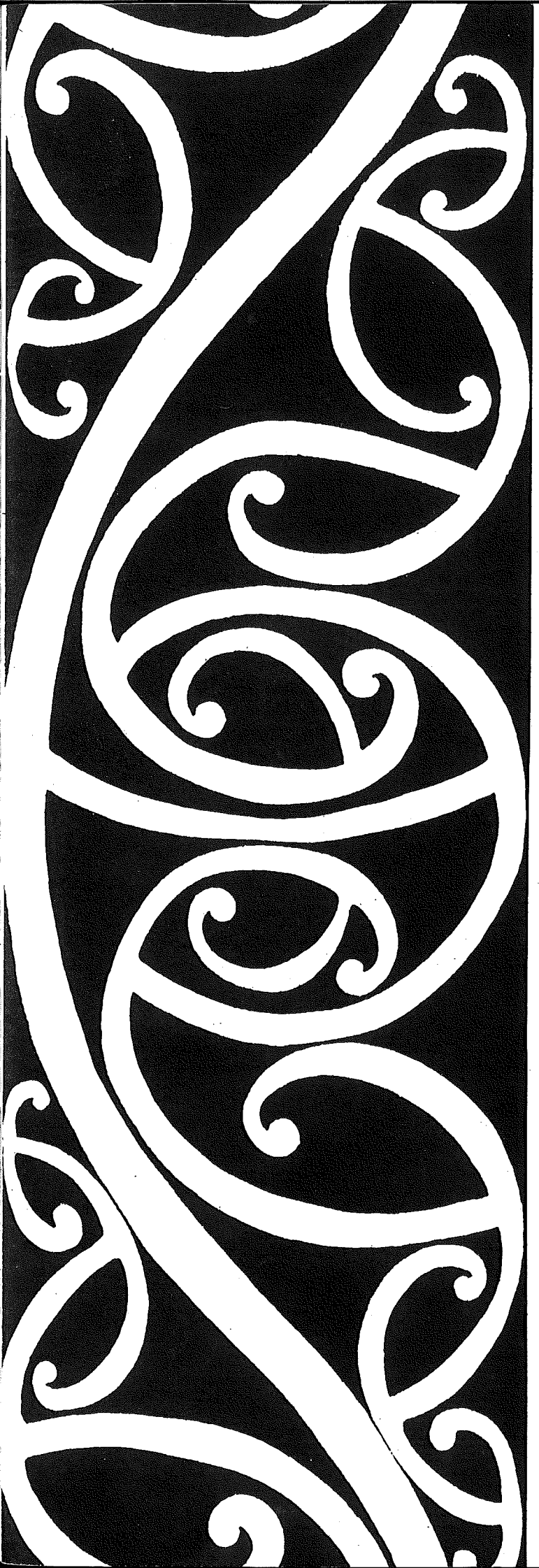

Taking Into Account the Principles of the Treaty of Waitangi

Ideas for the Implementation of Section 8 Resource Management Act 1991

By Diane Crengle LLB

January 1993

Disclaimer

This paper is part of an information series on the Resource Management Act produced by the Ministry for the Environment. All opinions expressed are the views of the author and do not necessarily reflect those of the Ministry. Responses to ideas are welcomed.

Readers are reminded that the Ministry for the Environment is not to be taken as providing legal opinion or definitive interpretations of the Act. Readers are urged to seek independent legal advice. Matters of interpretation are for the courts to decide.

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Contents

Foreword

The Resource Management Act represents a major shift in terms of how statutory resource management should be undertaken and improved. This is particularly so with respect to Maori interests and the Maori relationship with place, resource, heritage, former generations (Te Ao kowhatu) and future generations (uri whakatupu).

Since the publication of the Motunui Report in 1983, a growing recognition of the role of the Treaty in environmental issues has led to much greater awareness amongst decision makers of the relevance and importance of Maori traditions and approaches to the environment and how people should treat natural resources.

The enactment of the Resource Management Act represents a huge amount of background work, numerous submissions from Maori and the results of many seminars and hui. Throughout those proceedings, Maori have continuously focused on the importance of the Treaty in the conduct of local and regional government and on the need to develop resource management policies and plans which advance the Treaty interests of tangata whenua. This publication is offered as a contribution of ideas to help improve understanding of how the Treaty may be applied in the pursuit of better environmental outcomes.

The Treaty principles need to be distinguished as a subset of the Treaty as a whole. A number of things arise from the Treaty which cannot be encompassed within the constraints of the Resource Management Act nor discussed in this paper. Nonetheless, the principles of the Treaty can be used as a vehicle to promote understanding and meaningful communication between decision makers and tangata whenua. The principles, if applied correctly with a generosity of spirit, will not alienate people. Rather they will enhance the notion of reciprocity and the importance of learning to live together successfully.

This paper is an ideas piece, intended to stimulate discussion and suggestions for the exploration of relevant principles of the Treaty of Waitangi and their relationship to the Resource Management Act. It should not be treated as definitive.

Written with an audience of local authority councillors, policy makers and planners in mind, the paper seeks to provide a starting point for readers to gain an understanding of the kinds of things which they need to consider in seeking to satisfy their obligations with respect to the principles of the Treaty.

He whakaputanga tenei ki te iwi, ahakoa Pakeha, Maori ranei kia whanui ai te titiro aa hei whakakorikori hoki i te hunga e rapu ana i tetahi kaupapa kia kaua rawa te Tiriti e whakatahangia.

Ehara i te mea ka ea katoa nga ui, nga tono hoki ma te pukapuka nei. E kore e kahore ka kitea kua mahue etahi whakaaro. E pai ana ma koutou e tapiri atu. Ki te kitea etahi rarangi kahore e rarata ana, whakaaturia mai hei korerotanga. Ko te putake tena e meinga ai te pukapuka nei, ara hei whakakorerorero i a tatou.

E te iwi, whakamahia te pukapuka nei i ta koutou e pai ai. I oti te pukapuka nei i a Diane Crengle, he uri no Kai Tahu, Kati Mamoe, he roia hoki e mahi ana i Maruwhenua nei. Mehemea e rereke ana to koutou whakamaoritanga mo nga wahanga o te Tiriti me ona paanga ki o koutou rohe, he pai tonu. Ko to matou tumanako, ka riro etahi o nga whakaaro o te pukapuka nei i nga Kaunihera, hei whakaaraara, hei whiriwhiringa hoki.

Tena ano koutou i nga whakaaro mo nga taonga tuku iho.

Shane Jones
Manager, Maruwhenua

II
Te Tiriti O Waitangi

The Maori Text
(from the Treaty of Waitangi Amendment Act 1985)

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani – kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakarite te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ke te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua ahau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu -te Kawanatanga katoa o o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

The Treaty of Waitangi

The English Text (from the Treaty of Waitangi Act 1975)

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great many of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her Subjects has been graciously pleased to empower and authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the Individual Chiefs yield to her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Translation of Maori Text (Professor Sir Hugh Kawharu)

Victoria, the Queen of England, in her concern to protect the Chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it necessary to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queens government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a Captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government over their land.

The second

The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand (i.e. the Maori) and will give them the same rights and duties of citizenship as the people of England.

III Introduction

The Resource Management Act - A New Relationship

When the Resource Management Act became law on the first of October 1991, it introduced a number of positive obligations dealing specifically with the principles of the Treaty of Waitangi and with Maori interests. These include:

- A requirement 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[s.6 (e)].
- A requirement to have particular regard to kaitiakitanga [s.7].
- A requirement to take account of the principles of the Treaty of Waitangi [s.8].
- A requirement to consult with iwi in the preparation of plans and policies [First Schedule].

These and other provisions in the Act furnish considerable scope for a distinctive Maori dimension to be incorporated into resource management decision making and practice. Consideration of these provisions will require decision makers and local iwi to found a working relationship in a new and somewhat unfamiliar statutory context. For the relationship to be effective, it will need to be based on mutual tolerance and cooperation.

The rights and duties in the relationship are complementary and rest with both parties. Long-term success will require, above all else, a commitment from both local authorities and tangata whenua to work together in good faith and with clarity of purpose to develop kaupapa for the present and future management of natural resources.

Why "Principles"?

The phrase "the principles of the Treaty of Waitangi" was first introduced into New Zealand legislation in 1975 by the passage of the Treaty of Waitangi Act.

The choice by Parliament of the expression "the principles of the Treaty" was designed to overcome a number of problems associated with considering the literal words of the Articles in isolation. It reflects that the English and Maori texts are not translations one of the other and do not convey precisely the same meaning. It also recognised that the strict wording of the Treaty provisions assumed an ideal of equality which no longer existed.

> "...it is an unspoken premise when one speaks of principles of the Treaty of Waitangi that land and estates, forests, fisheries and other properties transferred or taken at some earlier time often shrouded in history were transferred or taken allegedly contrary to the principles of the Treaty. So, when one speaks of the principles one is not just referring to the letter of the Treaty but to the events that have occurred since it was signed". [The Lands case, (High Court), Heron J, p646.]

