Whenua with ancestral taonga, nor to exacerbate matters which are the subject of Treaty claims.

Tangata Whenua have high expectations that systems put in place under the RM Act will ensure that, as far as practicable, future grievances pertaining to the management of natural and physical resources will be avoided.

## 3.3 Objectives

1. *To sustain the mauri of natural and physical resources in ways which enable provision for the social, economic and cultural wellbeing of Maori.*
2. *To afford appropriate priority to the relationship of Tangata Whenua and their culture and traditions with their ancestral taonga when this conflicts with other values.*
3. *To involve Tangata Whenua in resource management processes in ways which:*
  - (i) *take into account the principles of the Treaty of Waitangi, including rangatiratanga;*
  - (ii) *have particular regard to the practical expression of kaitiakitanga.*

## 3.4 Policies, Methods and Reasons

### 3.4.1 Policy

*This policy gives effect to Objectives 3.3-1 and 2.*

***Waahi tapu and other ancestral taonga of special value to Tangata Whenua shall, where agreed by Tangata Whenua, be identified, evaluated, recognised and provided for in accordance with tikanga Maori, and given an appropriate level of protection.***

### 3.4.2 Methods

1. *The ARC and TAs will, in consultation with Tangata Whenua, identify and list in regional and district plans sites and areas of significance to Tangata Whenua, and such plans will include provisions which afford appropriate levels of protection to the items listed; and such listings will be kept up-to-date.*
2. *The ARC and TAs will make provision in regional and district plans to achieve appropriate levels of protection for sites and areas of special significance to Tangata Whenua where such sites and areas are known to exist but are not listed or identified in such plans.*

3. *The ARC and TAs will ensure that Iwi and hapu are informed of the various opportunities that exist for affording their taonga an appropriate level of protection.*
4. *The ARC and TAs will, when requested by Tangata Whenua, evaluate appropriate management techniques for heritage sites and areas of high significance to Tangata Whenua.*

### 3.4.3 Reasons

Section 6(e) of the RM Act requires that the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, be recognised and provided for as a matter of national importance. As stated by Policy 2.1.1 of the NZCPS, this includes the right of Tangata Whenua to choose not to identify all or any areas of special value. Also, as provided for by section 42 of the RM Act, the implementation of Policy 3.4.1 should provide for the protection of sensitive information to avoid offence to tikanga Maori or the location of waahi tapu (e.g., through the use of silent files).

Policy 3.4.1 gives effect to the heritage aspects of Issue 3.2.1. For a variety of reasons, opportunities to formalise the protection of valued areas through statutory plans have not been taken. It is important, however, that opportunities to formally record such areas in statutory plans are maintained and that a cautious approach to activities with unknown but potentially significant adverse effects on ancestral taonga is adopted.

In cases of highly valued, rare and irreplaceable taonga to Maori, the Crown has an obligation to ensure its protection (save in very exceptional circumstances). In taking this Treaty principle into account, an important option for the ARC and TAs to consider would be establishing appropriate management structures to actively manage such taonga (e.g., a heritage order or a management plan).

### 3.4.4 Policy

*This policy gives effect to Objectives 3.3-1 and 2.*

*Provision will be made enabling facilities and associated customary activities which are necessary for the wellbeing of Maori to be provided on Maori land, and on other land where appropriate, and ensuring that these are actively protected from any adverse effects of other activities.*

### 3.4.5 Methods

1. *Regional and district plans will recognise and provide for marae, papakainga, and associated customary uses of ancestral taonga.*
2. *The ARC will maintain an inventory of Maori land and, where appropriate, associated customary uses of ancestral taonga.*

### 3.4.6 Reasons

Subject to requirements to avoid adverse effects, the RM Act (section 6(e)) and Policy 3.2.6 of the NZCPS recognise that it is a matter of national importance to recognise and provide for marae, papakainga and other cultural facilities and associated customary uses of ancestral taonga. Policy 3.4.4 also takes into account the principles of the Treaty of Waitangi by confirming the right of Maori to live on ancestral land which is still in their possession and actively protecting the ability of Maori to use their taonga from the adverse effects of others. These principles are particularly important in the Auckland Region where little Maori land remains.

Customary activities should not be limited to Maori land. Regional and district plans are the most suitable mechanisms for determining what other land is appropriate for facilities and associated customary activities.

