

PART FIVE - MAORI DEVELOPMENT

NOTE:- LAKES A ZONE

Part Five has relevance within the Lakes A Zone. Refer to Part Five that is part of Rule 1.1 of the Lakes A Zone.

1. INTRODUCTION

1.1 BACKGROUND

The central pieces of resource management legislation comprising the *Environment Act 1986*, *Conservation Act 1987*, *Crown Minerals Act 1991*, *State Owned Enterprises Act 1986*, and the *Resource Management Act 1991* contain provisions relating to the Treaty of Waitangi or its principles which must be taken into account or provided for in their administration.

The principles are general statements on a national scale which aim to reflect the partnership which is implicit in the Treaty of Waitangi. Section 8 of the *Resource Management Act 1991* requires that:

"In achieving the purpose of this Act, all persons exercising functions and powers under 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)."

Five principles of the Treaty of Waitangi have to date been identified by the Waitangi Tribunal and the courts based on individual claims and cases that have come before them. The five principles are summarised in **Appendix X of Part Eighteen**. The Courts and Tribunal have emphasised the evolving nature of Treaty interpretation, which new considerations may further modify or enlarge.

Two strong themes have emerged in the expression of Treaty principles; partnership and active protection of resources of importance to Maori in accord with Maori cultural and spiritual values. In relation to the second element, Section 6(e) of the *Resource Management Act 1991* states that:

"In achieving the purpose of this Act, all persons exercising functions and powers under it in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for [as a matter of national importance] the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."

The *Resource Management Act 1991* itself also makes kaitiakitanga a matter to which all persons exercising powers and functions under the Act must have particular regard to under Section 7(a). 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.”

Kaitiakitanga supports the sustainable management of the natural and physical resources which is the purpose of the *Resource Management Act 1991*. In fact it is the responsibility of all agencies in the District to exercise the principle of kaitiakitanga in managing any natural or physical resource. This includes the operations of the District Council, regional councils and iwi authorities in preparing and implementing their plans.

Part Four identifies the following significant resource management issues which are of particular concern to the tangata whenua of the District:

- Resource management practices do not always adequately recognise the principles of the Treaty of Waitangi; and
- Some activities have the potential to adversely affect Maori cultural and spiritual values.

In addition, **Part Four** identifies certain unsustainable land management practices, and the adverse environmental effects associated with certain activities on amenity values, natural heritage and water bodies, as significant resource management issues. Certainly the principle of kaitiakitanga is important in these cases, which may include development proposals on behalf of the tangata whenua.

These issues are very much interrelated. However, in order to clearly illustrate the links between them and the means for dealing with them, each issue is described in turn in the sections that follow, along with a related Objective, Policy or Policies, a summary of Methods of Implementation and the Anticipated Environmental Results. This arrangement also assists in making the rationale for the provisions of **Part Five** more transparent. Generally, the Methods of Implementation summarised in **Part Five** are contained in **Parts Seven, Ten and Eleven**.

2. RESOURCE MANAGEMENT ISSUES

2.1 ISSUE ONE

RESOURCE MANAGEMENT PRACTICES DO NOT ALWAYS ADEQUATELY RECOGNISE THE PRINCIPLES OF THE TREATY OF WAITANGI

The use, development and protection of resources has sometimes in the past been carried out without adequate recognition of the responsibilities presented by the Treaty of Waitangi. Some Maori still believe this is the case. Practices such as

discharging effluent into water and allowing housing over urupa and other waahi tapu, were often undertaken because of a lack of appreciation by developers and authorities of the significance of water or sites to the tangata whenua. Planning provisions and consenting procedures did not always take sufficient account of multiple Maori land ownership and the Maori tribal decision-making processes which rely on consensus.

When tangata whenua interests are not given adequate recognition in the planning process, this may lead to poor decisions, alienation (and thus to not accepting or having a stake in decisions), and feelings of grievance. This could be in conflict with both the principles of the Treaty and Section 6(e) of the *Resource Management Act 1991*.

Because of the long history of resource management that has taken inadequate cognisance of Treaty principles there is often a history of grievance felt by tangata whenua which affects relationships between them and authorities such as Council.

