

# 7 Tangata Whenua

## 7.1 Significant Issues

Protection of Sites of Significance to Maori.

- Participation of tangata whenua in resource management, including consultation.
- Recognition of rangatiratanga and kaitiakitanga.
- Land use activities affecting the quality of waterbodies and associated resources.
- Development of land, including papakainga.
- Issues identified in other chapters of the Plan.

## 7.2 Overview

The Resource Management Act 1991 requires District plans among 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 as a matter of national importance (section 6(e) Resource Management Act 1991);
- To have particular regard to kaitiakitanga (section 7(a), Resource Management Act 1991);
- Take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (section 8 Resource Management Act 1991);
- To have regard to recognised relevant iwi planning documents, the New Zealand Heritage List/Rārangi Kōrero, and regulations relating to taiapure and mahinga mataitai (section 74(2)(b) Resource Management Act 1991).

The functions of territorial authorities (including the Whangarei District Council) are stated in section 31 of the Resource Management Act 1991. In relation to managing particular resources, the regulatory methods adopted by the Council relate directly to those functions listed in Section 31 of the Resource Management Act 1991 (e.g. subdivision) and not to Regional Council functions (e.g. water quality).

The term 'tangata whenua' denotes a relationship between Maori and the land. Generally, Maori use the term to convey their affinity to a particular rohe (area within which iwi claims mana whenua), and derive their identity from their genealogical ties with that land. The land boundaries of these rohe can be defined or recognised by features such as rivers, lakes, mountains, headlands or islands.

The claim to the status of 'tangata whenua' in a particular rohe is based on their long-time association and genealogical ties with that land. Tangata whenua are those who have 'mana whenua' over their land.

The inclusion of this chapter in the Plan does not represent the completion of the process of consultation with iwi (Maori tribe) and hapu (subtribe) in the District. Rather, this chapter establishes a framework and starting point from which the Council and iwi and hapu in the District can develop and maintain a working relationship in resource management matters. In preparing this chapter, and

## 7 Tangata Whenua

those other parts of the Plan which suggest ways in which matters of significance to tangata whenua can be addressed within the framework of the Resource Management Act 1991, the Council acknowledges the support, co-operation and guidance of the people of:

- Mangakahia Maori Komiti;
- Ngati Taka Hapu;
- Ngatiwai Trust Board;
- Te Parawhau o Whangarei;
- Te Runanga A Iwi O Ngapuhi;
- Te Runanga O Ngati Hau;
- Te Runanga O Ngati Hine;
- Te Runanga O Ngati Whatua;
- Patuharakeke Te Iwi Trust;
- Whangarei Maori Executive.

In the preparation of this chapter, the Council has also had regard to the Nga Hapu O Mangakahia Plan (July 1995), prepared by the Mangakahi Maori Komiti, and the planning policies of the Ngatiwai Trust Board. See Chapter 4 (definitions) for interpretation of Maori words.

### 7.2.1 Resource Management Concerns as Identified by Tangata Whenua

The Council understands that the concerns that are of significance to the tangata whenua of the District, in respect to the preparation, implementation and administration of the Plan, may be summarised as follows:

#### **Concerns Related to Participation:**

- Joint resource management with the Council, active participation, and input into the monitoring, enforcement and compliance procedures of the Council, with regular monitoring reports to be provided to tangata whenua.
- Adequate resourcing of iwi and hapu to enable participation in all aspects of sustainable management of their taonga.
- Participation by Maori in the policy, planning and decision-making processes of the Council.
- Recognition of Maori cultural values and tikanga in the policy, planning and decision-making processes of the Council.
- Recognition of marae as a place for consultation for Council and tangata whenua on resource management issues.
- Recognition of Te Reo Maori (Maori language) through the interpretation of the Plan into the Maori language, and the ability to speak Maori in judicial processes.
- Maintaining and enhancing Maori participation in the consultative processes between the Council and tangata whenua.
- Recognition of, and provision for, traditional Maori knowledge in the sustainable management of the District's natural and physical resources. This

## 7 Tangata Whenua

includes the cultural and intellectual property rights associated with matauranga Maori and taonga.

