

Incorporating Māori Perspectives in Part V Decision Making

ERMA New Zealand Policy Series: Protocol 1

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Chapter 1: Taking into Account Māori Perspectives

‘Kia mau koe ki te aka matua, kei mau koe ki te aka taepa’

Hold fast to the parent (firm and reliable) vine, take not hold of the loose (unreliable) vine.

(Hold to what is right and not what is wrong)

1.1 Introduction

Section 9 of the Hazardous Substances and New Organisms Act 1996 (HSNO Act) requires the Environmental Risk Management Authority (the Authority) to develop a decision-making Methodology which includes an assessment of monetary and non-monetary costs and benefits, and to apply it consistently. This Methodology has been approved by the Government and established as an Order-in-Council.

To supplement the Methodology Order more information has been published in the form of a set of Protocols. The Protocols indicate how the Authority addresses certain issues in its decision-making and how some of the key concepts found in the HSNO Act and the Methodology are interpreted.

In preparing these Protocols the Authority has been conscious of both its needs, as a decision-maker, and the needs of its stakeholders. As decision-maker, the Authority recognises the value of Protocols as a means of assisting it to produce high quality decisions consistently over time. Similarly, stakeholder groups can benefit from the additional clarification of the way in which the Authority makes decisions.

This Protocol outlines how the Authority assesses Māori and Treaty of Waitangi information, pursuant to sections 6(d) and 8 of the HSNO Act. The Protocol may be modified and added to over time as further information or insights into the Authority’s decision-making become available.

References to the Authority should be taken to include all delegated decision-makers under the HSNO Act 1996.

It is noted that this Protocol will generally be relevant only to applications of significance from a Maori perspective. Many applications will not.

1.2 Māori and HSNO Act 1996

Māori have a relationship that is inextricably inter-twined with the environment, spanning centuries of observation and experience from which a unique body of knowledge and cultural practice has developed. This experience is valuable, alongside that of Western scientific knowledge and experience, to the

development of tools and processes for ensuring that the mauri (life force) of the environment is maintained and improved.

Māori have consistently indicated the following reasons for seeking recognition of cultural values and practices in relation to the management of the environment:

- The conviction that their cultural practices have a very strong environmental basis and could enhance the management process;
- An obligation, as *kaitiaki*, to protect the natural world¹;
- The belief that spirituality is integral to the connection between Māori culture and tradition with the environment.

With this in mind, and in accordance with sections 6(d) and 8 of the HSNO Act 1996, the Authority, to the extent practicable, seeks to establish relationships at a hapū and iwi level consistent with partnership. The Authority's intention is to develop a relationship with all of its stakeholders which is one of mutual respect and cooperation, while fully recognising its statutory obligations. The statutory obligations relating specifically to Māori under the HSNO Act, include the following.

1.2.1 Part 4A: Ngā Kaihautū Tikanga Taiao

Ngā Kaihautū is a statutory Māori Advisory Committee established under Part 4A of the Act. It is required to provide advice and assistance, as sought by the Authority, on matters relating to policy, process and applications. This advice is given from a Māori perspective as described within a Terms of Reference set by the Authority.

1.2.2 Section 5(b)

Section 5(b) of the HSNO Act requires that the Authority, when exercising functions under the Act, will recognise and provide for:

'the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural wellbeing and for the reasonably foreseeable needs of future generations'.

A number of potential issues of significance relating to this section of the Act with particular reference to Māori communities are detailed in chapter 2.

1.2.3 Section 6(d)

Section 6(d) of the HSNO Act requires that the Authority, when exercising functions under the Act, will take into account:

¹ Ministry for the Environment (2003) *A Cultural Health Index for Streams and Waterways*. Ministry for the Environment, Wellington.

'the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga'.

In doing this, the Authority considers information provided by specialists, iwi and Māori stakeholders and Ngā Kaihautū.

A number of potential issues of significance for Māori relating to HSNO have been identified and are detailed in chapter 2.

