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1A TANGATA WHENUA

1A.1 Introduction

Maori make up approximately 47% of the population of the District, have substantial landholdings and have long-established skills and customary practices in the management of environmental resources.

Council recognises Tangata Whenua of the Gisborne Region as being the Iwi, Hapu and Marae of the region, or representative bodies.

In recognition that Maori and the Crown are Treaty partners, the Resource Management Act 1991 makes provision for a significant increase in the involvement of Tangata Whenua in resource management. It requires Maori values to be taken into account in the planning process and reflected in outcomes.

Section 6 (Matters of National Importance) requires that the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, Wahi Tapu, and other Taonga is recognised and provided for. Section 7 (Other Matters) of the Act states that Kaitiakitanga shall be given particular regard and Section 8 (Treaty of Waitangi) states that the Principles of the Treaty of Waitangi shall be taken into account by all persons exercising powers, duties and functions under the Act.

The Principles of the Treaty

The Maori are the Tangata Whenua (original inhabitants) and have rights which are guaranteed by the Treaty of Waitangi (Te Tiriti O Waitangi). The Treaty has been interpreted as embodying four principles which must be taken into account by persons exercising functions and powers under the Resource Management Act 1991. The first is the essential bargain between the Crown and Maori. This has been interpreted by the Court of Appeal¹ to mean the cession of Maori sovereignty to the Crown in exchange for tino rangitiratanga (tribal authority or self management). The second principle is tribal self regulation i.e. the Crown has an obligation to legally recognise tribal rangitiratanga. The third principle is the Treaty relationship. This implies a partnership and a duty to act reasonably and in good faith. Inherent in it is the notion of reciprocity - the exchange of the right to govern for the right of Maori to retain their full tribal authority and control over their lands and all other valued possessions. The fourth principle is one of active protection. The Court of Appeal stated that this 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. It carries also the obligation for the Crown to grant at least some form of redress for grievances where these are established.

Recognition of Kaitiakitanga

Kaitiakitanga is defined, in the Act, as:

"the exercise of guardianship and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself."

It is apparent this needs to be cited properly, or it has no weight, that this traditional Maori stewardship ethic has much in common with the "sustainable management" purpose of the Resource Management Act 1991. Inherent in this concept (of Kaitiakitanga) is the understanding that members of the present generation have a responsibility passed to them by preceding generations to care for the natural environment. Kaitiakitanga carries with it an obligation not only to care for the natural world, but also for each generation, by ensuring that a viable sustainable environment is passed on. Individuals, or tribal units, act as Kaitiaki over particular resources and ensure that their use is consistent with tribal laws.

¹ New Zealand Maori Council v The Attorney-General [1987] 1 NZLR 641 (Court of Appeal, Cooke PJ); and
New Zealand Maori Council v The Attorney-General [1992] 2 NZLR 576

Kaitiaki are Tangata Whenua who have the authority to exercise the guardianship role on behalf of Maori.

Notwithstanding the definition in the Act, the concept of Kaitiakitanga can mean different things to Iwi, Hapu and Marae.

Consultation with Tangata Whenua

Consultation is seen now more as a duty, rather than a principle as such. The duty is an active one requiring Council to consult early and in good faith.

This should include:

- A genuine invitation to give advice and a genuine consideration of advice given,
- The provision of sufficient information and time for the consulted party to be adequately informed, to approve the information and make useful responses;
- The party obliged to consult, keeping its mind open, being ready to change and to seek consensus.

The Courts more recently have adopted a holistic application of sections 6(e), 7(a) and 8. All these sections, including the Treaty principles of active protection and partnership, as well as consultation, need to be taken into account when making decisions.

Tangata Whenua choose to group themselves, or be represented, in a variety of ways. This includes Runanga, Iwi Trusts, Hapu Trusts, Marae Trusts, Land Trusts, Whanau Trusts or other designated authority.

Council recognises that it may be necessary to consult with the Iwi, Hapu and Marae on matters of specific local concern. Council has specific obligation during the preparation of a proposed policy statement or plan under the First Schedule Part 1 Cl. 3(d) of the Act to consult with the Tangata Whenua of the area who may be so affected, through Iwi Authorities and Tribal Runanga. The Council also recognises that there are Iwi organisations based in the Bay of Plenty and Hawkes Bay whose rohe extends into the Gisborne Region. The Council accepts an obligation to consult also with those organisations.