The second principle of the Treaty of Waitangi is that of self management or rangatiratanga. This principle arises from the second article of the Treaty which guarantees to Maori the control and enjoyment of those resources which they wish to retain. Maori retain a number of resources within Rotorua District, and there are others over which iwi currently have claims to the Waitangi Tribunal.

The second principle should be considered in conjunction with the fourth, which establishes the principle of reasonable co-operation between two peoples.

An important resource which Maori retain around Rotorua is land. Land has always been seen as important to the mana of iwi, and is increasingly being recognised as an important economic resource. Although Maori land, especially the larger blocks, has been used for pastoral farming and forestry for some time, iwi are beginning to look to using their land for more intensive uses. One example of such a more intensive use is papakainga development. Papakainga development usually centres around the establishment of housing and communal facilities, but it may also include the development of employment initiatives. This development may be agriculturally based but it need not be: it can include tourist ventures, workshops, packing sheds or, potentially, light industrial plants.

These developments have the potential to adversely affect the environment in the same way as similar developments elsewhere. Effects such as visual and landscape impacts, water supply and waste disposal, noise, and vehicle access problems may be generated. If the development includes light industry then hazardous substances or wastes may be involved.

Iwi see the rangatiratanga principle as enabling them to undertake these developments without, or with the minimum of, outside control. Nevertheless, Council has the legal responsibility to ensure that significant adverse effects are adequately avoided, remedied or mitigated. There is also a desire by at least some iwi authorities for them to undertake rangatiratanga and kaitiakitanga in accordance with Iwi Management Plans. Section 74 of the *Resource Management Act 1991* requires Council to have regard to such plans when preparing its District Plan. However, the law at present does not give Iwi Management Plans statutory standing in terms of consents or performance

standards for permitted activities. There are thus issues about enabling iwi to exercise rangatiratanga, and about their expectations of doing so in accordance with management plans, whilst ensuring Council fulfils its resource management responsibilities within the law, and in accordance with its resource management Objectives and Policies .

Kaitiakitanga, to which Council must have particular regard, is closely related to both culture and traditions, and to rangatiratanga. Rangatiratanga enables iwi to exercise kaitiakitanga in accordance with their traditions.

2.1.1 RESOURCE MANAGEMENT OBJECTIVES

(a) *The principles of the Treaty of Waitangi be taken into account in Council's resource management practice.*

(b) *Recognition of the importance of rangatiratanga to iwi.*

2.1.2 POLICY

In order to give practical effect to Section 8 of the *Resource Management Act 1991*, the District Council must have a working understanding of the principles of the Treaty of Waitangi. Consultation is one of the principles.

The term “consultation” is being defined by a developing body of case law. The main elements are that:

- It occurs as early as possible in the decision-making process, and sufficient time is made available;
- Sufficient information is provided to enable informed responses to be made;
- Council has an open mind and a willingness to change.

A key principle which has been stressed is the need to exercise good faith in the development and exercise of partnership between tangata whenua and the Crown and its agents such as government departments and local authorities. It is a joint responsibility, recognised in the fourth principle of the Treaty, for both Council and the tangata whenua to actively promote partnership in interpreting, implementing and giving effect to the meaning of all the principles of the Treaty within the Rotorua District. Patience, generosity of spirit, and a desire to cooperate will be required by all parties concerned.

2.1.2.1 Policy:

To actively continue the development of partnership relationships between Council and iwi authorities.

2.1.2.2 Policy:

To recognise the importance of the rangatiratanga principle when dealing with the management of Maori resources.

2.1.2.3

Policy:

To effectively consult with tangata whenua when making decisions that affect them.

2.1.3

METHODS OF IMPLEMENTATION

The policies will be implemented through the promotion of regular contact between Council and iwi at both Councillor level (for instance the Te Arawa Standing Committee) and at staff level. More specific Methods of Implementation, that are relevant to promoting general contact, are detailed below.

Council is unable to give full rangatiratanga to iwi: that can be done only by the Crown. Nevertheless, there are avenues open to Council to explore with iwi that may lead to particular recognition of particular aspects of rangatiratanga.