1.2.4 Section 8

Section 8 of the HSNO Act, requires that:

'All persons exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)'.

The Authority undertakes this requirement in a number of ways, including through the development of this Protocol. With specific regard to decision-making, the Authority seeks to act reasonably and in good faith, and to make informed decisions that actively protect Māori interests.

A number of potential issues of significance for Māori relating to HSNO and the Treaty of Waitangi have been identified and are detailed in chapter 2.

1.3 Incorporating Māori Perspectives

The Authority has a duty to make informed decisions in relation to Māori interests and perspectives on specific HSNO issues. To achieve this, the Authority has the power to require information from the applicant or to seek information independently. The provision of this information will often require consultation.

More detailed information relating to the types of issues posing particular significance to Māori is provided in chapter 2 to this Protocol.

1.3.1 Ngā Kaihautū

With the statutory mandate as set out in section 1.2.1 above in mind, Ngā Kaihautū has taken it upon themselves to act at all times to protect and uphold the integrity of tikanga and mātauranga Māori and to ensure it is appropriately applied by ERMA New Zealand to HSNO issues. Achieving this role involves:

- a. Providing the Authority with advice on organisational planning, policy development and procedure so that it takes account of Māori perspectives including Tikanga Māori, the Tiriti o Waitangi / Treaty of Waitangi, economic, scientific and other Māori aspirations.
- b. Recommending and assisting with strategies that enhance the knowledge, understanding and participation of Māori in relation to the role of the HSNO Act and functions of the Authority.

- c. Advising on the membership of committees with delegated authority to make decisions, as provided for under clause 43 of the First Schedule of the HSNO Act.
- d. Reviewing and recommending appropriate processes and protocols for ensuring the satisfactory incorporation of Māori perspectives to decision-making by the Authority and its delegated decision-makers under Part V of the HSNO Act.
- e. Advising on and monitoring the activities of ERMA New Zealand, including Part V decision-making, to ensure the timely, appropriate and effective incorporation of Māori perspectives.
- f. Providing advice on other functions of the Authority, including implementation of the transitional provisions, monitoring the effectiveness of the Act and of enforcement, public awareness initiatives and the general management and operations of ERMA New Zealand.

1.3.2 Consultation with Māori

The High Court, Appeal Court, Māori Land Court and others including the Waitangi Tribunal have stated that genuine consultation with Māori is fundamental to taking into account the principles of the Tiriti o Waitangi / Treaty of Waitangi. The Authority acknowledges this requirement and actively ensures consultation with Māori has been undertaken where its decision-making has the potential to affect Māori interests.

The HSNO Act requires the Authority rather than the applicant to take account of sections 6(d) and 8 of the Act, but it cannot properly do so without the requisite information. The Authority's policy is that the onus is on the applicant, in the first instance, to provide such information.

This policy recognises that applicants are usually in the best position to obtain information and can do so more cost-effectively than other parties. In addition, hapū, iwi and expert individuals are best able themselves to define precisely how a particular hazardous substance or new organism may impact on their specific tribal culture, traditions and taonga.

Where risks have a local impact, then consultation is conducted with local tangata whenua (iwi/hapū/whanau) unless the Authority, in consultation with Ngā Kaihautū, determines otherwise. The Authority expects local consultation to be carried out by the applicant. Where risks potentially involve issues of significance to Māori on a national scale, as may be the case for the release of new organisms and the import or manufacture of particular hazardous substances, nation-wide consultation is likely to be required.

A set of ERMA New Zealand policies on consultation will shortly be published, and copies can be obtained on request. Additional guidelines for consultation which expand on the policy, will subsequently be published in a revision of the ERMA New Zealand User Guide '*Working with Māori under the HSNO Act 1996*'. This material clarifies local or national consultation requirements, and

the provisions available where national consultation has been deemed appropriate.

Consultation is a two-way process, and the Authority will determine whether every reasonable effort is made on the part of the party consulting and there is a corresponding willingness to respond reasonably on the part of those consulted. Consultation is not taken to mean consensus or agreement. In terms of the HSNO Act the purpose of consultation is to provide information so that the Authority can make an informed judgement.