- Ensuring that the appropriate tangata whenua contacts are consulted for applications for resource consents.
- Resourcing for the preparation and implementation of iwi/hapu management plans, and to assist in the process of consulting with government (both central and local) on resource management matters.

### **Concerns Related to Rangitiratanga and Kaitiakitanga:**

- Recognition of, and provision for, customary authority and rights guaranteed by the Treaty of Waitangi/Te Tiriti O Waitangi, including the ability to exercise rangatiratanga and kaitiakitanga.
- Taking account of Maori cultural and spiritual values, including concepts of wairua, mauri, tapu, mana, wehi, karakia, whanaungatanga and manaakitanga.
- Recognition of the role of Maori as being the kaitiaki of their taonga.
- Recognition and provision for kaitiakitanga, including the concepts of rahui and tapu.
- Preservation and protection of the mauri (life force) of natural and physical resources.
- Recognition and provision for rahui as a form of tapu, protection and conservation, where a specific area is set aside under prohibition for a period of time.
- Recognition of the traditional practices of tangata whenua in maintaining and enhancing their relationship with their whenua (land), wai (waters) and other taonga.

### **Concerns Related to Particular Resources:**

- All aspects of water management, including in particular, the importance of maintaining adequate water levels and quality so as to ensure that the mauri of waterways is not demeaned in any way, particularly by pollution and human wastewater discharges to water, treated or otherwise, and the protection of the habitat of the freshwater fishery.
- Protection of those features, places and characteristics of natural and physical resources of special value to Maori, which may include, but are not limited to waahi tapu, tauranga waka (canoe landing site), mahinga kai, mahinga mataitai (food resource from sea), taonga raranga (plants used for weaving), urupa (cemetery or burial site), ancestral lands, wai whakaheke tupapaku and buried whakairo.
- Recognition and provision for the unique conditions pertaining to papakainga (housing for Maori people on Maori land) and communally owned Maori land.

### **7.2.2 The Principles of the Treaty of Waitangi (Te Tiriti O Waitangi)**

The Resource Management Act 1991 requires the Council to take into account the principles of the Treaty of Waitangi/Te Tiriti O Waitangi (The Treaty) when exercising its resource management functions and powers. The principles reflect the underlying importance of the Treaty as the source of constitutional authority in New Zealand, and as the guiding document in the relationship between Maori and the Crown.

## 7 Tangata Whenua

The principles of the Treaty do not supercede the Treaty itself, rather they derive from the Treaty and assist practical application of it. The Court of Appeal has defined these principles, noting that they must be capable of adaptation to new and changing circumstances (social and historical). Consequently additional principles may be developed and existing principles redefined over time.

The Council notes the following principles as being a current reflection of the purpose and intent of the Treaty as interpreted by the Courts, and which are relevant to the management of natural and physical resources.

### **The Principle of Kawanatanga**

Kawanatanga, as ceded by Maori under Article I of the Treaty, gave the Crown the right to govern and to make laws applying to everyone. The Court of Appeal has noted that the principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. The delegation of resource management powers by the Crown to local authorities under the Resource Management Act 1991 empowers local authorities to make and implement District plans.

### **The Principle of Rangatiratanga**

Rangatiratanga (full chiefly authority) over resources including lands, forests, fisheries and other taonga was guaranteed to Maori under Article II of the Treaty. Rangatiratanga includes elements of management, control and tribal self-regulation of resources, in accordance with their own customary preferences.

### **The Principle of Partnership**

The Treaty signified a partnership between iwi and the Crown. The exchange of promises under Articles I and II of the Treaty is seen as an exchange of gifts. The gift of the right to make laws, and the promise to do so in such a way as to accord the Maori interest an appropriate priority, is an example of this exchange. The principles of the Treaty require the Treaty partners to act toward each other reasonably, and with the utmost good faith. Reasonable co-operation and compromise, through effective, early and meaningful consultation by both partners, is also fundamental to this concept of a partnership.

