

# Te Whanganui-a-Orotu Report 1995

## Appendix V - Regional Policy Statement Extracts

The following extracts are taken from the Hawke's Bay Regional Council's *Regional Policy Statement*, proposed March 1994.

Pages 30 and 31:

### **Matters of Resource Management Significance to Tangata Whenua**

The resource management issues which are of significance to the Tangata Whenua may be summarised as follows:

- The need to preserve and protect the mauri of natural and physical resources.
- Recognition of the guarantees of tino rangatiratanga and its relationship with the kawanatanga in resource management planning and decision-making.
- The need to reaffirm the Maori social fabric of whanau/hapu/Iwi.
- Recognition of marae as the physical manifestation of tino rangatiratanga and a place for consultation as appropriate with Treaty partners including Councils.
- Recognition of kaitiakitanga.
- Protection of waahi tapu from desecration.
- The need for resource managers to take account of Maori spiritual values such as concepts of mauri, tapu, mana, wehi, and karakia.
- Respect for rahui and taiapure.
- The need to prepare hapu/Iwi resource development plans.
- The need to be in a position to implement hapu/Iwi plans without unreasonable and unjustified restrictions.
- All aspects of water management in Hawke's Bay. In particular, the importance of maintaining adequate water levels and quality to ensure that the mauri (life force) of waterways are undamaged, particularly by pollution and human sewage discharges to water.
- Input into enforcement and compliance procedures.
- The need to protect those characteristics of the coastal environment of special value to Maori, including waahi tapu, tauranga waka, mahinga kai, mahinga mataitai and taonga raranga.
- Adequate resourcing of the Iwi and constituent hapu to enable participation in all aspects of resource management in the Region.
- Active participation and recognition of tikanga Maori in policy and decision-making processes of the Councils.
- Maintaining and enhancing the consultative processes among the Councils, Tangata Whenua, and constituent hapu.
- Recognition and facilitation of resource development initiatives by Tangata Whenua and constituent hapu to the fullest extent practicable and permissible under the Act.

- Recognition and provision for the holistic relationship that Maori have with the environment extending from nga maunga (mountains) to te moana (the sea).
- Recognition of and provision for traditional Maori knowledge in the sustainable management of the Region's resources.
- Provisions enabling Maori to maintain and enhance their traditional relationship to the whenua (the land), wai (waters) and taonga (treasured possessions).

Pages 36 and 37:

### **What do the Principles of the Treaty of Waitangi (Te Tiriti O Waitangi) mean for Tangata Whenua?**

To Tangata Whenua those principles, based on interpretations by the Courts and the Waitangi Tribunal and as applied in the context of sustainable management of natural and physical resources under the Act, mean as follows:

#### **The Principle of Te Tino Rangatiratanga**

*Te tino rangatiratanga* (fully chiefly authority) over resources including lands, forests, fisheries and other taonga were guaranteed to Maori under Article II of the Treaty. Tino rangatiratanga includes tribal self-regulation of resources in accordance with their own customary preferences. Tino Rangatiratanga was not, nor was it ever intended to be, relinquished or given away by Maori to the Crown.

#### **The Principle of Partnership**

The Treaty signified a partnership between Maori tribes 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 as to accord the Maori interest in appropriate priority. Utmost good faith, reasonable co-operation and compromise are fundamental to this concept of a partnership.

#### **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 delegation of resource management powers by the Crown to local authorities under the Act means that those authorities can make policies, set objectives and make rules affecting the management of natural and physical resources, subject to the guarantee of tino rangatiratanga to Maori and recognition of the partnership between Maori and the Crown.

#### **The Principle of Active Participation and Consultation**

The spirit of the Treaty calls for Maori to have a much greater say in the management of the environment. Effective, early and meaningful consultation is an integral and necessary component and forerunner to greater participation by Maori in resource management decision-making.