1.4. The Principles of Te Tiriti o Waitangi / Treaty of Waitangi

The Authority is required by the HSNO Act to take into account principles of Te Tiriti o Waitangi/Treaty of Waitangi (section 8).

Because there is no single point of reference defining the principles of the Tiriti o Waitangi / Treaty of Waitangi clause, the Methodology sets out the principles as they apply in the HSNO context. These principles include, but are not limited to, the need to:

- a. establish relationships which are in the nature of partnership having regard to the other requirements of the Act;
- b. act reasonably, honourably and in good faith;
- c. make informed decisions on matters affecting the interests of Māori;
- d. actively protect Māori interests as far as is reasonably practicable; and
- e. avoid actions which would prevent redress of Treaty claims.

Further reference material relating to the principles of the Tiriti o Waitangi / Treaty of Waitangi is provided in Annex 4 for guidance.

1.5 Appointing Experts to Decision-Making Committees

Where an application raises issues of particular significance to Māori, Ngā Kaihautū may provide independent advice to inform decision-making. However, the Authority may also appoint Māori to the decision-making committee considering such applications and will look to Ngā Kaihautū as the primary source of advice for nominations to the committee.

Under these circumstances Ngā Kaihautū may recommend that one or more of its members or external Māori experts be appointed. Appointments will be made on the basis of the need for relevant expertise, including tikanga Māori (Māori protocols), mātauranga Māori (Māori knowledge) and knowledge of the Tiriti o Waitangi / Treaty of Waitangi.

Where a member of Ngā Kaihautū is appointed to a committee to consider an application, or seeks to make a personal submission on an application, that

member shall not contribute to the formulation of the collective view of Ngā Kaihautū on Māori issues in the application concerned.

1.6 Access by Māori

The Authority will endeavour to ensure that the ability of Māori to access the Authority's decision-making processes is not impeded or disadvantaged relative to any other group, and takes account of Māori custom, culture and traditions.

Consequently, the Authority will accept submissions and representations to hearings given in te reo Māori (Māori language) and will give consideration to submissions expressed in accordance with tikanga Māori.

1.7 Status of information

The Authority may treat as confidential any information that has been classified as being culturally sensitive by those iwi/Māori groups who have provided the information.

Chapter 2: Māori Perspectives in Part V Decision-Making

2.1 Evaluating Issues of Importance to Māori

When evaluating issues of importance to Māori perspectives as they relate to Part V applications, the following approach should be followed.

2.1.1 Information Sources

In making decisions on applications, the Authority will consider information, advice and input from:

- The Applicant;
- ERMA New Zealand staff;
- Ngā Kaihautū Tikanga Taiao;
- Reference documents including this Protocol, and especially the material in Appendix 2 describing Māori cultural concepts and practices;
- Direct consultation with Māori;
- Expert reviewers;
- Public submissions; and
- Other relevant sources

2.1.2 Cultural Impact Assessments

There is no formal requirement for applicants or for Maori wishing to provide input, to do a Cultural Impact Assessment. The place of such Assessments in HSNO decision making has yet to be considered by the Authority. However, this should not prevent such an Assessment being provided if this is considered to be appropriate in particular cases.

2.1.3 Considering the Information

In forming a view on the level of significance of issues of potential importance to Māori, consideration must be given to the following:

- The likely effect of the application on environmental, cultural, health, economic and Treaty issues;
- The extent to which issues raised by the applicant directly affect the matters set out in section 5(b) of the HSNO Act 1996 (*The maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well being and for reasonably foreseeable needs of future generations*);
- The extent to which issues raised by the applicant directly affect the matters set out in section 6(d) of the HSNO Act 1996 (*The relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, valued flora and fauna, and other taonga*);
- The extent to which the principles of the Treaty of Waitangi should be taken into account as required in section 8 of the HSNO Act 1996 (*All persons*

exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi – Te Tiriti o Waitangi);

- The appropriateness of the process of consultation with Māori by the applicant (guided by the information provided in the user guide *‘Working with Māori Under the HSNO Act 1996*);
- The strength of the evidence presented as to any adverse or beneficial effect on the relevant Māori community; and
- The scope for managing risks to Māori through the imposition of controls on specific applications.