Sources of Information on the Principles

The Court of Appeal

In a legal sense, the primary source of information for decision makers considering the principles of the Treaty will be the decisions of the Court of Appeal under the State Owned Enterprises Act. Although confined to a specific statute, the Court's findings on the principles will generally bind all decision makers under the Resource Management Act.

The relevant Court of Appeal cases are:

1. The 1987 case of New Zealand Maori Council v The Attorney General [1987] 1 NZLR 641, in respect of the transfer of lands and properties to State Owned Enterprises (the Lands case); and
2. The recently decided 1992 case of New Zealand Maori Council v the Attorney General [1992] 2 NZLR 576, in respect of the transfer of television and radio frequencies (the Broadcasting Assets case).

The Waitangi Tribunal

The Waitangi Tribunal was established by the Treaty of Waitangi Act 1975. Its jurisdiction and terms of reference are determined entirely by the Crown.

The Treaty of Waitangi Act 1975 was:

> "an Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty". [Long title to the Act.]

The first step which the Tribunal must take is to decide whether a claim exists. The law provides for claims only where the claimant has been prejudiced by a Crown act, proposal or omission in breach of the principles of the Treaty.

After considering any claim, the Tribunal may make recommendations to the Crown. The recommendations will be designed to achieve two separate but related purposes:

1. To act to eliminate or compensate for the prejudice caused by the breach; and
2. To act to prevent any future prejudice.

The distinction is significant. The Tribunal's role is not only to report on past grievances, but also to devise appropriate solutions to guard against their occurrence in the future. In this sense, the Tribunal reports have been particularly informative. They highlighted areas which, in an institutional sense, required urgent attention to improve the position of Maori in statutory resource management.

The Tribunal's reports will prove valuable to resource management decision makers seeking to understand the principles of the Treaty. The Court of Appeal referred, in very favourable terms, to the findings of the Tribunal, stating that they deserved to be accorded "much weight" in any analysis of the principles of the

Treaty. Even disregarding the status thus conferred by the Court of Appeal, there are a number of practical advantages in becoming familiar with the Tribunal's reports. Almost without exception, the claims on which the Waitangi Tribunal has reported to date have concerned land and other natural resources, aspects of which are now to be regulated by the Resource Management Act.

The Tangata Whenua

The decisions of the Court of Appeal and the Waitangi Tribunal have yet to yield a complete set of Treaty principles in sufficient detail to be easily applied to each and any circumstance. In addition, rangatiratanga and kaitiakitanga cannot be understood without reference to the Maori cultural context. Matters of rangatiratanga over particular resources or areas can be accurately determined only by the people who hold mana whenua over that resource.

In this context, consultation will become the vehicle for discussion between tangata whenua and the consent agency on action to be taken to give effect to the Treaty guarantees as these might apply to the area or resource in question.

Approaching Interpretation

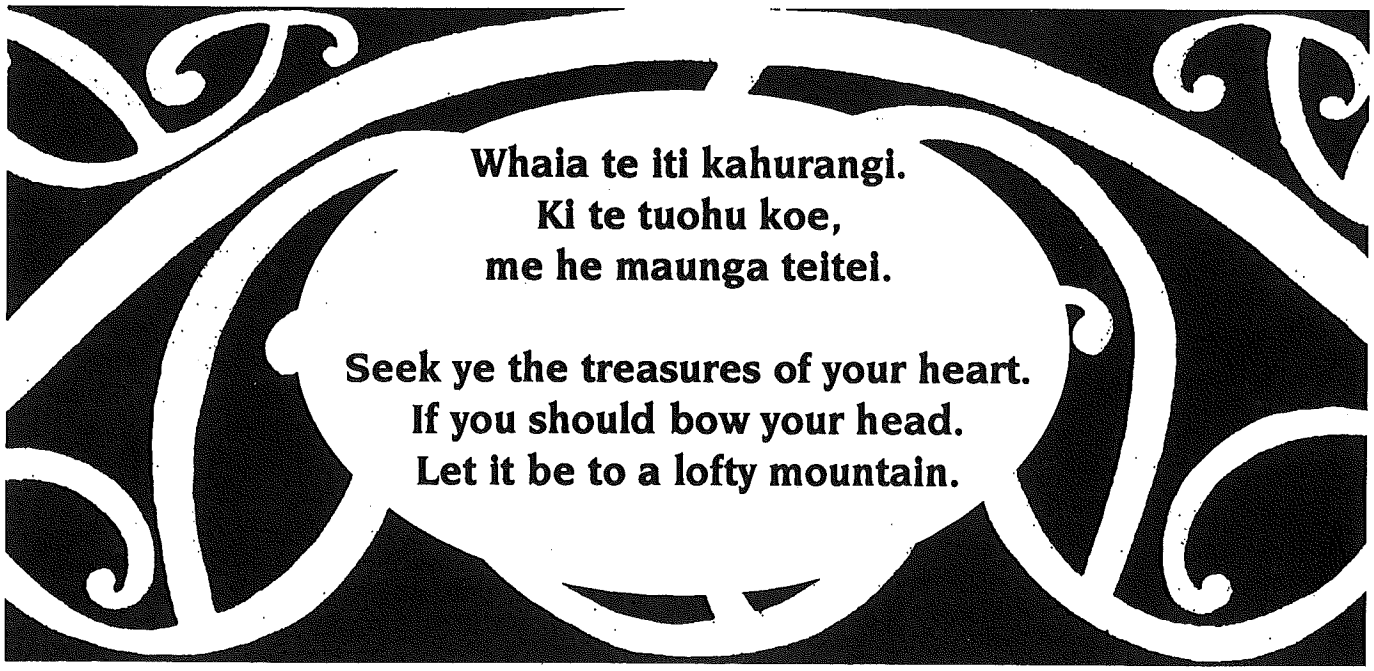
In interpreting the principles of the Treaty, the spirit of the Treaty is to be applied, not the literal words.

> "The essence of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretation out of place." [Orakei Report, p149, see Appendix for list of Tribunal Reports.]
>
> "The differences between the texts and shades of meaning do not matter for the purposes [of interpreting the principles of the Treaty]. What matters is the spirit." [Cooke P, in the Lands case, p 663.]

The approach taken by the Court and the Waitangi Tribunal to date reflects the intentions of Parliament when enacting the "principles of the Treaty". Under this approach, application of the principles to any situation is not to be denied simply because it may not be explicitly revealed in the words used. This would extend to definitions of resources, be it the "lands, forests, estates and fisheries" of the English text, or the "whenua, kainga and taonga" of the Maori text, and to the rights conferred by the Treaty, whether rendered as "sovereignty" and "full, undisturbed and exclusive possession" or as "kawanatanga" and "rangatiratanga".

The approach does not allow narrow interpretations on any of the matters referred to in the Treaty, if the effect of that narrow interpretation is to defeat the large and flexible approach which Parliament intended would be applied.

> "The way ahead calls for careful research, for rational positive dialogue and, above all, for a generosity of spirit." [Richardson J, in the Lands case, p673.]



IV The Principles of the Treaty

As explained previously, decision makers acting under the Resource Management Act need to first give consideration to expressions relating to the principles of the Treaty that have been made by the Court or the Waitangi Tribunal. Although yet to cover all conceivable situations, those decisions provide a good foundation on which local authorities and tangata whenua can build an effective working relationship.

The principles referred to in this part of the paper are drawn from the decisions of the Court and the Waitangi Tribunal.

Where appropriate, the outline of the principles used at the beginning of each section in this chapter, are from the Parliamentary Commissioner for the Environment's useful 1988 publication, **Environmental Management and the Principles of the Treaty of Waitangi.** They are repeated here with the kind permission of that office.

Sovereignty and Kawanatanga

Article I conferred on the Crown the exclusive right to make laws for the good governance of the country.

Principle One: The Essential Bargain

The Court of Appeal: **The cession by Maori of sovereignty to the Crown was in exchange by the Crown of Maori rangatiratanga.**

Waitangi Tribunal: **The right of the Crown to make laws was exchanged for the obligation to protect Maori interests.**

Legal sovereignty is the constitutional authority vested in the Crown and exercised through its executive, legislative and judicial capacities. Inherent in the concept of sovereignty is the right to make, enforce and unmake law.

There has been considerable debate over whether "kawanatanga", the word used by the missionary authors to translate "sovereignty" in the Maori text, means something much less than is encompassed by the concept of sovereignty.

The Waitangi Tribunal has found that kawanatanga meant the right to make laws for peace and good order and to protect Maori mana. The first was to enable the Crown to give expression to its obligation to look after the needs of the general public. The latter created an obligation on the Crown to exercise that power with due regard for the interests of Maori preserved in Article II.

The Court of Appeal found that the essential bargain of the Treaty was the exchange of sovereignty for the guarantee of rangatiratanga.

Kawanatanga and Local Authorities

The powers and functions of local government are exercises of kawanatanga.

Article I conferred on the Crown the right to make laws to protect the public interest. The Crown exercises this function primarily through Parliament and the enactment of statute.

The Crown has devolved some of its law making or regulatory capacity in the management of natural resources to local government through the Resource Management Act.

Regional and territorial authorities are charged with producing policy statements and plans that have the force of regulation. These determine conditions for use and access to resources.

