

MAORI LAND

Section 6 of the Act sets out matters which must be recognised and provided for. Included within this Section is the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. Section 7 of the Act requires that the Council has particular regard to Kaitiakitanga. In accordance with Section 8 of the Act all persons exercising functions and powers in accordance with 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 (Te Tiriti o Waitangi).

The Court of Appeal (interpreting the principles of the Treaty under the State Owned Enterprises Act 1986) and the Waitangi Tribunal have identified four main principles of the Treaty of Waitangi which provide a guide to the principles of the Treaty to be taken into account under the Resource Management Act. This list is not definitive and may continue to evolve, but acts as a guide. The principles are listed as follows:

Principle One The Essential Bargain

The Court of Appeal: The cession by Maori of sovereignty to the Crown was in exchange by the Crown for Maori rangatiratanga.

Waitangi Tribunal: The right of the Crown to make laws was exchanged for the obligation to protect Maori interests.

Principle Two Tribal Self Regulation

The Court of Appeal: Maori were to retain chieftainship rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.

Waitangi Tribunal: The Crown has an obligation to legally recognise tribal rangatiratanga.

Principle Three The Treaty Relationship

The Court of Appeal: The Treaty requires a partnership and the duty to act reasonably and in good faith. The responsibilities of the parties are analogous to fiduciary duties. The Treaty does not authorise unreasonable restrictions on the Crown's rights to govern.

Waitangi Tribunal: The Treaty implies a partnership, exercised with utmost good faith. The Treaty is an agreement that can be adapted to meet new circumstances. The courtesy of early consultation is a partnership responsibility. The needs of both Maori and the wider community must be met, which will require compromises on both sides.

Principle Four Active Protection

The Court of Appeal: The duty is not merely passive, but extends to active protection of Maori people in the use of their resources and other guaranteed taonga to the fullest extent practicable.

Waitangi Tribunal: The Maori interest should be actively protected by the Crown. The Crown's right of pre-emption imposed reciprocal duties to ensure that the tangata whenua retained sufficient for their needs. The Crown cannot evade its Treaty obligations by conferring an inconsistent jurisdiction on others.

Sections 6, 7 and 8, as set out in the Act, are subservient to Section 5 of the Act which requires the promotion of the sustainable management of natural and physical resources. This is the overriding purpose when exercising any function under the Act. It is necessary to ensure the

sustainable management of the natural and physical resources is being promoted when considering the matters contained in Sections 6, 7 and 8.

The Council, in seeking to take into account the principles of the Treaty of Waitangi, and in recognition of kaitiakitanga, will consider Maori Land managed by Maori as Treaty partners as an entity within the District Plan. It is important to ensure that the provisions for Maori Land in the District Plan also provide for the integrated management of resources. Therefore, the methods in this chapter are related to the rest of the Plan.

The provisions provided for Maori Land will be viewed as an extension to the provisions already developed for rural and urban land. The methods developed in these sections represent the effects which are considered to be generally acceptable after taking into account the Treaty of Waitangi.

ML 1.0 ISSUE

- (a) **Relationship of Maori with Maori Land.**

ML 1.1 OUTCOME

- (a) **Recognition of tribal rangatiratanga as provided for by the principles of the Treaty of Waitangi.**

ML 1.2 OBJECTIVE

- (a) **Sustainable management of the natural and physical resources associated with Maori Land recognising and providing for the relationship of Maori and Maori Land.**

ML 1.3 POLICIES

- (a) **To recognise tino rangatiratanga of nga iwi of the District, as affected by the Council's exercise of its functions under the Act, in the development of their own resources.**
- (b) **To require that a cultural activity does not create adverse environmental effects on adjoining properties.**

Explanation of Policies

The policies seek to provide nga iwi with the opportunity to utilise Maori Land for a variety of purposes in recognition of tino rangatiratanga. The Council in exercising its function to promote the sustainable management of the natural and physical resources has exercised some control over land uses and activities. The principle of sustainable management must be the overriding concept at all times. The policies developed are intended to ensure that adverse effects are avoided, remedied or mitigated.