2.2. Identifying and Assessing Effects (Risks and Benefits)

2.2.1 Process

Risks and benefits must be identified before they can be assessed or managed. In identifying risks and benefits the Authority will take into account the concept of **Kaitiakitanga**. Information on this is set out in Appendix 2.

Methods used to assess or analyse risks and benefits may vary according to the types of risk (source and consequence), but the general processes of risk identification and hazard identification are the same. Before identifying risks and benefits, the context must be established including the organisational or strategic and risk management context.

The following are steps required when assessing adverse and beneficial effects (risks and benefits) for the key outcome areas of environmental, cultural, health and wellbeing, economic, and Tiriti o Waitangi / Treaty of Waitangi:

1. Identify potential adverse and beneficial effects in each of the key outcome areas set out in section 2.3 below.
2. If there are none, there is no need to continue with that particular section of the key outcome.
3. Where potential effects are identified, assess the level of significance of the effects. This will be a qualitative assessment based on the information provided in the Evaluation & Review Report, Ngā Kaihautū Report and any experts advice sought.
4. Based on the level of significance of potential adverse effects, identify potential options or controls for mitigating, minimising or removing the risk where appropriate.
5. Based on the level of significance of potential beneficial effects, identify potential options or controls for encouraging their improvement or enhancement.
6. Determine the significance of the effects with controls in place.

2.2.2 Description of the significance of effects

Where the effects are tangible, ie, can be expressed in biological, physical or economic terms, etc, their significance should be described in the same way as

for effects more generally, eg, for risks, both the magnitude and the likelihood of the effect should be described.

For effects which are wholly cultural in nature, ie, do not have a biological, physical or economic component, it may be more appropriate to provide a single qualitative description of the nature and level of the cultural concern, rather than to attempt to describe magnitude and likelihood separately.

2.2.3 The 'weighting' of effects

For tangible effects the process of assessing the level of risk implicitly provides a basic weighting. The process of then adjusting weights to reflect the type of risk (cl 33 of the methodology) or to reflect distributional effects (eg impact on particular populations) is no different for effects for Maori than non Maori.

Where non-tangible effects are considered, the weighting used will need to be considered on a case by case basis.

2.3 Outcomes Important to Māori

A number of outcomes have been identified as important to Māori across the following broad areas of concern to the HSNO Act 1996:

- Environmental
- Cultural
- Health and Wellbeing
- Economic Development
- Tiriti o Waitangi / Treaty of Waitangi

These outcomes provide a reference against which application information can be assessed, and form the basis of the information provided in the relevant sections of the Evaluation and Review Report prepared by ERMA New Zealand staff.

If the application is likely to have adverse or beneficial effects for the outcomes listed in the sections below, the Authority will need to consider the significance of these effects to iwi/Māori, and in relation to other effects highlighted in the Evaluation and Review Report.

An indication of the weight (or depth of concern) attributed by iwi/Māori to specific potential effects may be provided by those iwi/Māori consulted in relation to the application.

2.3.1 Environmental Outcomes

The productivity and life-sustaining quantity and quality (including the spiritually based qualities) of the following:

- Traditional Māori food resources (mahinga kai)
- New Zealand's indigenous flora and fauna, or flora and fauna valued by Māori²
- Water (inland and coastal)
- Land
- Air
- Natural habitats and ecosystems
- Other natural resources valued by Māori

2.3.2 Cultural Outcomes

The potential adverse or beneficial effect on the *kaitiakitanga* role of Māori, including the protection and enhancement of the *mauri*, *mana* and *tapu* (as described in appendix 2) of:

- People – (Te tāngata)
- Native flora and fauna – (Ngā tāonga koiora)
- Valued flora and fauna – (Ngā tāonga tuku iho)
- Land – (Te whenua)
- Waterways (inland and offshore) – (Ngā Moana, Roto, Awa, Manga)
- Air – (Te hau)
- Traditional Māori values and practices – (Ngā tāonga tuku iho)
- Mātauranga Māori (Māori knowledge system and worldview)

2.3.3 Heath and Well-being Outcomes

The protection and enhancement of:

- Taha wairua – the spiritual health and well-being obtained through balance with nature and the protection of mauri
- Taha whanaunga – the responsibility and capacity to belong, care for and share in the collective
- Taha hinengaro - mental health and well-being and the capacity to communicate, think and feel
- Taha tinana - physical health and well-being

These attributes together express the holistic nature of hauora (Māori health and wellbeing) and this model is also known as the Whare Tapawha model of Māori health.

2.3.4 Economic Development Outcomes

- The ongoing capacity and capability of Māori to develop economically
- The ongoing participation of Māori in the generation of economic benefit, and the burden of economic cost

² ERMA New Zealand definitions for *native*, *introduced* and *valued introduced* are provided in Protocol 3, Series 2 *Interpretations and Explanations of Key Concepts*.

2.3.5 Tiriti o Waitangi / Treaty of Waitangi Outcomes

- The ongoing management by Māori of their cultural and natural resources (as recognised in section 6(d) of the HSNO Act)
- The ongoing rights of Māori to develop culturally, socially, spiritually, and physically (as recognised in section 5(b) of the HSNO Act)
- The implementation of the principles of the Treaty (as provided for in section 8 of the HSNO Act and as set out in section 1.4 of this Protocol).

Appendix 1: Glossary

Ancestral lands - lands that have historical, cultural or spiritual value to Māori.
Hapū – collection of families with common ancestry and common ties to land.
Iwi - Māori social and political grouping made up of hapū and whānau.
Kaitiakitanga – guardianship rights, the ability of Māori to act as stewards or caretakers.
Māhinga kai - food gathering practices and traditional Māori foods including indigenous shellfish, inland fish (tuna [eels], freshwater kōura [crayfish]) and plants (pūha, kūmara etc).
Mātauranga Māori –Māori knowledge of things.
Mauri - spiritual integrity or life-force, for Māori all things have an inner spiritual force, the mauri.
Ngā Kaihautū Tikanga Taiao - name of Māori Advisory Group to Authority meaning the determinants of environmental wellbeing.
Rāhui - embargo, quarantine, traditional Māori sanction to stop people using natural resources.
Sites - important sites to Māori (particularly archaeological sites and ancient dwellings).
Taonga - things deemed to be of value to Māori.
Tapu - sacred, forbidden, confidential.
Tikanga Māori - Māori processes, norms and traditions.
Wahi tapu – sacred sites or sites of spiritual significance to Māori.
Waitangi Tribunal Treaty of Waitangi claims - the Crown established the Waitangi Tribunal to hear and report on any past breaches of the Treaty of Waitangi.
Whānau – family (including the extended family).
Whare Tapawha – A model for considering Māori Health. Developed by the School of Māori Studies, Massey University.

Appendix 2: Māori Cultural Concepts / Practices

The following information about key Māori cultural concepts and practices is provided to guide decision-makers in considering Māori perspectives as they relate to HSNO issues. It should be noted that various iwi and hapū groups may have different interpretations of these concepts and practices, and that this document does not seek to definitively define them.

1. Mātauranga Māori (Māori worldviews and perspectives)

Cultural traditions existed and continue to exist for all races, creeds and nations. Traditions codified into laws, rules, practices and procedures provide the framework for different belief systems and worldviews.

The framework for identifying and characterising mātauranga Māori (Māori worldviews and perspectives) is based on an analysis of the traditional practices of Māori society. These traditional practices were and continue to be developed as tools for controlling behaviour, particularly in regard to the sustainable management of the environment in which Māori live.