Maori Liaison Office

The Maori Liaison Office responsibility is as follows:

- a) To assist Council in identifying issues and policy areas to be addressed in any proposed policy statement or plan.
- b) To provide policy advice to Council on any issues of concern to Maoridom;
- c) To assist in the preparation and distribution of any proposed policy statement or plan.
- d) To assist Council in ensuring effective and appropriate Tangata Whenua consultation is undertaken.
- e) To facilitate a two-way flow of information between the Council and the Maori Community.
- f) To assess and monitor Council policy and activities which affect Maori and recommend appropriate policy changes to Council or divisions of Council.
- g) To assist Maori as a point of contact in working with Council in respect to resource management issues.
- h) To identify that Iwi, Hapu and Marae contacts, protocols and processes undertaken are correct.

Iwi Resource Management Strategies or Plans

An Iwi, Hapu or Marae strategy is a policy document, expressing what the important issues are to Iwi, Hapu and Marae, such as regarding the use of natural and physical resources. An Iwi, Hapu and Marae Resource Management Strategy is made up of various components, and this is described under Section 4.6.1 in the Regional Policy Statement.

There are no statutory obligations to prepare Iwi, Hapu and Marae strategies, and there is no particular format or process which such a strategy should follow. It could be closely linked to or part of an Iwi, Hapu and Marae development plan.

The Resource Management Act imposes a duty on decision-makers to consider the Treaty of Waitangi, and local authorities must consult with Tangata Whenua in a variety of situations. Iwi, Hapu and Marae strategies are one way in which Iwi, Hapu and Marae can participate in the system established by the Act to manage the effects of the use of natural and physical resources.

When local authorities are preparing or changing plans and policy statements under the Act, they must have regard to Iwi, Hapu and Marae strategies to the extent that their contents has a bearing on resource management issues (Section 74(2)(ii)). This does not mean that the local authority is bound to follow an Iwi, Hapu or Marae strategy. Local authorities must balance a number of apparently competing interests, including Maori interests.

The Act lists a number of principles which decision makers must have a regard to the importance of, one of which is Maori and their culture and traditions with their ancestral lands, waters, sites, and other Taonga (Section 6(e)). The weighting that each principle gets depends on the circumstances that the decision maker is considering.

However, it does mean that local authorities must at least be aware of the issues and, where it is in accordance with the Act, support or give effect to the objectives of the strategy. The advantages to local authorities are clear. There would be greater recognition of local community issues and understanding, and therefore, less likelihood of challenge before the Courts or Tribunals, and in some cases the Iwi, Hapu or Marae strategy could also help the consistency of District Policies and Plans.

1A.2 Issues

- 1A.7.1 Council and the wider community struggles with the issue of how to recognise, have regard to, and provide for Tangata Whenua values, customs, rights and interests in the district.
- 1A.7.2 Resource management processes are unfamiliar and daunting for Tangata Whenua who have limited resources. This discourages Tangata Whenua from participation and Tangata Whenua consider their issues are not given due consideration.

1A.3 Objectives

- 1. To promote, where practicable, the preservation and protection of sites of value to Maori.
- 2. To recognise and provide for the relationship of Maori with their culture, traditions, ancestral lands, and other resources.

Note:

- 1. The District Plan has specifically provided for cultural heritage in Chapter 3, which provides rules and policies for the recognition and protection of cultural heritage. This includes archaeological sites, wahi tapu area schedule and a heritage protection layer which is a predictive model of human settlement. In recognising and protecting our cultural resource the Plan meets requirements of Sections 5, 6(e), 7(e), 8, 74(2)(b)(iia) and Second Schedule Part II 2(c) of the Act.

2. The District Plan has specifically provided in Chapter 16 for papakainga and marae settlements. This is consistent with Maori cultural values and customs in relation to their traditional lands, waters, Wahi Tapu and other Taonga. This chapter upholds within the limits of the Act, kaitiakitanga and rangatiratanga rights of Iwi.
3. The monitoring chapter will specifically cover plan effectiveness monitoring, consent compliance monitoring, state of the environment monitoring and the integration and dissemination of information.

Principal reason (1): This objective recognises that culturally important sites need to be preserved and protected where this is possible.

Principal reason (2): Maori as Tangata Whenua are the Kaitiaki of the environment and this concept includes the need to preserve systems as much as distinct resources. It recognises that Maori are an integral part of natural systems and cannot be separated from the well being of the system. If Maori are separated then the function of Kaitiaki cannot be exercised and the integrity of the relationship between Maori and natural and physical resources falters. Section 6(e) of the Resource Management Act 1991 requires that this integrity be maintained.