### **The Principle of Active Protection**

The guarantee of rangatiratanga, given in Article II, is consistent with an obligation to actively protect Maori values and interests in their lands, water, waahi tapu and other taonga, to the fullest extent practicable, and to give a priority to these when they may be adversely affected. In the context of resource management, the various elements which underlie and are fundamental to the spiritual association of Maori with the environment (including mauri, tapu, mana, tikanga and wairua), may be described as taonga that have been retained by Maori, in accordance with Article II of the Treaty. The principle of active protection therefore extends to the spiritual values and beliefs of Maori.

### **The Principle of Hapu and Iwi Resource Development**

Article III of the Treaty gave to Maori the same rights and duties as other New Zealand citizens. The Treaty guaranteed to Maori retention of their property rights under Article II, and the choice of developing those rights under Article III. To Maori, the efficient use and development of what are, in many ways, currently under-utilised hapu and iwi resources is a very important principle of the Treaty in the context of the Resource Management Act 1991. The Treaty recognises the right of Maori to develop those resources in accordance with their own needs and

## 7 Tangata Whenua

aspirations. Recognition of the ability and needs for hapu and iwi to develop their resources in a manner which achieves the purposes of the Resource Management Act 1991 is a principle of the Treaty.

It is acknowledged that tangata whenua may recognise the articles of Te Tiriti o Waitangi as distinct from these principles. On-going communication between the Council and tangata whenua may resolve this difference, and/or develop additional principles or redefine these principles over time, as the Court envisaged.

**Note:** It is hoped that this process will result in Memoranda of Understanding being developed between the Council and tangata whenua on co-management of shared natural and physical resources.

### 7.3 Objectives

#### 7.3.1

Within the respective domains of the exercise of rangatiratanga and kawanatanga, ensure that priority is afforded to the act of protection of taonga of tangata whenua, and to the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

*Explanation and Reasons: In the Manukau Report, the Waitangi Tribunal 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 found that the Treaty represented an exchange of gifts. The gift of the right to make laws, and the promise to do so in such a way as to accord the Maori interest an appropriate priority, is an example of this exchange.*

*It is important that the Council and tangata whenua develop and implement an understanding that is relevant and appropriate to the District,. From that understanding of rangatiratanga and kawanatanga, the Council and tangata whenua will better recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga, as a matter of national importance.*

#### 7.3.2

To enable tangata whenua to exercise rangatiratanga and kaitiakitanga over their ancestral lands, waters, sites, waahi tapu and other taonga in the District.

*Explanation and Reasons: Customary authority and rights are the source of well-being of tangata whenua. The ability to exercise rangatiratanga and kaitiakitanga is the ability to exercise political and use rights. Tangata whenua's well-being also includes associated 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.*

*Section 7(a) of the Resource Management Act 1991 requires particular regard to be given to kaitiakitanga. In Maori cultural terms, kaitiakitanga is a part of rangatiratanga. Section 5(2) of the Resource Management Act 1991 also requires the Council to manage resources in the way that enables the well-being of people*

## 7 Tangata Whenua

*and communities. The exercise of rangatiratanga and kaitiakitanga contributes to tangata whenua's well-being and helps to ensure that the mauri of taonga is healthy and strong.*

### 7.3.3

In the implementation of this Plan no action will be taken which will knowingly exacerbate registered treaty claims.

## 7.4 Policies

### 7.4.1 Interests of Tangata Whenua

To ensure that in the use, development and protection of natural and physical resources, the views and interests of the tangata whenua are fully represented at every stage of the process, including the preparation and implementation of the District Plan.

*Explanation and Reasons: In order to recognise the respective domains of the exercise of rangatiratanga and kawanatanga when managing the natural and physical resources of the District, it is important that tangata whenua and the Council reach and implement an understanding of the relationship between the two concepts. The inclusion of this policy reflects the limitations under which the Council acts in the management of natural and physical resources, (i.e., delegated authority from the Crown) and signals a need for flexibility and tolerance in the application of this understanding.*

### 7.4.2 Sites of Significance to Maori

To ensure that land use, subdivision and development does not adversely affect Sites of Significance to Maori, or other taonga identified in the District Plan or Hapu Environmental Management Plans.