ML 2.0 METHODS

- 1) To explore the appropriate transfer of functions to nga iwi in accordance with Section 33 of the Act.
- 2) To provide for the utilisation of nga iwi hearing commissioners or advisers for consent hearings where iwi and hapu have particular cultural and spiritual associations.

- 3) To promote the participation of nga iwi and hapu in monitoring resource consents.

ML 3.0 RULES

ML 3.1 GENERAL

Notwithstanding any provisions set out in the zoning section of this Plan the following rules apply to all Maori Land owned and managed by nga iwi. Any activity not specifically referred to shall comply with the provisions within the relevant zone.

ML 3.2 RURAL ZONE

ML 3.2.1 Permitted Activities

- (a) Maori Cultural Activity
- (b) Papakainga Housing Activity providing for not more than 4 residential units

ML 3.2.2 Controlled Activities

- (a) Papakainga Housing Activity providing for between, and including, 5-10 residential units.

ML 3.2.3 Discretionary Activities (Restricted)

- (a) Any Maori Cultural Activity which cannot meet all the relevant conditions for permitted activities specified in Rule ML3.2.5.

ML 3.2.4 Discretionary Activities

- (a) Any Papakainga Housing Activity providing for in excess of 10 residential units.
- (b) Any Papakainga Housing Activity which cannot meet all of the conditions for permitted activities specified in Rule ML 3.2.5.
- (c) Any controlled activity specified in Rule ML 3.2.2 which cannot meet all the standards and terms for controlled activities specified in Rule ML 3.2.6.

ML 3.2.5 Conditions For Permitted Activities

For Maori Cultural Activities, compliance with the following conditions is required for the activity to be a permitted activity:

- (1) Integration

The following permitted activity conditions for a Rural Activity in the Rural Zone shall apply to a Maori Cultural Activity as if the words "Maori Cultural Activity" were substituted for "Rural Activity":

- (i) RU 4.5 (1)(a) and (b)
- (ii) RU 4.5 (2)(a) and (b)
- (iii) RU 4.5 (5)
- (iv) RU 4.5 (6)(a), (b) and (c)

- (v) RU 4.5 (7)

For Papakainga Housing Activities, compliance with the following conditions is required for the activity to be a permitted activity:

- (2) Traffic

All papakainga housing activities on one site shall be provided with only **one** access. (In this situation one access means there is only one access to the site from the road notwithstanding the number of units on the site).

- (3) Integration

The following permitted activity conditions for a Rural Activity in the Rural Zone shall apply to a Papakainga Housing Activity as if the words “Papakainga Housing Activity” were substituted for “Rural Activity”:

- (i) RU 4.5 (1)(a)and(b)
- (ii) RU 4.5 (2)(a)and(b)
- (iii) RU 4.5 (5)
- (iv) RU 4.5 (6)(a), (b)and(c)
- (v) RU 4.5 (7)

ML 3.2.6 Standards and Terms for Controlled Activities

For Papakainga Housing Activities, compliance with the following standards and terms is required for the activity to be a controlled activity:

- (1) Traffic

All papakainga housing activities on one site shall be provided with only **one** access. (In this situation one access means there is only one access to the site from the road notwithstanding the number of units on the site.)

- (2) Integration

Compliance with the following permitted activity conditions for a Rural Activity in the Rural Zone shall apply to a Papakainga Housing Activity as if the words “Papakainga Housing Activity” were substituted for “Rural Activity”:

- (i) RU 4.5 (1)(a) and (b)
- (ii) RU 4.5 (2)(a) and (b)
- (iii) RU 4.5 (5)
- (iv) RU 4.5 (6)(a), (b) and (c)
- (v) RU 4.5 (7)

ML 3.2.7 Assessment of Controlled Activities

The Council has reserved control over the following matters when assessing an application for a Controlled Activity:

- (a) Financial Contributions
- (b) Transportation
- (c) Servicing
- (d) Amenity Values

ML 3.2.8 Public Notification of Applications for Controlled Activities

The written approval of affected persons is not required therefore the application need not be notified.