### 3.4.7 Policy

*This policy gives effect to Objectives 3.3-1, 2 and 3.*

*The involvement of Tangata Whenua in the preparation, implementation, monitoring, change or review of the RPS and regional and district plans shall be undertaken in ways which:*

- (i) *recognise the customary authority of Tangata Whenua;*
- (ii) *provide for the direct involvement of Tangata Whenua where decisions are being made on an issue of significance to Iwi or hapu concerning ancestral taonga or tikanga Maori;*
- (iii) *enable the assessment of effects of activities on relationships with ancestral taonga, including effects on access to, or use of, ancestral taonga;*
- (iv) *provide for early and effective consultation.*

*In addition, in relation to resource consents, the ARC and TAs shall:*

- (v) *take into account where relevant any planning document recognised by an Iwi authority affected by a resource consent;*
- (vi) *enable applicants to be aware of their responsibilities to Tangata Whenua early in the consent process.*

#### **3.4.8 Methods**

1. *The ARC will, in consultation with each Iwi authority of the Region, and in consultation with TAs where it is considered they will be affected, establish an agreement with each Iwi authority regarding procedures to give effect to mutual and respective responsibilities under the RM Act, with particular reference to sections 6(e), 7(a), 7(e) and 8 of the RM Act.*
2. *The ARC will maintain an information-base comprising relevant Treaty claims, principles, reports and other relevant information enabling the principles of the Treaty to be taken into account.*
3. *The ARC and TAs will, with Tangata Whenua, determine the likely situations in which Tangata Whenua wish to be consulted, and provide for this in the implementation of regional and district plans.*
4. *The ARC will, with Tangata Whenua involvement, maintain a list of Tangata Whenua representatives explicitly appointed for consultation over resource management matters.*
5. *The ARC will and TAs should, with Tangata Whenua, establish co-ordinated education programmes, to improve the understanding of all parties regarding the responsibilities pertaining to matters of significance to Tangata Whenua under the RM Act.*
6. *ARC hearing procedures will, where appropriate, provide for tikanga Maori, marae hearings, and the use of Maori language where this will enable effective participation by Maori, and contribute to informed decision-making.*
7. *The ARC will, in consultation with Tangata Whenua, maintain a list of Hearing Commissioners with recognised expertise in tikanga Maori and resource management and/or relevant technical matters. A person from the list will be appointed for hearings under the RM Act where ancestral taonga or tikanga Maori is a significant issue to Iwi or hapu.*
8. *The ARC and TAs will ensure that matters of significance to Tangata Whenua are identified during the preparation of plans, taken into account, and where appropriate provided for.*
9. *The ARC will, in consultation with Tangata Whenua, establish and maintain guidelines and checklists to assist consulting parties give effect to Policy 3.4.7.*
10. *The ARC will ensure that a directory of Maori organisations in the Auckland Region is available in order to assist with consultation.*
11. *The ARC and TAs will, where Tangata Whenua are affected, encourage applicants to consult the appropriate Tangata Whenua groups prior to submitting their applications for resource consents.*
12. *The ARC and TAs will ensure that Tangata Whenua are consulted when it is proposed to transfer duties, powers or functions in terms of section 33 of the RM Act.*

#### **3.4.9 Reasons**

In addressing elements of Issue 3.2.2, Policy 3.4.7 seeks to give certainty to Tangata Whenua involvement in resource management processes. Policy 3.4.7 also gives effect to recent case-law defining consultation, and incorporates important elements of the Guidelines of the Parliamentary Commissioner for the Environment, for consultation with Tangata Whenua (**Proposed Guidelines for Local Authority Consultation with Tangata Whenua**; Office of the Parliamentary Commissioner for the Environment, June 1992).

Significant adverse effects on ancestral taonga occur largely as a result of consent granting processes. Applicants and the ARC and TAs have certain responsibilities to Tangata Whenua. Consistent with section 8 of the RM Act, and to facilitate the assessment of effects on relationships with ancestral taonga, it is important that, where relevant, Iwi planning documents are taken into account in consent processes.

In recognising the customary authority or mana whenua of Tangata Whenua, Policy 3.4.7 takes into account the Treaty principle of rangatiratanga. Examples of recognising customary authority include the establishment of agreements and the appointment of Hearing Commissioners in accordance with Method 3.4.8.

Before making decisions which may affect customary rights, a full appreciation of the nature of the taonga to Tangata Whenua is required. This can only be gained from those having customary rights over the taonga. Policy 3.4.7 takes this important Treaty principle into account.

### 3.4.10 Policy

*This policy gives effect to Objective 3.3-3.*

***The management of natural and physical resources shall take into account the effects on relevant Treaty claims and/or customary rights of Tangata Whenua.***

### 3.4.11 Methods

1. ***The ARC and TAs will ensure that Tangata Whenua are consulted where relevant Treaty claims and/or customary rights, including the use and enjoyment of ancestral taonga, may be affected by proposals.***
2. ***Where a resource consent application involves the use or allocation of resources which are subject to Treaty claims and those claims concern:***
  - ***the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; or***
  - ***kaitiakitanga; or***
  - ***the principles of the Treaty of Waitangi***  
***the ARC and TAs shall have appropriate regard to any relevant findings of the Waitangi Tribunal on those aspects of the claims when considering whether to attach a condition to the consent to enable a review of consent conditions.***
3. ***The ARC and TAs shall have appropriate regard to any relevant findings of the Waitangi Tribunal or courts of law and any Acts of Parliament or Regulations which concern:***