One way is to make activities such as papakainga development as permissible as possible. In **Part Ten**, this activity is classified as a Discretionary Activity, with a number of assessment criteria designed to ensure environmental concerns are satisfactorily addressed. It could be possible to make papakainga development a Controlled or even a Permitted Activity with sufficiently comprehensive Performance Standards designed to ensure that adverse effects are avoided, remedied or mitigated and that the Objectives and Policies of the Plan are met.

However, this can only be done satisfactorily when Council has finalised some studies aimed at identifying a number of resource management matters that are important to the wider community. Many of these studies are identified elsewhere in this Plan. These include the Lakes Strategy, the Natural Heritage Inventory, and the Landscape Study. These studies should identify critical elements for protection and effective methods for doing so, including relevant performance standards, and criteria to be used in the assessment of resource consent applications. Once these are completed or well under way, Council could develop, with tangata whenua, acceptable provisions to allow developments such as papakainga to proceed with a minimum of control.

Another method is the use of Section 33 of the *Resource Management Act 1991*, which allows Council to transfer functions, powers or duties to an iwi authority. It needs to be noted, however, that this transfer cannot be complete: although functions, powers or duties can be transferred, the Act specifically requires Council to retain its responsibility for those matters, including approval of any Plan that may be developed under that transfer by the authority. In addition, Section 35 requires Council to monitor the exercise of those transferred powers, duties or functions.

Transfers must be done by way of a special consultative procedure, and would need to be negotiated separately with each iwi authority that wishes to accept transfer. If an iwi authority indicates its desire to accept a transfer from Council under Section 33 of the *Resource Management Act 1991*, Council will consider such a request, and if terms, acceptable to both parties are negotiated, Council will initiate proceedings under Section 33(4).

Another method is for Te Arawa, or a particular iwi, and Council to jointly develop Plans or Strategies. In this way, the interests and concerns of both parties can be addressed together in ways that are mutually agreed and mutually supporting. Both jointly developed documents and transfers under Section 33 of the *Resource Management Act 1991* could provide for iwi to formally exercise kaitiakitanga.

2.1.4 ANTICIPATED ENVIRONMENTAL RESULT

- Increased mutual understanding and improved relationships between tangata whenua and Council;
- More effect given to the principles of the Treaty of Waitangi;
- Consideration of possibilities for tangata whenua to exercise rangatiratanga and kaitiakitanga;
- Innovative solutions for resource management according to the principles of the Treaty of Waitangi.

2.2 ISSUE TWO

SOME ACTIVITIES HAVE THE POTENTIAL TO ADVERSELY AFFECT MAORI CULTURAL AND SPIRITUAL VALUES.

Because destruction of sites can adversely affect Maori cultural and spiritual values, there is a need for more knowledge and information on those values.

Section 93(1)(f) of the *Resource Management Act 1991* requires Council to notify iwi authorities of proposed developments that may affect them. Although this provision can ensure that tangata whenua concerns can be included in the consideration of applications, it can lead to conflicts. The conflicts are between the consenting processes set out in the Act and the expectations of applicants for expedient consideration of their applications on the one hand, and the ability of the iwi authorities to handle the notifications, because of the work load and their style of consensus decision-making, on the other.

In certain cases where consultation with tangata whenua is necessary, Council or the applicant may have difficulty in correctly identifying Maori owners and/or trustees. This may result in tangata whenua not being informed of proposed resource consents for activities which might adversely affect them until the public notification stage or until they are notified. Again, the fourth principle of the Treaty is important in this regard. When tangata whenua are given adequate information, it is reasonable to expect them to provide a timely response when their views are sought in resource consent applications, or Plan Change procedures.

Council acknowledges that the traditional Maori villages of Ohinemutu, Whakarewarewa and Ngapuna in the Urban Area have historical and cultural significance to the tangata whenua. Although all three retain a primarily residential function, the villages of Ohinemutu and Whakarewarewa have become significant destinations for tourists as well.

In **2.3 of Part Seven** it is recognised that increasing tourist activities within the villages can have an adverse effect on amenity values enjoyed by their residents, and could result in a degradation of their distinctive character and heritage values. In a more fundamental sense, the cultural and spiritual significance which these places have to their residents could be seriously affected. In addition, the amenity of Ngapuna is under pressure from nearby industrial activities.