The Waitangi Tribunal has found that the Crown, in devolving its law making authority, may not avoid Treaty obligations by conferring an inconsistent jurisdiction on others. Part of the Crown's response to this duty with respect to management and control of natural resources was the enactment of section 8 and related provisions protecting Maori interests. The authority of local government to act in the public interest in the management of natural resources carries concurrent obligations with respect to Maori and Treaty interests.

Agents of the Crown

Should local authorities be regarded as agents of the Crown? In part, this issue relates to the extent of the duty on local government to act in the implementation of section 8 of the Resource Management Act. The precise legal situation is uncertain and the present debate may not be resolved for some time.

On the one hand, local authorities may not be agents of the Crown within current legal tests. It should be noted that these tests have evolved from traditional allocation of central government responsibilities and may not cover the range of devolution presently occurring.

On the other hand, from the viewpoint of the Treaty partners the regulatory instruments to be produced by local authorities are among those which were expected to be covered by Article I. In addition, the Waitangi Tribunal has held the Crown accountable for the actions of local authorities which have given rise to Treaty grievances, because the Crown has failed to legislate to prevent the offending actions. If both the actions of local government and the consequences of those actions can give rise to Treaty considerations, it is possible to assume an obligation on local authorities comparable to that of the Crown.

Whether or not the Crown is held to be primarily accountable for Treaty grievances in these cases, the reality is that local communities can incur direct costs, both in terms of damaged relationships at local level, and in delays in processes and projects pending resolution. The Resource Management Act has empowered local authorities to consider and incorporate Maori interests in ways which will help avoid future grievances.

Exclusive Possession and Rangatiratanga

Article II guaranteed the continued right of hapu to manage and control their resources in accordance with their customs and having regard to their cultural preferences.

Principle Two: Tribal Self-Regulation

Court of Appeal: Maori were to retain chieftainship rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.

Waitangi Tribunal: The Crown has an obligation to legally recognise tribal rangatiratanga.

The Waitangi Tribunal has expressed its preference for defining the rights guaranteed by Article II as "rangatiratanga" rather than the "exclusive possession" of the English text. This approach accords with international law rules on the interpretation of bilingual treaties.

The use of the term "rangatiratanga" in the context of the Treaty denotes an institutional authority to control the exercise of a range of user rights in resources, including conditions of access, use and conservation management. Rangatiratanga incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom.

The ability to exercise rangatiratanga over tribal resources goes to the heart of the mana of the iwi. It reflects the relationship between people and resources as sources, not only of physical commodities, but also of personal and tribal identity and community stability. The authority of rangatiratanga is constrained by a concurrent obligation to exercise that authority for the collective benefit of the community.

> "...we [stress] that 'rangatiratanga' and 'mana' are inextricably related and that rangatiratanga denotes the mana not only to possess what one owns but, and we emphasise this, to manage and control it in accordance with the preferences of the owner. We thought that the Maori text would have conveyed to Maori people that, amongst other things, they were to be protected not only in the possession of their [taonga] but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences". [Ngai Tahu p231, See Appendix for list of Tribunal Reports.]

Rangatiratanga is expressed in decisions which reflect Maori priorities and values, and is given practical effect in the application of customary regulatory practices and controls.

The authority encompasses both the making of the decisions and their implementation. Rather than being confined to process, the exercise of rangatiratanga included rights to control end uses.

Rangatiratanga and Ownership

In communicating with consent agencies Maori speak of their interest in natural resources as a right to ownership of the resources. Although generally understood to mean legal title, the English concept of "ownership" encompasses rights of possession, use, and management of natural resources and the right to derive benefits of capital and income from those resources. This range of user rights is also characteristic of rangatiratanga.

Local authorities do not have much capacity to change matters of legal title. The ability and responsibility for returning ownership of resources and their benefits to Maori as recompense for Treaty grievances rests with the Crown.

The expression of rangatiratanga over natural resources is not limited to aspects of title alone, however. The management functions of local authorities under the Resource Management Act are the primary controls on how resources will be used, developed and protected, and by whom. These functions are those which, under rangatiratanga, would have been performed by tribal authorities. The authority, therefore, to make these decisions is an essential characteristic of the exercise of rangatiratanga.

Local authorities are able to provide significant opportunities for the expression of rangatiratanga in these aspects of use, management and control.

Maori Cultural Preferences

Rangatiratanga is to be exercised according to Maori cultural preferences. The Waitangi Tribunal has interpreted rangatiratanga as denoting both the mana to possess the resource and the mana to control it according to tribal customs and preferences.

All resource allocation decisions, especially those attempting to resolve conflicting uses, are based on how the resources are valued and the purpose for which they are to be used and managed. These values and purposes will vary according to the community need and the nature of the individual resource. Recognition of rangatiratanga incorporates the unique cultural and spiritual affinity between Maori and their lands and resources. It is expressed in methods of management and control which reflect and preserve that relationship.

Hapu

The Maori text of the Treaty of Waitangi refers to hapu, recognising that the local hapu descent group was a primary social and economic unit in Maori society. Control over natural resources, food harvesting and fisheries, in particular, was generally exercised on a day to day basis by hapu, rather than by the larger iwi, or tribal grouping.

The recognition of hapu authority to exercise rangatiratanga is a consistent theme throughout the Waitangi Tribunal's reports. Primary rights over resources, such as rights of possession, use and management, were vested with hapu. These rights were exclusive. In the Motunui claim, for example, the Tribunal noted that particular hapu exercised rights to take fish from particular reefs. The effects of degradation should be considered from the perspective of each hapu, and not from the perspective of the whole of Maori society.

> "It is not an adequate answer to [the objection] to consider the pollution of reefs in one locality not to be prejudicial for as long as other reefs remain untainted. The important question here is whether the whole or an undue proportion of the reefs of any particular hapu are prejudicially affected." [Motunui-Waitara p7, see Appendix for list of Tribunal Reports.]

Statutory resource management reflects a similar localised control within districts and regions that is not incompatible with traditional Maori structure, although physical boundaries frequently differ. With few exceptions, resource management

strategies and allocation decisions will have a local application and will be made according to local conditions and priorities.

Similarly, the recognition of rangatiratanga will mean different things in different situations depending on a number of factors, including the type of use proposed, the nature of the particular resource, its significance to the local people, and their goals and objectives for its management. The issue of how rangatiratanga should be exercised in respect of any particular resource cannot be determined except by the tangata whenua having mana over that resource.

Taonga

Taonga has been defined by the Waitangi Tribunal as meaning "all things highly prized", and includes both tangible and intangible things. The term equates roughly to the European concept of a resource, but is capable of incorporating a range of economic, spiritual and cultural associations.

> "All resources were taonga, or something of value, derived from gods." [Muriwhenua, p179, see Appendix for list of Tribunal Reports.]
>
> "The Maori taonga in terms of fisheries has a depth and breadth that goes beyond quantitative and material questions of catch volumes and cash incomes. It encompasses a deep sense of conservation and responsibility to the future which colours [Maori] thinking, attitude and behaviour about their fisheries." [Muriwhenua, p180, see Appendix for list of Tribunal Reports.]

The concept of taonga contains economic benefits, in the sense that natural resources provide physical sustenance and materials for use and trade. For Maori, however, that is only a small part of their relationship with natural resources as taonga.

Such resources are also a vital source of personal and tribal identity, symbolised in a simple form in people's identification of themselves in relation to their tribal mountains, rivers and other taonga, and manifested recently in numerous attempts to seek judicial protection for important tribal resources, particularly water bodies.

The tenets which control access to and use of natural resource taonga were also essential to the maintenance of community social order. Perhaps most significantly, they are a source of personal and collective emotional and spiritual strength.

The fundamental thing to understand and accept about taonga is that, as with rangatiratanga, the concept cannot easily be understood except by reference to the Maori world view.

The Court and the Tribunal have given broad and flexible descriptions to the term "taonga". Local authorities, therefore, ought not to adopt any more restrictive definition when determining over what rangatiratanga is to be exercised and what arrangements should be made to accommodate this.

Distinctions between resources still owned and resources no longer in Maori ownership, for example, are relevant only to the question of how rangatiratanga over that resource might now be expressed. They have no bearing on whether the resource may be taonga to the local people and, therefore, subject to the Article II guarantee. This has been expressly accepted with regard to resources such as fishing grounds or important mahinga kai (places for gathering food).

Acknowledging that the potentially exhaustive list of what is taonga has not yet been written, nor is likely to be, developments in the future are certain to see its application extended to resources which have not yet been considered by Court or Tribunal. Local authorities need to develop a flexible working relationship with tangata whenua to assist discussion on such matters.

Action by Local Authorities

The exercise of rangatiratanga is an essential prerequisite to Maori ability to use their resources to meet community needs and objectives in ways which express their cultural preferences. It also allows them to maintain their cultural and spiritual relationship with the natural world.

In general terms, local authorities will need to respond to these matters with respect to Maori use of their important resources and in controlling access and use by others.