- ***the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; or***
- ***kaitiakitanga; or***
- ***the principles of the Treaty of Waitangi***  
***when exercising their decision making functions under the RM Act in relation to the use or allocation of resources which are subject to Treaty claims.***

### 3.4.12 Reasons

Under subsection 6(e) and 8 of the RM Act the implications of resource management decisions on Treaty claims and customary rights need to be taken into account. Policy 3.4.10 addresses aspects of Issues 3.2.1 and 3.2.3.

Examples of relevant Treaty claims include those reported on by the Waitangi Tribunal relating to the loss of access, use and enjoyment of ancestral resources by Tangata Whenua as a result (inter alia) of environmental degradation. The establishment of Mahinga Mataitai Reserves under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, making provision for customary rights, is another relevant matter to take into account under Policy 3.4.10.

Guidance regarding what types of Treaty claims are not relevant to the administration of the RM Act will be taken from the Planning Tribunal and the general courts.

Everything practicable should be done to avoid, and not exacerbate Treaty grievances. Policy 3.4.10 will help avoid future Treaty grievances, and save cost and time to all parties.

### 3.4.13 Policy

*This policy gives effect to Objective 3.3-3.*

***In the exercise of their responsibilities under the RM Act, the ARC and TAs will enable the practical expression of kaitiakitanga by Tangata Whenua.***

### 3.4.14 Methods

1. ***The ARC and TAs will, in consultation with Tangata Whenua, identify opportunities to involve Iwi in the management of ancestral taonga, including consideration of transfers of functions, particularly for those taonga:***

- (i) *which are tribally-owned or managed;*
  - (ii) *with characteristics of special value to Tangata Whenua including waahi tapu, tauranga waka, tauranga ika, taonga raranga, taiapure, or mahinga mataitai areas or reserves;*
  - (iii) *used for customary purposes;*
  - (iv) *where joint management opportunities exist.*
2. *The ARC and TAs will, in consultation with Tangata Whenua, identify and provide opportunities for the practical exercise of kaitiakitanga by Iwi and hapu.*
  3. *The ARC will, with Tangata Whenua involvement, encourage initiatives which seek to incorporate tikanga Maori into resource management processes, techniques, and measures of resource quality.*

#### 3.4.15 Reasons

Section 7(a) of the RM Act recognises that kaitiakitanga has a positive contribution to make in promoting the sustainable management of natural and physical resources. Consultation has highlighted existing and proposed tribal initiatives which seek to maintain or enhance the mauri of ancestral taonga (e.g., regeneration of indigenous vegetation adjacent to waterways, conserving both soil, water, and associated aquatic life).

In having particular regard to kaitiakitanga, the ARC and TAs cannot presume how each Tangata Whenua group wants its Kaitiaki role to be recognised. It is important, however, for the ARC and TAs to provide opportunities enabling the practical expression of kaitiakitanga.

It is important to note that the exercise of kaitiakitanga also requires recognition of the rangitiratanga of Tangata Whenua. The RM Act (section 33) and Policy 2.1.3 of the NZCPS recognise that the option of transferring to Iwi direct control is an important method of having particular regard to kaitiakitanga, protecting ancestral taonga and, therefore, promoting sustainable management. Method 3.4.14-1 provides a focus for any transfers.

### 3.5 Environmental Results Anticipated

- (a) Ongoing beneficial relationships between Tangata Whenua and the ARC and TAs.
- (b) Protection and enhancement of relationships of Tangata Whenua with their ancestral taonga.
- (c) Consultation on all matters of resource management significance to Tangata Whenua.
- (c) Provision for social, economic and cultural wellbeing of Tangata Whenua, in accordance with Treaty rights and obligations.
- (e) Involvement of Tangata Whenua in managing their ancestral taonga, including decision-making, in accordance with Treaty rights and obligations.

These results mean that the mauri of ancestral taonga in the Auckland Region will be sustained.

### 3.6 Monitoring

The following monitoring is necessary to evaluate the suitability and effectiveness of the policies and methods.

- (i) Report on the state of the environment, identifying significant adverse effects on relationships, and work initiated or completed to avoid, remedy or mitigate these.
- (ii) Report each three years on the effectiveness of resource consent procedures, and suggestions for continuous improvement.
- (iii) Report each three years on provisions for achieving policies, their effectiveness, and suggestions for continuous improvement.

The results of this monitoring should provide assurance that the objective of sustaining the mauri of natural and physical resources in the Auckland Region with Tangata Whenua will be achieved.