ML 3.2.9 Standards and Terms for Discretionary Activities (Restricted)

For Discretionary Activities (Restricted) compliance with the following standards and terms is required for an activity to be a Discretionary Activity (Restricted):

None

ML 3.2.10 Matters over which the Council has Restricted the Exercise of its Discretion for Discretionary Activities (Restricted)

Any actual and potential effects on the environment of the activity due to the non-compliance of the activity with the permitted activity conditions, specifically including cumulative effects which may arise over time or in combination with other effects, but for the purposes of clarification, excluding those actual and potential effects on the environment that would result if the activity complied with all the permitted activity conditions.

ML 3.3 RESIDENTIAL HIGH ZONE

ML 3.3.1 Permitted Activities

- (a) Maori Cultural Education Activity
- (b) Marae Activity
- (c) Papakainga Housing Activity

ML 3.3.2 Discretionary Activities (Restricted)

- (a) Any permitted activity specified in Rule ML 3.3.1 which cannot meet all of the relevant conditions for permitted activities.

ML 3.3.3 Conditions For Permitted Activities

For Maori Cultural Education, Marae and Papakainga Housing Activities, compliance with the following conditions is required for the activity to be permitted activity:

- (1) Integration

The following permitted activity conditions for a Residential Activity in the Residential High Zone, shall apply to Maori Cultural Education, Marae, and Papakainga Housing Activities as if the words "Maori Cultural Education, Marae and Papakainga Housing Activities" were substituted for "Residential Activity"

- (i) RH 4.5 (1)
- (ii) RH 4.5 (2)
- (iii) RH 4.5 (5)(a) and (b)

ML 3.3.4 Standards and Terms for Discretionary Activities (Restricted)

For Discretionary Activities (Restricted) compliance with the following standards and terms is required for an activity to be a Discretionary Activity (Restricted):

None.

ML 3.3.5 Matters over which the Council has Restricted the Exercise of its Discretion for Discretionary Activities (Restricted)

Any actual and potential effects on the environment of the activity due to the non-compliance of the activity with the permitted activity conditions, specifically including cumulative effects which may arise over time or in combination with other effects, but for the purposes of clarification, excluding those actual and potential effects on the environment that would result if the activity complied with all the permitted activity conditions.

ML 3.4 RESIDENTIAL MEDIUM ZONE

ML 3.4.1 Permitted Activities

- (a) Maori Cultural Education Activity
- (b) Marae Activity
- (c) Papakainga Housing Activity

ML 3.4.2 Discretionary Activities (Restricted)

- (a) Any permitted activity specified in Rule ML 3.4.1 which cannot meet all of the relevant conditions for permitted activities.

ML 3.4.3 Conditions For Permitted Activities

For Maori Cultural Education, Marae, and Papakainga Housing Activities, compliance with the following conditions is required for the activity to be a permitted activity:

- (1) Integration

The following permitted activity conditions for a Residential Activity in the Residential Medium Zone, shall apply to Maori Cultural Education, Marae, and Papakainga Housing Activities, as if the words "Maori Cultural Education, Marae, and Papakainga Housing Activities" were substituted for "Residential Activity":

- (i) RM 3.5 (1)
- (ii) RM 3.5 (3)
- (iii) RM 3.5 (4)
- (iv) RM 3.5 (7)(a) and (b)

ML 3.4.4 Standards and Terms for Discretionary Activities (Restricted)

For Discretionary Activities (Restricted) compliance with the following standards and terms is required for an activity to be a Discretionary Activity (Restricted):

None.

ML 3.4.5 Matters over which the Council has Restricted the Exercise of its Discretion for Discretionary Activities (Restricted)

Any actual and potential effects on the environment of the activity due to the non-compliance of the activity with the permitted activity conditions, specifically including cumulative effects which may arise over time or in combination with other effects, but for the purposes of clarification, excluding those actual and potential effects on the

environment that would result if the activity complied with all the permitted activity conditions.