Actions which support and enhance tribal rangatiratanga might be reflected in:

1. Providing opportunities for participation by Maori in the making of resource allocation decisions, and the development of conditions on those consents.
2. Developing policies and plans which protect Maori resources from adverse effects resulting from the activities of others.
3. Removing impediments, such as planning restrictions, which limit Maori ability to pursue their desired uses.

Environmental impact assessment and monitoring of the effects of resource use are important functions in which Maori will seek to participate. In some cases, Maori will be in a position to exercise those functions independently. In others, partnerships between tangata whenua and councils or contractors can provide for equally effective participation.

Local Government Structures

The emphasis on Maori cultural preferences in the exercise of rangatiratanga has important ramifications for the creation of Maori Standing Committees and similar structures within local government. These initiatives, although both laudable and practical, do not necessarily provide full opportunities for Maori to exercise their rangatiratanga.

From necessity, Maori liaison initiatives are taking place within the existing structures of local government, structures which express European cultural preferences and customary practices. Although in many cases a real effort is being made to reduce the disparities as much as possible, in Treaty terms this remains at best an intermediate step.

Having said that, there exists always the possibility that tangata whenua may choose to give institutional expression to their rangatiratanga in a manner which is not too dissimilar from other organisational forms.

Local authorities need to ensure that the structures they are proposing for liaison are acceptable to tangata whenua. This does not mean deciding in advance of discussion what would be acceptable to the local authority and then seeking tangata whenua agreement.

It would be preferable to seek the views of the tangata whenua as to what is acceptable to them, and then make every effort to give effect to those wishes, wherever possible.

Decision makers should appreciate that merely offering some form of participation in the expectation that Maori will take up the offer will not be enough to satisfy their Treaty responsibilities. In such circumstances it would not be unreasonable for the tangata whenua to decline to participate.

The right of tangata whenua to exercise rangatiratanga also influences the weighting to be given to their views on Treaty matters. Generally, this will have greatest effect in urban centres where there will be a large population of immigrant (taurahere) Maori who are not tangata whenua for the area.

On matters pertaining to natural resources within the rohe (territory) of a hapu or iwi, the obligation on local authorities is to seek the views of the tangata whenua, whose opinions must prevail over those of taurahere.

Transfer of Functions

The transfer of functions from councils to iwi authorities provided for in the Resource Management Act offers one of the best opportunities for applying the powers conferred by kawanatanga to support and enhance the practical expression of rangatiratanga. Councils should discuss with iwi the types of powers and functions it would be appropriate to consider transferring.

In the context of resource management, Maori might seek a transfer of functions to carry out services. These could range from monitoring the environmental effects of ongoing activities and environmental impact assessment of specific resource consent proposals, to licensing uses of particularly significant resources, such as important water bodies.

In some cases, iwi authorities will already possess the expertise necessary to compete successfully for contracts for these services. In others, local authorities will need to address the extent to which they can assist with resources. In this context resources are not necessarily financial. Technical advice and assistance to facilitate iwi efforts to achieve the standards to successfully contract for future services may prove to be even more significant.

Partnership

Principle Three:
The Treaty Relationship

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 right to govern.

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 Maori and the wider community must be met, which will require compromises on both sides.

The concept of a partnership is fundamental to the compact or accord embodied in the Treaty of Waitangi. 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.

> "It appears that the key to defining the principles of the Treaty is to be found in the idea of a partnership between Pakeha and Maori, and that cooperation is at the heart of the agreed relationship of the two partners." [Muriwhenua, p191, see Appendix for list of Tribunal Reports.]
>
> "It was a basic object that two people would live in one country. That in our view is also a principle, fundamental to our perception of the Treaty's terms. The Treaty extinguished Maori sovereignty and established that of the Crown. In doing so it substituted a charter, or a covenant in Maori eyes, for a continuing relationship between the Crown and Maori people, based on their pledges to one another." [Muriwhenua, p192, see Appendix for list of Tribunal Reports.]

Partnership and Mutual Compromise

Each of the things exchanged in the Treaty of Waitangi was intended to act as a limit on the exercise of the other.

> "The cession of sovereignty or kawanatanga enables the Crown to make laws for conservation control, resource protection being in everyone's interests. These laws may need to apply to all alike. But this right is to be exercised in light of Article II or the authority of the tribes to exercise control. In short, sovereignty is said to be limited by the right reserved in Article II. It follows that Treaty fishing interests should not be qualified except to the extent necessary to conserve the resource." [Muriwhenua, p230, see Appendix for list of Tribunal Reports.]

At the time of the signing of the Treaty, relations between Maori and British were essentially mutual and reciprocal. Although both peoples were to gain from the Treaty, neither would do so without also making a substantial concession. In each case, the rights obtained or reserved were limited by what was given or guaranteed to the other party.

Even the exclusive and exhaustive sovereignty of the Crown was intended to be rendered less than absolute by the exchange of rights evidenced in the Treaty.

> "[The guarantee of rangatiratanga] necessarily qualifies or limits the authority of the Crown to govern." [Ngai Tahu, p237, see Appendix for list of Tribunal Reports.]

By the same token, the right of Maori to exercise absolute tribal authority is limited by the cession to the Crown of the right to make laws which will apply to all.

In reconciling the concepts of sovereignty and rangatiratanga some compromises are necessary.

> "It was inherent in the Treaty's terms that Maori customary values would be properly respected, but it was also an objective of the Treaty to secure a British settlement and a

place where two people could fully belong. To achieve that end the needs of both cultures must be provided for, and where necessary, reconciled." [Mangonui, p60, see Appendix for list of Tribunal Reports.]

"The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. Indeed to try and shackle the Government unreasonably would itself be inconsistent with those principles.

The test of reasonableness is necessarily a broad one...[which] has to be applied...in the end in a realistic way" [Cooke P, in the Lands case, p665.]

[Article II of Te Tiriti] offers perhaps the highest possible degree of protection of Maori interests that is consistent with the cession of sovereignty." [Ngai Tahu, p235, see Appendix for list of Tribunal Reports].

Partnership and Balance

"The guarantee requires a high priority for Maori interests when works impact on Maori land or particular fisheries...In other cases, however, it is a careful balancing of interests that is required." [Mangonui, p60, see Appendix for list of Tribunal Reports.]

The fundamental message of the Treaty is one of balance. Although qualified by principles as to the priority to be given to Maori interests, this principle signals that giving effect to the Treaty is to benefit both peoples.

It is important to note when speaking of the balance to be found between kawanatanga and rangatiratanga that it refers to the balance between the interests of the public which elected government is bound to represent and which includes Maori as citizens, and the distinct and specific interests of Maori with respect to their taonga. Assertions of rangatiratanga over certain resources are not attacks on the mana of the Crown to make law in respect of Maori resources, but are simply expressions of the obligation to ensure that the right of Maori to act in accordance with their own values is given an appropriate priority.

One of the more vexing issues to be faced by resource management decision makers is how to find the appropriate balance between the interests of the public good and those of Maori where these do not coincide. The Tribunal's reports give some guidance on how this should be done. It ought not to be presupposed, however, that there will inevitably be a conflict between Maori objectives and the interests of the public on resource management issues. Often the very reverse will be the case. Partnership seems to imply a commitment by decision makers to determine the extent to which both sets of interests can be accommodated.

Partnership and the Status of Tangata Whenua

The special relationship between Crown and Maori as Treaty partners is reflected in the exchange of the right to make laws representative of the interests of the public and the guarantee of continuing Maori rights to own and control their valued resources. Maori were granted the additional privilege of British citizenship, so as to be included in considerations of those public interests in a position of democratic equality. At the same time, and this understanding is crucial, Maori were to retain their distinct and special collective rights over certain treasured resources as the people of the land, the tangata whenua, separately and in addition to those rights of citizenship granted under Article III.

Partnership and Power Sharing

The aspects of the partnership which imply how decision making is to be shared between Maori and the Crown arise out of the bargain made in the exchange between sovereignty and rangatiratanga (the right of the Crown to make laws was exchanged for the obligation to protect Maori interests).

Put simply, the Treaty of Waitangi provided for a distribution of power that would see the Crown having control over the activities of its citizens. Here, Maori would expect to participate in democratic terms, as would all citizens. On the other hand, Maori acting as hapu were guaranteed the power to exercise an autonomous authority over their own resources. In addition, the Crown was to exercise its power so as not to detract from the right of hapu to exercise authority over their own resources.

A difficulty arises where, as with the Resource Management Act, the Crown has delegated functions to local government which Maori assert are properly their rights under the Treaty. In this context, Maori assert that they are already offering a major concession by agreeing to share with local government the unqualified authority which they were guaranteed.

This may be very difficult for local authorities to accept, and even more difficult for them to implement, but it is what the Treaty intended. At the very least, local authorities should seek to understand it, since it is the basis for calls for a 50:50 partnership between themselves and Maori. As for implementing a response to those objectives, it is to be hoped that local authorities will strive to remain open to the many opportunities which are possible within the limits of their powers and functions.

Partnership and Good Faith

In addition to the issues of power sharing, the Tribunal and Court have identified two essential characteristics of the partnership.

These are the obligations of each party to act reasonably and in utmost good faith.