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

The guarantee of Te Tino Rangatiratanga given in Article II is consistent with an obligation to actively protect Maori people in the use of their lands, water and other protected taonga, to the fullest extent practicable. In the context of resource management, the various elements which underlie and are fundamental to a spiritual association with the environment (including mauri,

tapu, mana, tikanga and wairua) may all fairly 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/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/Iwi resources is a very important principle of the Treaty in the context of resource management under the Act. Ngati Kahungunu seek restoration of their tribal resources. The Treaty recognises the right of Maori to develop those resources in accordance with their own needs and aspirations. In pursuing development, Maori may choose to pursue non-traditional uses of their resources instead of or as complementary to, their traditional practices. Recognition of the ability and needs for hapu/Iwi to develop their resources in a manner which achieves the purposes of the Act is a fundamental principle embodied in the Treaty.

### **Tribunal's comment**

We note that the Crown's obligation 'to actively protect Maori people in the use of their lands, water, and other protected taonga' is qualified by the words 'to the fullest extent practicable'. We consider this qualification is inconsistent with the preceding discussion of the principle of kawanatanga and the delegation of resource management powers to local authorities to exercise, '*subject to the guarantee of tino rangatiratanga to Maori and recognition of the partnership between Maori and the Crown*'.

Clearly the regional council still has to resolve the inconsistency between the Crown's duty to actively protect te tino rangatiratanga and national and physical resources long regarded as taonga and its right and duty to control and manage natural and physical resources in the national interest.

The Tribunal has already considered this issue in its *Mohaka River Report 1992* (p 68), where it pointed out in the words of the *Ngai Tahu Sea Fisheries Report 1992* that 'the right to govern' that the Crown acquired under the Treaty 'was a qualified right'.

### **Comments on the Hawke's Bay Regional Council's Proposed Regional Coastal Plan of September 1994**

Chapter 2 of the Hawke's Bay Regional Council's *Proposed Regional Coastal Plan* of September 1994 ('Coastal Resources') included a section entitled 'Cultural Heritage and Tangata Whenua', which acknowledged and described 'the kaitiaki role

of the Ngati Kahungunu as "tangata whenua" in terms of Tikanga Maori based on the traditional sovereignty over god-given taonga relating to the land and sea'. It noted that, for Maori, 'the coast and contributing waters can be likened to the bloodlines of their forefathers, life sustaining and sacred. They provide the main requisites for everyday life . . .' Knowledge and understanding of the past ensure that 'Maori would continue to support, respect and conserve the environment'. Maori see themselves 'as part of the total created reality'. 'They belong to the environment. Their role within the natural environment is as Kaitiaki. It is the obligation of the Kaitiaki to ensure that there is as little disruption to the environment as possible. To defile the environment would be contemptuous and show a lack of respect to the appropriate Atua.'

'The principle of environmental Kaitiakitanga should be construed as the sustainable use of the resources, the education of future generations as to the sustainable use and the appeasement of the Atua.

'The workings of Tapu played a dominant role in environmental protection and resource management.'

The Ahuriri Estuary was recognised in the proposed regional coastal plan as a wildlife area of 'national significance' and, together with the larger area of Te Whanganui-a-Orotu, as of major significance to the tangata whenua. In making decisions on permit applications to use the estuary, the regional council was to have particular regard to the need to protect sites of spiritual, historical, or cultural significance to Maori, including wahi tapu, tauranga waka, mahinga maataitai, and taonga raranga, as well as the need to manage the estuarine habitat and physical estuarine processes in a way that averted, remedied, or mitigated adverse effects on the biological integrity of the estuarine system.

Prohibited activities included the erection of whitebait jetties, maimai, or any structure that would impound the coastal marine area, allowing stock to enter. The taking and use of water from the mauri area, and the use of powered vessels, except for rescue operations, were also prohibited. Rules on water quality standards and the discharge of contaminants were specified. Desired environmental outcomes derived from the Knox report included:

- '(a) Management of the estuary as a whole system, with respect for the relatedness of its parts. '

- (b) Maintenance of the estuarine ecosystem at optimum function through protection of the sources and pathways of energy flow that drive it.'

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*Waitangi Tribunal, Department of Justice, Wellington.*