ML 3.5 RESIDENTIAL LOW ZONE

ML 3.5.1 Permitted Activities

- (a) Maori Cultural Education Activity
- (b) Marae Activity
- (c) Papakainga Housing Activity

ML 3.5.2 Discretionary Activities (Restricted)

- (a) Any permitted activity specified in Rule ML 3.5.1 which cannot meet all of the relevant conditions for permitted activities.

ML 3.5.3 Conditions For Permitted Activities

For Maori Cultural Education, Marae, and Papakainga Housing Activities, compliance with the following conditions is required for the activity to be a permitted activity:

- (1) Integration

The following permitted activity conditions for a Residential Activity in the or Residential Low Zone, shall apply to Maori Cultural Education, Marae, and Papakainga Housing Activities, as if the words "Maori Cultural Education, Marae, and Papakainga Housing Activities" were substituted for "Residential Activity":

- (i) RL 3.5 (1)
- (ii) RL 3.5 (3)
- (iii) RL 3.5 (4)(a) and (b)
- (iv) RL 3.5 (5)(a) and (b)

ML 3.5.4 Standards and Terms for Discretionary Activities (Restricted)

For Discretionary Activities (Restricted) compliance with the following standards and terms is required for an activity to be a Discretionary Activity (Restricted):

None.

ML 3.5.5 Matters over which the Council has Restricted the Exercise of its Discretion for Discretionary Activities (Restricted)

Any actual and potential effects on the environment of the activity due to the non-compliance of the activity with the permitted activity conditions, specifically including cumulative effects which may arise over time or in combination with other effects, but for the purposes of clarification, excluding those actual and potential effects on the environment that would result if the activity complied with all the permitted activity conditions.

ML 3.6 COMMERCIAL ZONE

ML 3.6.1 Permitted Activities

- (a) Maori Cultural Education Activity
- (b) Marae Activity

ML 3.6.2 Discretionary Activities (Restricted)

- (a) Any permitted activity specified in Rule ML 3.6.1 which cannot meet all of the relevant conditions for permitted activities.

ML 3.6.3 Conditions For Permitted Activities

For Maori Cultural Education and Marae Activities, compliance with the following conditions is required for the activity to be a permitted activity:

- (1) Integration

The following Permitted activity conditions for a Commercial Activity in the Commercial Zone, shall apply to a Maori Cultural Education and Marae Activity, as if the words "Marae Activity" were substituted for "Commercial Activity":

- (i) CM 6.5 (1)
- (ii) CM 6.5 (3)(a)and(b)

ML 3.6.4 Standards and Terms for Discretionary Activities (Restricted)

For Discretionary Activities (Restricted) compliance with the following standards and terms is required for an activity to be a Discretionary Activity (Restricted):

None.

ML 3.6.5 Matters over which the Council has Restricted the Exercise of its Discretion for Discretionary Activities (Restricted)

Any actual and potential effects on the environment of the activity due to the non-compliance of the activity with the permitted activity conditions, specifically including cumulative effects which may arise over time or in combination with other effects, but for the purposes of clarification, excluding those actual and potential effects on the environment that would result if the activity complied with all the permitted activity conditions.

ML 3.7 URBAN SETTLEMENT ZONE

ML 3.7.1 Permitted Activities

- (a) Maori Cultural Education Activity
- (b) Marae Activity
- (c) Papakainga Housing Activity

ML 3.7.2 Discretionary Activities (Restricted)

- (a) Any permitted activity specified in Rule ML 3.7.1 which cannot meet all of the relevant conditions for permitted activities.

ML 3.7.3 Conditions For Permitted Activities

For Cultural Education, Marae and Papakainga Housing Activities, compliance with the following conditions is required for the activity to be a permitted activity:

(1) Integration

The following permitted activity conditions for a Residential Activity, specified in the Urban Settlement Zone shall apply to Maori Cultural Education, Marae and Papakainga Housing Activities as if the words "Maori Cultural Education, Marae and Papakainga Housing Activities" were substituted for "Residential Activity":

- (i) US 3.5 (1)
- (ii) US 3.5 (3)
- (iii) US 3.5 (4)(a) and (b)
- (iv) US 3.5 (6)(a) and (b)

ML 3.7.4 Standards and Terms for Discretionary Activities (Restricted)

For Discretionary Activities (Restricted) compliance with the following standards and terms is required for an activity to be a Discretionary Activity (Restricted).