These characteristics of partnership are matters of principle, forming a set of fundamental precepts for how two peoples should behave towards each other in the sharing of the country's resources. These fundamental principles ought to drive the structures which are created for their expression. Difficulties will often arise where matters of procedure and structure, such as standing committees, iwi liaison positions, and protocol, are put in place before enough consideration has been given to whether those procedures and structures are the best vehicles for achieving the goals and objectives of the relationship – or even what those goals and objectives might be.

In a bicultural partnership, good faith will be reflected in an appreciation that the tenets and concepts underpinning the relationship between one people and their resources cannot easily be translated into another language or understood within another value context.

The principle of partnership is about appropriate attitudes. Councils, therefore, may choose to consider as a priority the education and information needs of their own staff and councillors with respect to the demands and sensitivities of cross-cultural communication, and the Treaty of Waitangi.

Partnership and Consultation

The Court of Appeal has rejected the notion that the Treaty implies there should be a universal application of the duty to consult, and that this duty is absolute.

The Court said:

> "In truth the notion of an absolute open-ended and formless duty to consult is incapable of practical fulfilment and cannot be regarded as implicit in the Treaty."

The Court went on to conclude that:

> "the better view is that the responsibility of one Treaty partner to act in good faith fairly and reasonably towards the other, puts the onus on a partner...when acting within its sphere to make an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty." [Richardson J, in the Lands case, p683]

In seeking to implement the Court's decision, the Waitangi Tribunal identified the following areas where consultation will be

> "highly desirable, if not essential if legitimate Treaty interests of Maori are to be protected." [Ngai Tahu, p245, see Appendix for list of Tribunal Reports]

The matters identified included:

- environmental matters, especially as they affect Maori access to traditional food sources – mahinga kai;
- resource and other forms of planning, insofar as they may impinge on Maori interests;
- matters which might impinge on a tribe's rangatiratanga;
- negotiation for the purchase of Maori land.

In the course of their discussions on good faith and reasonableness, the Court and Tribunal have identified a number of characteristics of good consultation, including:

- the obligation to provide sufficient information so as to allow tangata whenua to make an informed assessment on the proposal and determine their response to it;
- the obligation to be willing to change plans or proposals, if that is the result of consultation;
- the obligation to ensure adequate time frames. This means allowing sufficient time for tangata whenua to absorb what they are being asked to consider, and giving them sufficient time to respond. Time frames in this respect must be calculated so as to accommodate tribal needs, specifically the need for extensive tribal discussion and hui. It should go without saying that plans for implementation of proposals should not contradict these time frames.

In the context of the Resource Management Act, local authorities and iwi ought to approach all dealings with each other with a commitment to real and meaningful dialogue, and with minds open to all possibilities for achieving the balance contemplated by the Treaty.

This duty will not be met if local authorities decide outcomes or seek to limit opportunities before discussion has even begun. Nor will it be met if the approach seeks only to undertake the minimum required. A flexible and generous attitude is one of the essential characteristics of good faith.

It should be noted that the actions of a fair and reasonable Treaty partner in this regard are no more than is required of any reasonable decision maker seeking to make informed decisions and concerned to accommodate the needs of a special constituency.

The Test

It is suggested that local authorities adopt the test applied by the Waitangi Tribunal in its own deliberations. The test used by the Tribunal is this:

"[Are the actions or proposals] fair, reasonable and proper bearing in mind the [spirit] of the Treaty and the ... duty to act honourably and in good faith to the community as a whole, Maori and Pakeha". [Te Roroa, p30, see Appendix for Tribunal Reports.]

In assessing their actions, local authorities will need to satisfy themselves, and others, that they reflect an attitude of good faith and reasonableness. The test will necessarily be a broad one.

"Honesty of purpose calls for an honest effort to ascertain the facts and reach an honest conclusion." [Richardson J, the Lands case, p683.]

Active Protection

Principle Four: Active Protection

Court of Appeal: The 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.

The obligation to grant at least some form of redress for grievances where these are established.

Waitangi Tribunal: The Maori interest should be actively protected by the Crown.

The Crown 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.

What is to be Protected

The duty of active protection extends to those interests which are guaranteed to Maori by the Treaty, primarily the continued authority to exercise rangatiratanga over natural and cultural resources.

It is useful to distinguish protection of the exercise of rangatiratanga from protection of the resources that it is to be exercised over.

In the context of the Resource Management Act, what is to be protected under this principle is a continuing capacity for Maori to exercise self-regulated decision-making authority over those resources important to them.

Conservation of resources is only one part of the exercise of rangatiratanga. In respect of natural resources, what was guaranteed to Maori was the right to continue a relationship with those resources that was as much about their use as about their conservation. Conservation may be one of the objectives of the tangata whenua in their exercise of their rangatiratanga, but that is essentially for them to determine.

Action by Local Authorities

Active protection, by its very words, denotes a requirement to act.

Local authorities cannot rely upon Maori to bring to their attention matters which meet their Treaty obligations to protect Maori Treaty interests. Uncertainty about procedures and lack of personnel and finance can combine to make it difficult for Maori to initiate participation in local government processes. Local authorities need to develop effective working relationships with tangata whenua in order to determine how best to go about putting in place policies which reflect protective action.

Generally, the obligation to protect Maori interests has a three-fold application.

First, Maori should be protected, within reason, from restrictions imposed by legislation, plan or policy which prevent or limit them using their land and resources according to their cultural preferences.

Second, Maori are owed protection from the adverse effects of the activities of others on their ability to use their land and resources, both in biophysical and spiritual terms.

The third category concerns directing resources towards informing and supporting Maori in the development of resource management strategies which reflect their cultural and spiritual preferences, and in their participation in local government.

Policies and Plans

The extent to which iwi may determine that individual resources warrant protection will usually depend, firstly, on their importance and, secondly, on the effects of the proposed activity. Waahi tapu and important mahinga kai are good examples of resources for which Maori will seek a high degree of protection. Other resources may demand a lesser degree of protection.

The degree to which resources need to be protected from these activities will be as variable as the activities and resources are themselves. Within the Maori cultural context of "taonga", only the tangata whenua can determine what will be appropriate in each case. The first step in satisfying the obligation under this principle will be to consult tangata whenua as to which resources are important to them, and what degrees of protection they would wish to be given to them.

The viability or effectiveness of active protection can be measured only in the context of the Maori world view, in terms of what is important to them. Without consultation, local authorities will not have the knowledge necessary to give effect to this Treaty principle.

Resourcing

Lack of adequate personal and financial resources is consistently identified by iwi as the most significant barrier to their full participation in the planning system on issues of concern.

Resourcing of tangata whenua initiatives is an important way for local authorities to respond to the intentions which Parliament had in enacting the principles of the Treaty.

Examples of resourcing initiatives planned by local authorities include:

- assisting with expertise and financial resources for the development of iwi planning strategies;
- addressing Maori information needs with a view to increasing effective participation in existing local government processes and structures;
- assisting with education of other community sectors on Maori interests, and facilitating mediation and discussion on matters of mutual importance;
- facilitating access to culturally important resources in public ownership.

There are a number of possibilities for local authorities to assist iwi with resourcing so as to achieve effective participation in activities under the Resource Management Act.

Resource Consent Allocations

To establish their partnership with the tangata whenua, local authorities will need to consider how best to share decision making when allocating and controlling consents for the use of resources by others. In other cases, tangata whenua will seek to assert their relationship with their lands, waters, and other taonga through application for resource consents on their own account, so as to regain an economic base for their communities.

Parliament's intention was to improve the situation for Maori with respect to natural resources. As part of this, the value of competing bids for resource space is not to be assessed simply in monetary terms. (It should be noted that this was expressly provided for in the coastal tendering provisions. These allow a discretion to consider non-monetary factors in the acceptance of bids.)

Active Protection and Redress

The Court of Appeal has upheld the obligation of the Crown to grant at least some form of redress for established grievances. Sir Robin Cooke noted that the obligation existed unless there were grounds which would justify a reasonable Treaty partner in withholding it, and noted that such grounds would be likely only in very special circumstances.

Mr Justice Somers said:

> "The obligation of the parties to the Treaty to comply with its terms is implicit, just as is the obligation of parties to a contract to keep their promises. So is the right to redress for breach which may fairly be described as a principle, and was in my view intended by Parliament to be embraced by the terms it used in [section 9 of the SOE Act]. As in the law of partnership a breach by one party of his duty to the other gives rise to a right of redress so I think a breach of the terms of the Treaty by one of its parties gives rise to a right of redress by the other – a fair and reasonable recognition of, and recompense for, the wrong that has occurred." [Somers J, in the Lands case, p693.]

To a great extent granting redress for breaches of the Treaty of Waitangi is beyond the capacity of local government. Neither is the Resource Management Act a particularly suitable vehicle for the settlement of Treaty claims.

Local government responses, therefore, may be limited to ensuring that their actions do not detrimentally affect the capacity of the Crown to provide redress in the form of ownership of land or other resources. This may include retaining ownership and designation of public lands, particularly reserves.

Decision makers, however, must try to give effect to the intention of Parliament when exercising their powers and functions under the Resource Management Act.