2.2.1 RESOURCE MANAGEMENT OBJECTIVE

District Plan provisions and consent processes that recognise and effectively provide for the relationship of Maori people and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

2.2.2 POLICIES

There are many buildings, trees, objects and sites of significance to tangata whenua within the Rotorua District. A large number of these have been incorporated into Maori Reserves as defined in the *Te Ture Whenua Maori Act 1993/Maori Land Act 1993*. These Maori Reserves provide for a wide range of activities such as marae and ancillary buildings, urupa, landing places, bath houses, farmland, forestry and plantation reserves. Many other sites, however, are not formally identified, and there are some sites of value to tangata whenua which they do not want to be widely known.

Thus the Objective will be achieved primarily by consulting with the relevant iwi or other recognised authority where an application for a resource consent will adversely affect them. However, Council recognises that in some cases it may be inappropriate to expressly identify certain sites of particular sensitivity to tangata whenua, such as the location of burial caves and other urupa.

Council also recognises the important role which Maori Reserves have in preserving the spiritual and cultural heritage of tangata whenua within the District. The approach to preserving the character, heritage and amenity of the Maori villages of Ohinemutu, Whakarewarewa and Ngapuna is outlined in **Parts Seven and Nine**.

2.2.2.1 Policy:

To consult with tangata whenua, where an application for a resource consent may adversely affect the relationship of Maori and their culture with their ancestral lands, water, sites, waahi tapu, and other taonga, unless the tangata whenua indicate that adequate consultation has already taken place.

2.2.2.2 **Policy:**

To recognise that some information held by tangata whenua which may be necessary for informed decision-making may be considered by tangata whenua to be privileged.

2.2.2.3 **Policy:**

To recognise the important role of Maori Reserves including identified waahi tapu in preserving the spiritual and cultural heritage of tangata whenua within the District.

2.2.3 **METHODS OF IMPLEMENTATION**

The *Resource Management Act 1991* requires Council to consult with iwi, including consultation over consent applications. This requirement cannot be delegated or transferred to applicants, however desirable that may be. However, in their own interests applicants should also consult with iwi, preferably when their applications are being prepared. This allows iwi more time to consider the effects, and it gives opportunities for constructive debate between the parties. Council will encourage applicants to consult with iwi where appropriate prior to lodging applications for resource consents.

The requirement to notify iwi authorities in Section 93 of the *Resource Management Act 1991* can be overruled by Section 94. However, this ability is circumscribed and usually requires the written approval of affected persons unless Council considers this unreasonable in the circumstances. Tangata whenua are affected persons if any of the matters referred to in the Objective will be affected by a proposed activity.

To facilitate both the consideration of consents and the consultation workload of iwi authorities, Council will consult with iwi in the District to develop protocols that identify their rohe (areas of interest), the types of application they want to have referred, contact persons, and ways the processes can be streamlined. Council recognises that the protocols may differ from iwi to iwi.

When an application for resource consent is submitted that affects resources regarded as taonga by tangata whenua, Council will:

- (a) Ask the tangata whenua whether the applicant has adequately consulted and whether their concerns have been accommodated in the consent application. Where necessary, Council will delay notification of applications under Section 92 of the *Resource Management Act 1991*, to allow time for consultation to be undertaken; and
- (b) If required to, under Section 93(1)(f) of the *Resource Management Act 1991*, to ensure that appropriate notice is served on iwi authorities.

Some of the features valued by tangata whenua are identified in **Appendix A** of this Plan. These features are afforded protection by the requirement for a Discretionary Activity application to modify or destroy any of the features concerned. Decisions on these applications require consultation with tangata whenua.

Council recognises that it may be inappropriate to expressly identify certain sites that are of particular sensitivity to tangata whenua and will release specific details of these sites only where this is acceptable to the tangata whenua concerned. Council will consult with tangata whenua to develop protocols, such as silent files, to handle sensitive information in ways that preserve the tangata whenua's mana over it.

2.2.4 **ANTICIPATED ENVIRONMENTAL RESULT**

- The relationship of Maori people and their culture and traditions with taonga is recognised.
- Resources regarded as taonga are accorded adequate protection, and thus their mana is respected by not releasing sensitive information.