None.

ML 3.7.5 Matters over which the Council has Restricted the Exercise of its Discretion for Discretionary Activities (Restricted)

Any actual and potential effects on the environment of the activity due to the non-compliance of the activity with the permitted activity conditions, specifically including cumulative effects which may arise over time or in combination with other effects, but for the purposes of clarification, excluding those actual and potential effects on the environment that would result if the activity complied with all the permitted activity conditions.

ML 3.8 PROTECTED AREAS ZONE

The following rules shall apply to all Maori Land and Crown Land from the west of the township of Pipiriki extending to the intersection of Otaihanga Road and the Whanganui River that abuts the Whanganui River or abuts any reserve, strip or road that abuts the Whanganui River and for the purposes of clarification was identified as the Rural E Zone in the Waimarino County Second Reviewed District Scheme as operative on the date this Plan was publicly notified.

ML 3.8.1 Permitted Activities

- (a) Maori Cultural Activity
- (b) Papakainga Housing providing for up to, and including, four residential units

ML 3.8.2 Discretionary Activities

- (a) Any Maori Cultural Activity which cannot meet all the relevant conditions for permitted activities set out in ML 3.8.3

ML 3.8.3 Conditions for Permitted Activities

For Maori Cultural Activities, compliance with the following conditions is required for the activity to be a permitted activity:

(1) Integration

The following permitted activity conditions for a rural activity in the Rural Zone shall apply to a Maori Cultural Activity and Papakainga Housing Activity as if the words “Maori Cultural Activity” and Papakainga were substituted for “Rural Activity”:

- (i) RU 4.5 (5)
- (ii) RU 4.5 (6)(a), (b) and (c)

(2) Ancestral and Traditional Sites

The activities shall be established on ancestral sites that have traditionally been occupied by Maori for Maori Cultural Activities.

Principal Reasons For Adopting the Objectives, Policies and Methods

The above objectives, policies and methods recognise that the Treaty of Waitangi provides Maori with certain rights with regard to the use, development and protection of natural and physical resources. The Council sees a need to provide in its District Plan flexibility to enable nga iwi to use their land for a range of purposes. However, the Council is very aware that it must fulfil the functions provided to it under the Act. The above provisions achieve an appropriate balance.

The Council recognises that some Maori Land has been managed by Maori in an unmodified state. This Plan acknowledges this and provides for this management ethic to continue and be passed from one generation to the next.

When preparing this approach to Maori Land, consideration was given to firstly treating Maori Land the same as all other land, (no “action” approach), and utilising the “spot zoning” technique common in district schemes prepared under the Town and Country Planning Act 1977.

While the “no action” approach has benefits due to its ease of implementation, it does not reflect the recognition Part II of the Resource Management Act 1991 provides for Maori. It is therefore considered to be an ineffective method of achieving the matters in Part II and is discarded as an inappropriate means of the Council exercising its functions.

The “spot zoning” approach requires specific spatial identification of sites during the preparation of the proposed Plan. This method only provides selective recognition of the matters contained in Part II of the Act, and does not provide the flexibility of the approach adopted. Therefore it was discarded as it was not the most efficient and effective method.

ML 4.0 CROSS REFERENCES

As a guide only, any person referring to the above should also refer to the parts of the District Plan addressing the following issues:

- Information Requirements
- Rural Zone
- Residential High Zone
- Residential Medium Zone
- Residential Low Zone
- Commercial Zone
- Industrial Zone
- Urban Settlement Zone
- Protected Areas Zone

- Transportation
- Subdivision
- Signs
- Financial Contributions
- Hazardous Substances
- Indigenous Vegetation and Habitats of Indigenous Vegetation
- Riparian Management and Public Access
- Relocatable Buildings
- Natural Hazards
- Heritage