Part of that intention included a recognition of the history of Treaty breaches and an implicit expectation that the situation would be changed for the better by the implementation of the Resource Management Act. The logical conclusion is that local authorities should approach resource management issues with this expectation firmly in mind.

In its most simple terms, the relationship is one of attitudes, about demonstrating a willingness to take a generous and flexible approach to the duty under section 8 and to taking account of the principles of the Treaty of Waitangi.

AN EXAMPLE OF BALANCING INTERESTS –

The Kaituna Report

In this claim, the Waitangi Tribunal was considering a proposal to pump sewage effluent into the Kaituna River, a part of the water system including Lakes Rotorua, Rotoiti, the river and the Maketu Estuary. The proposal sought to divert present discharge from Lake Rotorua into the river.

The interests which were to be balanced were:

a) the interests of the claimant tangata whenua subtribe, as set out in the grounds for their objection; and

b) the public interest, which dictated that the disposal of sewage was necessary, and which had led to the original decision to proceed with the proposal;

The grounds for the claimants' objections were:

Health: The discharge of effluent would harm public health due to the transportation of entero-viruses.

Social: This is best expressed in the statement, "None of us would willingly go bathing or boating in waters containing human effluent".

Spiritual and cultural. There were basically five grounds under this heading:

Spiritual offence – to mix waters containing human effluent with waters used for gathering food is deeply objectionable on Maori spiritual grounds.

Importance of the river to the hapu as a result of historical associations.

Importance of the river as a seafood resource – particularly intense due to prior degradation of water quality in the hapu's territory, and particularly important due to the cultural significance of seafood for Maori.

Importance of the riverbanks as a source of other types of food .

Importance of the river and its banks as a source of weaving and other cultural materials, and for their processing for use.

A significant factor influencing the Tribunal's decision was the special importance of the river as the primary, and in some instances the only, existing source of these cultural resources for the hapu.

Public Interests

The full details of the matters which had been considered by the local authority in reaching its original decision were not canvassed in the report. It should be noted, however, that the law as it stood at the time the decision was made did not allow for any weight to be given to Maori cultural and, particularly, spiritual concerns. It is assumed, therefore, that, although made properly within the existing law, the decision had not included any consideration of those matters. (The Town and Country Planning Act 1977 ancestral relationship decision was at that time limited to lands).

Some of the matters referred to were:

- the importance of protecting the lakes from further degradation (to be achieved through diverting the discharge into the river);
- the other positive benefits to the community, including Maori, of the sewage scheme;
- a possible reduction in public costs of disposal by reason of the diversion to the river.

The Tribunal considered the availability of alternatives to the proposal to be a crucial factor in their decision. In this case there was evidence that alternatives in various forms were available; alternatives which, incidentally, could have proven to be less expensive than the proposed diversion to the river.

Decision and Implications

The Tribunal recommended against the proposal. In doing so it upheld all of the spiritual and cultural grounds which had been put forward by the claimants. The Tribunal did not specifically comment on the other two grounds, health and social.

The spiritual and cultural significance of the river resource was an essential part of the Tribunal's deliberations. This significance can be determined only by the tangata whenua who have traditional rights over the river. It could not be assessed in any other way.

Although the two are very much related, it is necessary to distinguish the protection of the tribe's rights with respect to the river from the protection of the river itself. What the Tribunal was recognising was the tribe's continuing right to exercise its rangatiratanga over the river in both its use and its preservation. The exercise of that rangatiratanga was manifested in the right to take food and other things from the river and its environs for cultural sustenance, and in the right to act in accordance with the dictates of their spiritual relationship with the resource. The exercise of these rights would have been seriously and detrimentally affected had the river been polluted by effluent

AN EXAMPLE OF PARTNERSHIP –

The Orakei Report

It is not proposed to detail all of this complex claim. The example given here concerns only the recommendations made by the Waitangi Tribunal in respect of the parks of the Bastion Point Headland. These parks were publicly owned reserves of national significance.

The Public Interest Factors to be Weighed

These interests largely resulted from the extreme public significance of the parks. They were:

- as a scenic focal point;
- as a passive recreation reserve (passive meaning recreation not requiring fixed facilities);
- as a place having unique public historical associations;
- as a unique public facility;
- as an environmental resource.

In short, due to its special character, uniqueness and importance as a public resource to the Auckland region and the nation, these parks enjoyed a singular significance against which the interests of the tribe needed to be offset. The very fact of the Tribunal's willingness to make recommendations on such important public lands reflects and signifies the justice of the Ngati Whatua claim.

The Interests of the Tribe

The importance of the parks to Ngati Whatua was as extreme as their public importance. Factors taken into account included:

- their vital importance to the tribe as papakainga;
- their significance to Ngati Whatua who had been left all but landless by Treaty breaches;
- their importance as almost the only tribal land left in public ownership and therefore available to satisfy the claim.

This last point was perhaps the most crucial. The justice of the claim demanded reparation in the form of return of lands. These parks were almost the only lands once held by Ngati Whatua that were not now in private ownership.

Decision and Implications

The Tribunal's main concern with restoring the lands to Ngati Whatua was the potential for conflict. On the one hand it was desirable that the land's present character remained. This precluded development. On the other hand, restoration was part of responding to Ngati Whatua's need for an economic base. Returning the land without enabling Ngati Whatua to use it for their needs would have amounted to an empty gesture. The Tribunal determined that, subject to the "major qualification" that the economic base be found in other areas, the parks served best to re-establish the status of Ngati Whatua in Auckland, but that the interests of Ngati Whatua and the public could be reconciled.

The Tribunal recommended that ownership of the parks be vested in Ngati Whatua on the following terms:

- that they be held as parks for the benefit of the tribe and of Auckland;
- that administration of the parks be entrusted to a partnership of tribal and Auckland City Council representatives;
- that the costs of maintenance of the land were to continue to be paid by the local authority in return for the continuing right of public use.

The primary significance for local authorities in this example was the terms on which the management partnership was to operate, in particular the sharing of all decision-making powers. In this instance, the public use of the parks for passive recreational purposes was to be preserved. The management committee would not have had power to prevent that use. All other uses were, however, under the control of the management committee, giving the tribe a vehicle for exercising a form of rangatiratanga, albeit compromised by the sharing of power with the council, and limited in freedom of action by the preservation of the public user right.

The following points are emphasised:

1. The partnership, to have any meaning to the tribe in terms of the rangatiratanga exercise of power of decision making would have required a minimum of 50 percent tribal representation.
2. The proposal was first to be put to the tangata whenua, without obligation on them to accept it, as it had yet to be discussed with them and they may not have wished to be bound into such an arrangement.
3. The Tribunal was also careful to guard against the tribe incurring expense in their participation in the proposal, in this case by making recommendations as to responsibility for maintenance costs.

It must also be understood that the compromise in this case was very much being borne by the tribe and not the public, whose rights of access would continue undisturbed.

AN EXAMPLE OF PARTNERSHIP, RANGATIRATANGA AND ACTIVE PROTECTION –

The Ngai Tahu Report – The Titi Islands

The Maori Interest

Lying adjacent to Rakiura (Stewart Island), the Titi Islands have for centuries been a taonga of immense value to the tangata whenua of Rakiura as a tribal mahinga kai and source of tribal identity and mana. The annual birding heke by Rakiura Maori to the Islands was described by the Waitangi Tribunal as "an ancient tradition which...has survived through to the present day." [p 814] "The right to collect titi is known throughout Maori society as the prerogative of Ngai Tahu".

The Public Interest

The islands are also immensely valuable as a vital last refuge for many endangered species dependent on a stable habitat and the control or absence of predators and competitors. The islands alone support the entire breeding stock of some bird, reptile and insect species.

Administration

The islands are divided into two categories: beneficial islands, being islands held by the Crown in trust with beneficial ownership being vested in the descendents of those Rakiura Maori having rights there, and Crown islands, owned by the Crown.

All the islands are administered according to regulations first authorised in 1886 for the purposes of protection and management of the islands and protection of the titi, in order to conserve them for the exclusive use of those Ngai Tahu who were beneficially entitled. Rakiura Maori have exclusive birding rights over the islands and unlimited access to the 21 beneficial islands but are obliged to seek written approval before visiting Crown islands.

Rakiura Maori have supervisory rights in the administration of the islands and representation on the committee of management, through which recommendations concerning the islands can be made. They also enjoy regulatory protection from trespass or interference with their rights.