1A.4 Policies

1. To take account of the guarantee of rangitiratanga and its relationship with kawanatanga in resource management planning
2. To recognise that each Iwi, Hapu and Marae has its own priorities and preference for the management of resources and to respect those priorities and preferences within the limits of the Act.
3. To encourage applicants for resource consents to consult with Tangata Whenua.
4. To recognise, and provide for, the Kaitiaki responsibilities of Tangata Whenua.
5. To have regard to any relevant planning document recognised by the appropriate Iwi, Hapu or Marae.
6. To give consideration to appointing to a hearing committee or a panel of independent commissioners considering a resource management issue involving values important to Maori, a commissioner or commissioners with expertise in Maoritanga including Kawa (protocol) and Kaitiakitanga. Any commissioner so appointed should have sufficient expertise to address issues of sensitivity to Tangata Whenua.
7. To ensure that the Maori language and Maori place names are recognised in the exercise of any of Council's functions, powers and duties under the Act.
8. To establish with Tangata Whenua a consultation network with the constituent Iwi, Hapu and Marae of the Gisborne District who have mana whenua in the district. This is for the purpose of establishing processes and protocols to enable full and effective participation in resource management processes.

Explanation (1): Section 8 of the Resource Management Act 1991 requires everyone who exercises powers, duties and functions under the Act to take into account the principles of the Treaty of Waitangi. At the heart of the Treaty are the principles of Rangatiratanga and Kawanatanga. This Policy directs the Gisborne District Council to take these principles into account. This Policy supports Objectives 1A.8(2) and 3.3(1).

Principal reason (1): This Policy is required to give effect to Section 8 of the Resource Management Act 1991 when Council and Consent Authorities within the Gisborne District exercise powers, duties and functions under the Act.

Explanation (2): Iwi, Hapu and Marae form the base unit of decision making within Maoridom. Each Iwi, Hapu and Marae may express its priorities and needs independently of any other Iwi, Hapu and Marae and give emphasis to particular resource management needs quite independently of other Iwi, Hapu and Marae. One means of identifying the priority and needs of Iwi, Hapu and Marae may be through Management Plans. This Policy is designed to recognise this fact. This Policy supports Objective 1A.8(2) and 16.3(1).

Principal reason (2): To ensure that the Iwi, Hapu and Marae is recognised as the base unit of decision making in Maoridom so that appropriate emphasis is given to the views of Iwi, Hapu and Marae when considering the relationship of Maori and their culture.

Explanation (3): Council has an obligation to consult with the Tangata Whenua of the Gisborne Region. Applicants for resource consents, in Section 88(4) and the Fourth Schedule of the Resource Management Act 1991, are encouraged to consult generally, including consultations with Tangata Whenua. The purpose of this Policy is to encourage applicants for resource consents to provide evidence of genuine attempts to consult with Tangata Whenua in good faith. This Policy supports Objectives 1A.8(2) and 3.3(1).

Principal reason (3): It is important for all applicants seeking resource consents to be encouraged to consult with Tangata Whenua so that appropriate consultation has been undertaken.

Explanation (4): This Policy, recognises that in order to give effect to Section 6(e) of the Resource Management Act 1991, which states, "that it is 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, Wahi Tapu, and other Taonga" provides for this important relationship between Maori and the district. This Policy supports Objective 1A.8(2), 3.3(1) and 16.3(1).

Principal reason (4): This Policy is necessary to conform with Section 6(e) of the Resource Management Act 1991 because Kaitiakitanga is a central tenant of Maori Culture.

Explanation (5): Policy 1A.9(2) states that each Iwi, Hapu and Marae has its own priorities and preferences for the management of district resources. An issue that arises from this statement is how should these preferences be identified. This Policy identifies one mechanism Council may use to assist in this. This Policy requires Council to examine relevant planning documents when exercising its powers, duties and functions with a view to understanding the issues of concern to Iwi, Hapu and Marae affected and providing for those concerns to be considered where appropriate. This Policy supports Objectives 1A.8(2)

Principal reason (5): This Policy is an extension of Policy 1A.9(2) stated above and provides a means by which Council may be able to identify the distinctive management needs of Iwi, Hapu and Marae and take these into account when exercising any power, function or duty under the Resource Management Act 1991 without removing the need to meet the purpose of the Act.