*Explanation and Reasons: The Council is required 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, under the Resource Management Act 1991.*

*Traditional Maori culture and values are closely linked to the environment. Land, in particular, confers dignity and rank, is the resting place for the dead, a spiritual base for traditional beliefs and a heritage for future generations. Land establishes personal and tribal identity, is a symbol of social stability and is an important source of emotional and spiritual strength.*

*The High Court has indicated that, in considering the effects of activities on the relationship of tangata whenua with ancestral land, there must be some factor, or nexus, between Maori culture and traditions, and the land in question, which affects the relationship of Maori people to the land. For example, the extent to which a special relationship is claimed through several generations is one factor.*

## 7 Tangata Whenua

*The principles of the Treaty which the Council must take into account (section 8 Resource Management Act 1991), include active protection of taonga as a means to enable hapu and iwi to exercise rangatiratanga over their resources. Section 6(e) of the Resource Management Act 1991 requires the recognition and provision for the relationship of Maori people with their taonga. Tangata whenua have expressed concern for the quality and condition of areas and places of significance to them. Of particular concern is the need to protect waahi tapu from desecration through development. Some Sites of Significance to Maori are shown on the Planning Maps, and others will be identified in Hapu Environmental Management Plans.*

*In addition to specific places of significance, archaeological sites may include signs of Maori occupation within the District, such as middens, ovens and caves. Archaeological sites are a connection to past generations and are a source of information on their activities. The Heritage New Zealand Pouhere Taonga Act 2014 requires an archaeological authority to be granted for any destruction, damage or modification of an archaeological site. As archaeological sites are defined under the Heritage New Zealand Pouhere Taonga Act 2014, in terms of human activity prior to 1900, many will be of significance to tangata whenua. Tangata whenua should be consulted regarding any proposal to modify, damage or destroy such sites.*

### 7.4.3 Waterbodies

To ensure that indigenous wetlands, estuaries, coastal areas and waterbodies, of significance to tangata whenua, are maintained and enhanced, and that access for tangata whenua to those water bodies is provided.

*Explanation and Reasons: Water bodies are of social, cultural and spiritual value to Maori and contain resources important for their well-being. Water bodies are areas of mahinga ka, which provide an important source of the traditional food of the Maori, such as the tuna (eel) and kawai (freshwater cray-fish). These traditional food sources are central to their economic, spiritual and cultural well-being. Traditional food resources of the District are degraded due to past destruction of habitat, degradation of water quality, discharges from land development activities, water extraction for farming and horticultural purposes, the damming and drainage of the waterways and the introduction of predators. It is therefore important that waters and indigenous wetlands are sustainably managed for protection and enhancement of those mahinga kai areas, and the food resources therein, and that access to these traditional food resources for tangata whenua is maintained.*

### 7.4.4 Consultation

To ensure effective consultation with, and participation of tangata whenua in resource management processes by:

- Fostering partnerships and relationships with the tangata whenua of the area;
- Avoiding unnecessary conflict on resource management issues;
- Recognising and respecting iwi authority and affiliations;

## 7 Tangata Whenua

- Acknowledging and providing for historical circumstances and their impacts on resource needs;
- Respecting tikanga Maori;
- Acknowledging the rights of hapu and whanau to speak and act on matters that affect them;
- Allowing tangata whenua time for informed assessments of proposals and to determine their responses, consistent with the time constraints in the Resource Management Act 1991;
- Encouraging applicants to consult tangata whenua, where appropriate.

*Explanation and Reasons: Consultation is considered both a principle of the Treaty of Waitangi, and a duty to ensure that the principles are given effect to. Essential elements of general consultation have been defined by the High Court. These elements include: sufficient information being provided to the consulted party, sufficient time for participation and consideration of information and genuine consideration of advice received. For consultation with tangata whenua on resource management matters, four particular elements of consultation can be identified:*