Aspects of Rangatiratanga

The following extract from claimant Rakiihia Tau quoted in the report encapsulates many of the aspects of the relationship between Ngai Tahu and the Titi Islands:

"Our relationship, management and administration as Ngai Tahu whanui of the mutton-bird or Titi Islands is perhaps the nearest living example we have to the meaning of rangatiratanga to our natural resources or mahinga kai. For example:

1. The decisions are made to the allocation of catching areas or wakawaka, the siting of houses, the welfare of the mutton-birders and the protection and rules governing the environment. These decisions are determined by those who have the whakapapa or genealogy rights to our Titi Islands. These decisions are collective decisions.
2. Our social order can be seen. We live in our houses as whanau groups. We work collectively, to ensure good town planning, allocation of wakawaka (birding areas) fairly and equitably, ensuring our provisions are transported and catch returned to our points of departure, as well as our collective responsibility for the health of those of our people on the island. More importantly, to discuss and determine policies for the protection of the environment rules for catching titi for the retention of our manu kai and their environment. These are unwritten laws, laws we live by, laws that are taught to learner birders, and for this reason we have retained our environment and manu kai....The importance of our social order is that all must contribute individually for the wellbeing of our collective responsibility, the retention of our resources for future generations." p856-857

The Decision

The Tribunal found that there was no breach of Treaty principles in the Crown issuing regulations for the management of the islands where the regulations:

- provide a mechanism for mutual benefit, balancing the free access of Rakiura Maori against the need to protect endangered species by safeguarding the taonga by mutual action;
- were written and established in full consultation with Rakiura Maori;
- are administered in full consultation with a representative committee of Rakiura Maori;

- offer ongoing protection of the Maori food resource and the economic opportunity of the resource as a solely Rakiura Maori right;
- protect the islands against despoliation;
- allow for the expertise of the Department of Conservation to be applied to implement policies arrived at by the representative committee.

The Crown's action in regulating to give effect to the wishes of the Rakiura Maori is an example of the exercise of kawanatanga, satisfying the obligation to actively protect the Maori interest, and of partnership, where the public interest in guarding the islands against despoliation is also protected.

The fact, said the Tribunal, that regulations were drawn up by beneficiaries in the land is not a point to be overlooked in the application of the principles of partnership in resource management.

V Implementing Section 8

Introduction

At its most simple, the partnership embodied in the Treaty of Waitangi is concerned with achieving the best possible balance between the interests of the public, including individual Maori, and those communal Maori interests encompassed in the concept of rangatiratanga. The principles dictate that different compromises must be achieved according to the different circumstances of each case. The final balance, assessed over time and across the range of society's activities to which the Treaty applies, was to have been mutual and equal.

Parliament has determined, however, that the principles of the Treaty are not to be given effect to in isolation from other matters.

Decision makers must assess the meaning of the duty to "take into account", ensure they are at all times pursuing the purpose of sustainable management, and at the same time work out how to incorporate their responsibilities to the other duties set out in Part Two of the Resource Management Act.

The following section is intended to alert local authorities to some of the issues resulting from the multiple obligations created by Part II of the Resource Management Act. This is done by looking at ways in which applying the principles of the Treaty of Waitangi may provide opportunities to resolve some of the difficulties which may arise.

The conflict will be less in some instances than in others. Perhaps progress towards achieving the balance contemplated by the Treaty can still be achieved. The outcome remains to be seen.

Local authorities are reminded that the Ministry for the Environment, in providing advice on the implementation of the Act is not to be taken as providing legal opinions. Decision makers are urged to obtain independent legal advice on such matters.

"Take into Account"

Judicial comment on the meaning of the duty "to take into account" holds that it is a significantly stronger duty than that of "to have regard to".

Where decision makers are given a discretion to determine matters, unfettered by anything more than an obligation "to have regard" to certain matters, then they are required to give the matter genuine attention and thought, and such weight as they consider appropriate. But having done that they are:

> "...entitled to conclude it is not of sufficient significance either alone or together with other matters to outweigh other contrary considerations". [New Zealand Cooperative Dairy Company Limited v Commerce Commission [1991] NZLR, p601.]

Their discretion remains complete, unaffected by the duty.

The Court of Appeal has determined that the duty "to take into account" differs from that "to have regard to". In the words of Mr Justice Somers:

> "The first question [in this case], is what is meant by the words "shall have regard to". I do not think they are synonymous with "shall take into account". If the appropriate matters had to be taken into account, they must necessarily in my view affect the discretion [of the decision maker]." [R v CD [1976] 1 NZLR, p436.]

It would appear from these cases that the duty "to take into account" indicates that the decision maker must weigh the matter with other matters being considered and in making a decision, effect a balance between the matters.

In terms of section 8, the use of "take into account" indicates that in every case the principles of the Treaty must be considered and weighed against other factors in making a decision. Decision makers need to be able to demonstrate how they have achieved the balance between the matters in coming to their decision.

Need to Consult

The effect of the section 8 duty is to further emphasise the value of local authorities seeking to fully inform themselves as to the meaning and application of the principles of the Treaty to the facts of the particular case.

That will normally include a consultation process with tangata whenua so as to determine the cultural significance of the resource, the opportunities for the exercise of kawanatanga and rangatiratanga and the opinions and objectives of the tangata whenua with respect to the particular resource.

Without evidence of such consultation, local authorities may find it difficult to demonstrate their compliance with the duty set out in section 8.

Sustainable Management and the Principles of the Treaty (Section 5)

The requirement in section 8 to take account of the principles of the Treaty of Waitangi is expressed as being in relation to powers and functions being exercised by persons "in achieving the purpose of this Act".

The purpose of the Resource Management Act is defined in section 5 as "to promote the sustainable management of natural and physical resources".

The emphasis in the definition on the promotion of sustainability, rather than on its achievement, was designed to enable communities to move towards the goal of ecological sustainability at a pace to be determined by their special social and economic needs. The ultimate objective might be to reconcile continuing development, and its contribution to human well being, with the need to protect against environmental degradation.

Although certain essential co-requisites are identified in the definition of sustainable management, their priority and the extent to which they are reflected in resource allocation decisions will depend on the visions set by individual communities.

The setting of these visions will reflect community values and priorities for their resources. They are decisions which will affect all resource use in the area, including that of Maori with respect to their taonga. Maori will seek to have an active role in making these decisions, to incorporate Maori cultural and spiritual values and associations with the natural world.

Priority Between the Sections

The duty in section 8 is subordinate to the duty in section 5.

If there is no conflict between the two, there should be no difficulty in giving effect to both. In the event of conflict, section 5 is to be preferred. As always, it may be good practice for decision makers to first endeavour to determine the extent to which both objectives are able to be achieved together.

Ancestral Relationship and the Principles of the Treaty (Section 6e)

Section 6(e) requires decision makers to recognise and provide for the ancestral relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

It is apparent that the duty to "recognise and provide for" implies more trenchant obligations than that of "to take into account". The effect is to oblige decision makers to give greater weight to the ancestral relationship than to the principles of the Treaty of Waitangi, in the event that these conflict.

The Treaty and Section 6

The Treaty deals with a hierarchy of relationships, from the primary relationship between Crown and Maori, the relationship between kawanatanga and rangatiratanga, and finally, the relationship with their resources which Maori are seeking to maintain in preserving their authority to exercise rangatiratanga. This last relationship is the same as that specifically promoted in section 6(e). It is, however, only one facet of the matters addressed in the Treaty of Waitangi.

The Treaty is fundamentally about balancing the interests and the cultural preferences of two peoples, Maori and Pakeha. Rangatiratanga, and the traditional relationship it seeks to preserve is only one side of the equation.

Rangatiratanga and Section 6

As we have seen, the concept of rangatiratanga incorporates all of the following characteristics:

- It is intrinsically linked to traditional cultural precepts. These relate to preferred tribal structures and organisation, particularly tribal communalism of land/resource holding and decision making and to the primary role of the hapu descent group.
- It incorporates the entirety of Maori religious and spiritual beliefs. These dictate the subordinate position occupied by people with respect to the natural world, and thence how people are to behave within that relationship.
- It is exercised utilising traditional controls on resource use which are designed to maintain the tenets of the spiritual relationship.

In this context, rangatiratanga is about continuing to have the mana or authority to exercise the relationship between Maori and their culture and traditions with the natural world. The similarities with section 6 arise because both are concerned with the same relationship, and the traditions and cultural precepts that determine both its characteristics and the terms of its exercise.

The traditional relationship of Maori with their lands, water, sites, waahi tapu and other taonga was considered by Parliament to be of such significance as to warrant legislation as a matter of national importance. One of the effects of combining sections 6 and 8 is to emphasise the need to recognise the ancestral relationship in any balancing exercise when weighing the pros and cons of any proposed resource use.

Use, Development and Protection of Resources

Section 6(e) is an extension of section 3 (1)(g) of the Town and Country Planning Act. Over the years Maori have sought to rely on this section to enable the establishment of marae or papakainga-based settlement or to persuade decision makers against particular resource uses. The ability of Maori to use resources is as fundamental to the relationship as the obligation to conserve and protect them.

A possible source of conflict between 6(e) and section 8 arises out of the development right presented by the Treaty principle of choice. This gives Maori the right to choose when they wish to abide by their own customs or when they will modify this so as to take advantage of the opportunities offered by pakeha practices.

When they entered the Treaty, Maori did so in the expectation they would be able to take advantage of the new technologies offered by the settlers.

Today the economic imperative is a particularly strong motivation. This may lead to Maori proposals to use resources for their economic development in ways which could result in some environmental degradation.

Can section 6 be used to constrain Maori from pursuing economic goals if the result may be more environmental degradation than would be acceptable under the Maori traditional relationship?

Two points need to be considered here. First, the phrase "the relationship of Maori and their customs and traditions with their taonga" does not necessarily refer to the relationship as exercised in pre-European Maori society. Culture is dynamic. Traditions evolve. The prevailing social and economic conditions of the time go a long way towards determining the way that culture finds expression. It does not necessarily follow, therefore, that development can never be an exercise of the relationship encapsulated in section 6(e).

