



TANGATA WHENUA VALUES AND MĀORI LAND - POLICIES

ML2.1 Introduction

Section 6 of the Act sets out matters which must be recognised and provided for. Included within this Section is the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. Section 7 of the Act requires that 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:

ML2.1.1 Principle 1: The Essential Bargain

- (a) The Court of Appeal: The cession by Māori of sovereignty to the Crown was in exchange by the Crown for Māori rangatiratanga.
- (b) Waitangi Tribunal: The right of the Crown to make laws was exchanged for the obligation to protect Māori interests.

ML2.1.2 Principle 2: Tribal Self Regulation

- (a) The Court of Appeal: Māori were to retain chieftainship rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.
- (b) Waitangi Tribunal: The Crown has an obligation to legally recognise tribal rangatiratanga.

ML2.1.3 Principle 3: The Treaty Relationship

- (a) 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.
- (b) 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 Māori and the wider community must be met, which will require compromises on both sides.

ML2.1.4 Principle 4: Active Protection

- (a) The Court of Appeal: The duty is not merely passive, but extends to active protection of Māori people in the use of their resources and other guaranteed taonga to the fullest extent practicable.
- (b) Waitangi Tribunal: The Māori 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.

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

The provisions provided for Māori 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.

ML2.2 Issue

- (a) Ensuring section 6(e) of the RMA is recognised and provided for and the Principles of the Treaty of Waitangi are taken into account in resource management decision-making by Council.

ML2.2.1 Objective

- (a) To ensure that Section 6(e) of the RMA is recognised and provided for and that the Principles of the Treaty of Waitangi are taken into account in resource management decision-making by Council.

ML2.2.2 Policies

- (a) To take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in the management of the natural and physical resources
- (b) To consult with the District's Tangata Whenua, where appropriate, actively, early and in good faith.
- (c) To recognise Tangata Whenua and their relationship to the natural and physical resources in the area over which they have mana whenua status.
- (d) To further develop consultation processes with Tangata Whenua.

ML2.3 Issue

- (a) Relationship of Māori Land.

ML2.3.1 Objective

- (a) Sustainable management of the natural and physical resources associated with Māori Land.
- (b) Recognising and providing for the relationship of Māori and Māori Land.



ML2.3.2 Policies

- (a) To recognise tino rangatiratanga of Tangata Whenua of the District in the development of their own resources, consistent with Council's exercise of its functions under the Act.
- (b) To ensure that the development of Māori Land does not create adverse environmental effects on adjoining properties.

ML2.3.4 Explanation of Policies

The policies seek to provide Tangata Whenua with the opportunity to utilise Māori Land for a variety of purposes in recognition of tino rangatiratanga. (The exact translation of tino rangatiratanga into English is debated, with some translations defining the term as a guarantee of Māori sovereignty; others a right to self-determination; others again a right of self-management. However, for the purposes of the District Plan, tino rangatiratanga is recognised in the Tangata Whenua Values and Māori Land Chapter Rules, which provides greater development opportunities on Māori Land than provided for under the general zoning rules.)

Council, in exercising its function to promote the sustainable management of the District's 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 cultural and other effects are avoided, remedied or mitigated.