- a) Consultation needs to be conducted on a marae of the tangata whenua, in mutual good faith and to a sufficient degree so that Councils are familiar with the nature and substance of the interests and concerns of tangata whenua.*
- b) Consultation does not mean consensus. Councils must consult for a reasonable time in a spirit of goodwill and open-mindedness, so that all reasonable planning options are carefully considered and explored. If the outcome is disagreement, then this has to be accepted.*
- c) Consultation should be ongoing, and an integral part of processes expected, to monitor the suitability and effectiveness of a plan. Councils should re-open consultation if other factors and information are brought to its notice and necessitate review of the understanding previously reached.*
- d) Consultation should not fetter the decision-making responsibility. Councils must be free to determine submissions or cross-submissions made on a plan without being fettered in their decision-making responsibility by an understanding reached prior to the notification of the plan.*

*In order to assess the actual or potential effects of proposals, the Council will encourage applicants to consult with tangata whenua, where the District Plan requires effects on Sites of Significance to Maori to be identified, or where tangata whenua make Council aware that they are an affected party.*

### 7.4.5 Use of Maori Land

To enable tangata whenua to use, develop and protect their lands in accordance with their cultural preferences, consistent with the purpose of the Resource Management Act 1991.

*Explanation and Reasons: Planning policies and rules may limit tangata whenua use rights over their own land. The principles of the Treaty indicate that the Plan should enable Maori people to live in accordance with their cultural values, as*

## 7 Tangata Whenua

*guaranteed in the Articles, subject to the effects of their activities being in accordance with the purpose of the Resource Management Act 1991: promoting the sustainable management of natural and physical resources. This also fulfils the Council's statutory responsibilities in terms of section 6(e) of the Resource Management Act 1991.*

### 7.4.6 Iwi Management Plans

To take into account any relevant planning document recognised by an iwi authority when preparing or changing a District Plan to the extent that its content has a bearing on resource management issues of the District.

## 7.5 Methods

### 7.5.1 Regulatory Methods

- Identification of all currently known heritage areas of significance to Maori (Policy 7.4.2).
- Update currently known heritage areas of significance for Maori as new information becomes available.
- Record, on the planning maps, those Sites of Significance to Maori as validated information becomes available (Policy 7.4.2).
- Zone rules providing for esplanade reserves and strips in locations having regard to the cultural preferences of tangata whenua (Policy 7.4.3).
- Resource Area rules relating to Sites of Significance to Maori when requested by tangata whenua (Policy 7.4.2).
- Resource consent conditions and requirements for the identification and recognition of any effects on Sites of Significance to Maori (Policy 7.4.2).
- Develop criteria, in consultation with tangata whenua, by which iwi/hapu management plans can be prepared for consideration by Council (Policy 7.4.6).
- Consider initiation of Plan changes to address substantive issues arising from iwi/hapu management plans.
- Council to ensure that assessments of effects on the environment identify any tangata whenua groups that may be affected by a proposal, the consultation undertaken with those groups, and any response to the views of the tangata whenua consulted (Policy 7.4.4).
- Infringement notices, enforcement orders, abatement notices and prosecution for illegal destruction of heritage areas (Policy 7.4.2).
- To consider transfer of powers under section 33 of the Resource Management Act to enable tangata whenua to manage the use and development of Maori land, or heritage areas of significance to Maori, in circumstances where the criteria specified in Section 33(4) of the Resource Management Act are satisfied (Policies 7.4.1, 7.4.3 and 7.4.5).
- To consider transfer of powers under section 33 of the Resource Management Act to make decisions on applications for Marae, Papakainga and kaumatua housing for tangata whenua (Policy 7.4.5).

## 7 Tangata Whenua

*Explanatory Note: This plan makes reference to ‘Sites of Significance to Maori’ and ‘heritage areas of significance to Maori’. The difference between these terms is that the former deals with those sites that are identified on the planning maps and are protected through particular rules and performance standards, whilst the latter deals with those areas which are not yet so identified.*

### 7.5.2 Other Plans and Legislation

- The Northland Regional Policy Statement and Regional Plans (Policy 7.4.5).
- The Heritage New Zealand Pouhere Taonga Act 2014 contains provisions for all archaeological sites, whether recorded or not. To modify or destroy a site requires consent from the Heritage New Zealand Pouhere Taonga (Policy 7.4.2).
- Iwi Management Plans and Hapu Environmental Management Plans (Policy 7.4.6).