The second point to consider is related to the first. Realistically, tangata whenua local to the resource are the only people able to assess the characteristics of the relationship with a particular place or resource. That includes determining where development fits within that relationship. Section 6(e) does not mean that decision makers are to exercise the relationship themselves. They are to provide opportunities for Maori to do so.

Within section 6 the ancestral relationship is only one of the matters of national importance to be provided for. The priority of these matters depends on the facts of the case.

The principles of the Treaty require that the right of rangatiratanga is balanced with public interests, but do not specify any particular public interests to be given more or less weighting. Most importantly, the principles also require that, wherever possible, the balance is to be exercised in favour of the Maori interests, especially where they either own the land or resource, or where its significance to them is particularly great.

One of the effects of combining section 6 and section 8 may, therefore, be to import into the section 6 balancing exercise, the Treaty principles. The Treaty presumption is that the balance is to favour Maori interests represented by the ancestral relationship unless there are compelling reasons against doing so. This presumption is itself not unqualified, being dependent, as always, on the facts of the particular situation, primarily the importance of the land or resource and the importance of the development proposal.

Taonga and Section 6

The definition of taonga given during deliberations on the principles of the Treaty, particularly those made by the Court of Appeal, will be very influential in determining the meaning of this term when it is used in section 6.

The Court's decisions will not be strictly binding, however, due to the rules which govern legal precedent. Essentially, those definitions were made in the context of the Treaty, not of an ancestral relationship given legal effect independently of any Treaty reference.

Ultimately it will be for the Courts to decide whether these distinctions are sufficiently important as to render not applicable the Court's comments on taonga. They will also have to decide whether they support the decisions of the Waitangi Tribunal on the same subject.

In the meantime decision makers should be guided by these definitions, as they come from the highest of legal authorities and, as yet, are the only assistance available.

Section 6 refers to:

> "ancestral lands, water, sites, waahi tapu and other taonga".

The use of the words "and other" is a strong indication that Parliament has accepted that all the preceding things identified – lands, water, sites and waahi tapu – are also taonga. Although interesting, this acceptance is unlikely to have much practical effect for the purposes of section 8. The definitions of taonga given by the Court and Waitangi Tribunal are sufficiently wide-ranging as to accommodate all these specified things. It does, however, serve as a useful reinforcement of the point that local authorities ought not to limit the application of the principles of the Treaty by interpreting taonga as meaning something less.

Kaitiakitanga and the Principles of the Treaty (Section 7a)

Kaitiakitanga has as its root the word tiaki (to care, guard or protect). Kaitiaki is the agent, the guardian, and given the noun ending of tangi, becomes the word "kaitiakitanga", which means guardianship.

The definition given to kaitiakitanga in the Act refers to the exercise of guardianship and to an ethic of stewardship. It is important to understand that the definition is intended to offer decision makers a starting point. It offers concepts of guardianship and stewardship which are reasonably familiar. Decision makers should use these definitions in their efforts to grasp the meaning of a concept which will be very unfamiliar to many, simply because of its different cultural context. Kaitiaki, and the exercise of their responsibilities, kaitiakitanga, are a part of Maori cultural and spiritual belief, rooted in the values of that society. They cannot be understood without reference to those values.

This means it is not wise to rely solely on understanding what guardianship and stewardship might mean to the decision maker. In determining the characteristics of kaitiakitanga, the crucial factor will be the meaning of these concepts to Maori.

Even then, this will be only the beginning. Once a general understanding of the many matters encompassed by the term is reached, more investigation will be required to determine how it is expressed and applied to any particular resource management situation. In this aspect, the obligations created by use of kaitiakitanga in the Act are by no means unique. The Resource Management Act made enormous changes to the way in which resources are to be managed and introduced several "new" concepts to law in the process. The full implications of these concepts can be developed only with their use over time.

In the case of kaitiakitanga, however, decision makers have access to knowledge which will assist them in their task. The tangata whenua who have mana over the resource will be able to determine both the characteristics of kaitiakitanga and how it should be given expression.

Kaitiakitanga and rangatiratanga are intrinsically linked. Both are concerned with actions which are the right and responsibility of tangata whenua, but there are differences. Rangatiratanga denotes the authority which tangata whenua have to control all aspects of use of a resource. To a significant extent, rangatiratanga is exercised as between people. It includes, for example, the right to control other people's access to the resource. Since it is exercised collectively, it also denotes the right to control the terms of access and use by members of the hapu.

In comparison, kaitiakitanga connotes a relationship between people and the environment. This relationship encompasses and determines the position occupied by people in relation to the natural world in both its physical and metaphysical senses. As do many Pakeha, Maori value the natural world for both its tangible and its intrinsic worth.

Kaitiakitanga includes an obligation on people to use resources in ways which respect and preserve resources in the environ-

ment, both physically and as sources of spiritual power. Kaitiakitanga have the function of alerting people to the obligations of compliance with the tenets of this relationship. Where kaitiaki are people, the exercise of kaitiakitanga and the exercise of rangatiratanga both control the actions of other people. Where the kaitiaki are non-human, the obligation on people is to respect and respond to the indications which the kaitiaki give.

In both instances, the ability and responsibility for determining how to effect compliance rests with the tangata whenua.

Hei Mutunga

The Treaty of Waitangi is a document of great and, as yet, largely unrealised potential for forging a relationship between Maori and Pakeha based on the right of both cultures to benefit equally from their association with each other, respect and appreciation for the richness of cultural difference and for the needs of people and communities to be able to live and develop according to their own values and preferences.

Until outstanding grievances are resolved, Maori will continue to base the assertion of their rights to undisturbed use and possession of their important natural resources, waters, and mahinga kai on the exchanges and the promises of the Treaty and to complain of the environmental degradation caused by decisions from which they have been excluded in breach of the Crown's guarantees under the Treaty.

As one commentator described it

> "...the Treaty of Waitangi is the mechanism which established environmental goals and standards and enables the delegation of managerial responsibilities to the Crown. It is the benchmark by which hapu and whanau measure the extent of Crown performance of its obligations". [p4 Te Whakaari Takitimu.]

Rendered into its most simple terms, the obligations of the Treaty are about attitude, about demonstrating a willingness to take a generous and flexible approach to the duty under section 8, and to upholding the spirit and compliance with the principles of the Treaty of Waitangi.

Appendix 1

Part II

Resource Management Act

Purpose and Principles

5. **Purpose** - (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

   (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-

   (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

   (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

   (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6. **Matters of national importance** - 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 the following matters of national importance:

   (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

   (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

   (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

   (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

   (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

7. **Other matters** - 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 have particular regard to-

   (a) Kaitiakitanga:

   (b) The efficient use and development of natural and physical resources:

   (c) The maintenance and enhancement of amenity values:

   (d) Intrinsic values of ecosystems:

   (e) Recognition and protection of the heritage values of sites, buildings, places, or areas:

   (f) Maintenance and enhancement of the quality of the environment:

   (g) Any finite characteristics of natural and physical resources:

   (h) The protection of the habitat of trout and salmon.

8. **Treaty of Waitangi** - 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).

Appendix 2

List of Reports of the Waitangi Tribunal Issued to Date

Wai-1	Fishing Rights (Hawke)	1978	Wai-25	ARA Maori Representation	1987
Wai-2	Waiau Pa Power Station	1978	Wai-26	(& Wai-150) Radio Frequencies	1990
Wai-3	Welcome Bay Sewerage Scheme	1990	Wai-27	Ngai Tahu	1991
Wai-4	Kaituna River	1984		Ngai Tahu Sea Fisheries	1992
Wai-5	Land Tax Claim	1990	Wai-32	Ngati Rangiteaorere	1990
Wai-6	Motunui-Waitara	1983	Wai-34	Kakanui Sewerage Scheme	1990
Wai-8	Manukau	1985	Wai-38	Te Roroa	1992
Wai-9	Orakei	1987	Wai-45	(pt) Kaimaumau Muriwhenua Land	1991
Wai-10	Waiheke Island	1987	Wai-67	Oriwa 1B3	1992
Wai-11	Te Reo Maori	1986	Wai-83	Waikawa Block (Sth Island)	1990
Wai-12	Motiti Island	1985	Wai-103	Wairoa Land	1990
Wai-13	Tai Tokerau Fishing Regulations	1990	Wai-119	Mohaka River	1992
Wai-14	Tokaanu Buildings (Tuwharetoa)	1990	Wai-202		1991
Wai-15	Fishing Rights (Te Weehi)	1987	Wai-261	(Interim) Auckland Hospital Endowments	1992
Wai-17	Mangonui Sewerage	1988	Wai-264	(276,72 & 121) Auckland Railway Lands	1992
Wai-18	Fishing Rights (Lake Taupo)	1986	Wai-307	Fisheries Settlement Report (Sealords)	1992
Wai-19	Maori 'privilege'	1985		Interim Report on Sylvia Park and Auckland	1992
Wai-22	Muriwhenua Fishing	1988		Crown Asset Disposals	