Explanation (6): There may be issues under consideration arising from resource consent applications where values of cultural and traditional importance to Maori are involved. Council should ensure experts in the culture and traditions of the Tangata Whenua concerned are part of the independent panel of commissioners. Such an appointment will assist in achieving Policy 1A.9(1) above. This Policy supports Objective 1A.8(2).

Principal reason (6): This Policy assists Council to give effect to the principles of the Treaty of Waitangi by recognising Rangatiratanga when considering local issues of importance to Maori.

Explanation (7): The Maori language is a Taonga of great importance to Maori and, in itself, should be protected as a resource. It is also an official language of New Zealand. If Council is to recognise and provide for, as a matter of national importance, the relationship of Maori and their culture and traditions with their Taonga, then it is important that the Maori language is accepted and cherished. This Policy supports Objective 1A.8(2)

Principal reason (7): This Policy is a requirement of Section 6(e) of the Act and recognises that Maori is an official language of New Zealand/Aotearoa.

Explanation (8): The Regional Policy Statement for the Gisborne Region specifies that Council must establish a consultation mechanism with Hapu of the Gisborne Region. This Policy provides for this requirement in the context of the district. This Policy implements Objectives 1A.8(1), 1A.8(2), 3.3(1) and 16.3(1.) It also assists in the implementation of Policy 1A.9(1).

Principal reason (8): In order for Council to implement all its Objectives in relation to Maori, it is essential that Council develops a mechanism which facilitates direct communication with Iwi, Hapu and Marae that are affected by issues.

1A.5 METHODS OF IMPLEMENTATION

1A.5.1 Management

1. The Council may consider the transfer of its functions, power and duties, in accordance with section 33 of the Act, where it is satisfied that the transfer is desirable on all of the following grounds:
 - (a) The authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power or duty;
 - (b) Efficiency;
 - (c) Technical or special capability or expertise.
2. The Council may invite Iwi, Hapu and Marae in the district to compile a list of commissioners for possible appointment as independent commissioners where applications for resource consents affect Iwi, Hapu or Marae.
3. The Council shall, in accordance with Tikanga Maori and pursuant to the Maori Language Act 1987 (Te Reo Maori), provide for the use of the Maori Language before any hearing committee considering resource management issues within the district. Early indication by people of the intention to use the Maori language will facilitate the provision of a translator for the benefit of those people who cannot speak Maori.
4. The Council may provide for hearings under the Resource Management Act 1991 to be held, where appropriate, on Marae.

Principal reason (1): Where a specific function has been identified as being of special value to Tangata Whenua, the local authority may consider the transfer of its functions, powers and duties to Iwi, Hapu and Marae authorities. This Method implements Policies 1A.9(1)) and 1A.9(4).

Principal reason(2): In order for Maori to fulfil their Kaitiaki responsibilities and to recognise Rangatiratanga, it may be appropriate for Maori representatives to act as commissioners for some hearings in order to assist the hearing committee to arrive at decisions that take into account the perspectives of the Maori culture. It would assist the Council if a list of suitable people was drawn up prior to the need arising. This Method is designed to achieve this and implements Policy 1A.9(7).

Principal reason (3): The Maori language is a Taonga of Maori and an official language of New Zealand. Section 39(2) of the Resource Management Act 1991 provides for the Maori language to be used when giving evidence in accordance with the Maori Language Act 1987. While it is not necessary to repeat the Act, in this case it is useful to do so in order to ensure that those who wish to use the Maori language at hearings understand that they may do so. This Method implements Policy 1A.9(8)).

Principal reason (4): A concern expressed frequently by Maori and Council is the fact that Maori find the process and trappings of Hearings uncomfortable and foreign. This may inhibit Maori participation in the Resource Consent process which places at risk values and perspectives important to Maori. This Method recognises that there may be circumstances where hearings should be held on Marae, where Maori would feel more able to express their views. While this may inhibit other people attending, the net benefit may override the discomfort when Maori feel they can participate more fully in the Resource Management process. It is relevant to note that the Environment Court has sat on Marae to conduct its business. This Method implements Policy 1A.9(1).

1A.6 ANTICIPATED ENVIRONMENTAL RESULTS

- a) Special value sites within the district will be protected in accordance with Tangata Whenua aspirations.
- b) The cultural well-being of the district's communities will be enhanced.
- c) Greater amenity value associated with the district's environment.
- d) Greater involvement and responsibility of Tangata Whenua in the management of the district as Kaitiaki of the Gisborne District.