### 7.5.3 Information, Education and Advocacy

- Meetings with tangata whenua to investigate the application of sections 33 and 34 of the Resource Management Act 1991 to multiple-owned Maori land and identified Sites of Significance to Maori (Policy 7.4.1).
- Liaison with the Northland Regional Council, Department of Conservation and adjacent territorial authorities (Policy 7.4.1).
- Liaison with other organisations involved in resource management, for example the Heritage New Zealand Pouhere Taonga (Policy 7.4.1).
- Consultation with tangata whenua on resource management issues and the co-management of council land containing Sites of Significance to Maori (Policy 7.4.4).
- The collection and maintenance of information on treaty claims relevant to resource management in the District (Objective 7.3.3, Policy 7.4.1)
- Appointment of persons with appropriate expertise in Maori culture, traditions and values as hearings Commissioners or members of a Council Hearings Committee in matters of particular significance to tangata whenua including applications on land over which there is a treaty claim (Policy 7.4.4). Such persons will be appointed in consultation with the appropriate tangata whenua.
- Provision of advice and information to tangata whenua on activities that may have adverse effects on Sites of Significance to Maori (Policy 7.4.4).
- Recognise the authorised and mandated representatives of tangata whenua associated with particular Sites of Significance to Maori, and for general consultation purposes (Policy 7.4.4).
- Development of an administrative process of liaison with tangata whenua that provides early and sufficient information on all resource consent applications, allowing for a reasonable response period (Policy 7.4.4).

## 7 Tangata Whenua

- Holding resource management hearings on Marae, or at other appropriate venues, where there are particular matters that require expression by tangata whenua in a culturally appropriate situation (Policy 7.4.1).
- Educational opportunities for council members and officers in Tikanga Maori, Te Reo Maori, and the Treaty (Policy 7.4.4).
- Acknowledging traditional Maori place names where possible (Policy 7.4.4).
- Correction of existing erroneous Maori place names within the District with a corresponding public education campaign.
- That tangata whenua have the opportunity for effective input into the provision of road names.
- Raising public awareness of the importance of protecting Sites of Significance to Maori (Policy 7.4.4).
- Protection of sensitive information in the course of proceedings as provided for in section 42 of the Resource Management Act 1991 (Policy 7.4.1).
- Educational opportunities for tangata whenua on their marae in all aspects of sustainable management of resources, planning processes, and council policies (Policy 7.4.4).
- Promote public awareness of the protected nature of sites of significance to tangata whenua.

### 7.5.4 Economic Instruments

- Annual Plan allocation for assisting other protection agencies (Policy 7.4.1).
- Provision of rates' relief as an incentive and a method of compensation for those land owners whose land, or part of whose land, is identified as a Site of Significance to Maori, be incorporated in the Annual Plan process (Policy 7.4.2).
- Provision of rates' relief as an incentive and a method of compensation for those landowners who voluntarily covenant land for the protection of heritage areas of significance to Maori (Policy 7.4.2).
- Conditions on resource consents and designations, including financial contributions, to remedy or mitigate effects on heritage areas of significance to Maori (Policy 7.4.2).
- Resourcing of Hapu Environmental Management Plans under the Annual Plan Policy 7.4.1).
- Impose financial penalties for illegal destruction of heritage areas of significance to tangata whenua (Policy 7.4.2).

### 7.6 Anticipated Environmental Results

The following results are expected to be achieved by the foregoing Objectives, Policies and Methods. The means of monitoring whether the Plan achieves the

## 7 Tangata Whenua

expected outcomes are set out in the Whangarei District Council Monitoring Strategy.

- The Whangarei District Council, in the exercise of its functions and powers, takes into account the principles of the Treaty of Waitangi.
- The Whangarei District Council recognises and provides for the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga, and has particular regard to kaitiakitanga.
- The Whangarei District Council undertakes effective consultation with tangata whenua and ensures effective participation of tangata whenua in resource management processes.
- Sites and heritage areas of significance to Maori are identified, assessed, afforded protection and shown on the planning maps in the District Plan.
- The adverse effects of subdivision, use and development on sites and heritage areas of significance to Maori are avoided, remedied or mitigated.