Mātauranga Māori is essentially a system of knowledge and understanding about Māori beliefs relating to creation, the phases of creation and the relationship between atua (supernatural guardians) and tāngata (mankind). This relationship or whakapapa (genealogy) determines the way people behave in the context of their environmental ethical practices. Understanding Māori beliefs, values and the relationship of these to the natural world requires an understanding of traditional expressions including those portrayed in waiata (song) and pēpeha (proverbs).

It should be remembered that while the main features and principles in Māori tradition are consistent between different iwi/hapū groups, the concept of ‘He kōrero i titoa ai i te roro o te whare wānanga’ (traditional expressions composed in the porch of the house of learning) recognises regional and tribal differences.

The following are three concepts considered key to understanding mātauranga Māori. These concepts have firm spiritual derivations providing a platform that recognises a holistic view in environmental management.

- ***Kaitiakitanga*** (*guardianship, preservation, protection, fostering*)
Kaitiakitanga is the undertaking of responsibilities and obligations inherited from the atua (spiritual guardians) over the realms of those atua. These obligations and responsibilities are accrued through an intricate system of relationships with the environment, for the control and management of resources.
- ***Kawa* or *Ture*** (*rituals, protocols and rules*)
Customary or habitual practices founded on long continued methods of usage, which evolve according to evolving needs and circumstances.

- **Tikanga** (*custom, correct way of doing things*)
Custom, shared understandings and social action based on ideas, values and knowledge inherited from the atua.

2. Kaitiakitanga (A guiding principle for decision-makers)

Kaitiakitanga³ is a guiding principle and valuable navigational tool for the Authority to assist in making sound judgements and decisions when taking into account mātauranga Māori (Māori worldviews and perspectives).

Kaitiakitanga is defined in the Resource Management Act 1991 as guardianship and/or stewardship, though was used by Māori to define conservation customs and traditions. It is intimately linked to rangatiratanga⁴, the power and authority of tangata whenua to control and manage the resources within their territory, as guaranteed in the preamble and Article II of the Tiriti o Waitangi / Treaty of Waitangi.

All resources and forms of life were birthed from Papatūānuku, the earth mother. Like the Greek ‘Ge or Gaia’, a personification of the Earth, the Māori term Papatūānuku (‘land from beyond the veil; or originating from the realm beyond the world of sense-perception’), was the personified form of the whenua or natural earth. Through her union with Ranginui (sky father), all things were created meaning that all animate and inanimate things are related through whakapapa.

‘Papatūānuku is herself a living organism with her own biological systems and functions. She provides a network of support systems for all her children who live and function in a symbiotic relationship. The different species and genera contribute to the welfare of other species and also help to sustain the biological functions of Mother Earth both in their life and death. Her children facilitate the processes of ingestion, digestion and exertion. The streams of water are her arteries bringing the life giving waters for her to imbibe and share with her offspring. Those same streams act as alimentary canals and help in the disposal of waste.’⁵

According to Māori tradition, the resources or children of Papatūānuku do not belong to tāngata (people) but rather tāngata are one of the many children who belong to Papatūānuku. People, animals, birds and fish all harvest the bounties of Papatūānuku but do not own them.

³ The term *tiaki* has the basic meaning ‘to guard’, but it can also mean ‘to keep, preserve, conserve, foster, protect, shelter and keep watch over’. The prefix *kai* followed by a verb denotes the agent of an act, and adding the suffix *tanga* to get *kaitiakitanga* means guardianship, preservation, conservation, fostering, protection, and sheltering.

⁴ Marsden, M (1992) “God, Man and Universe” in Michael King (ed) *Te Ao Hurihuri*. Reed Publishers, Auckland

⁵ Ibid

Kaitiakitanga is therefore the undertaking of duties and obligations inherited from the atua (spiritual guardians and first children of Papatūānuku) over the realms of those atua. They include but are not limited to:

Tāne - kaitiaki of the resources of the forests;

Tangaroa - kaitiaki of the resources of the oceans;

Rongo - kaitiaki of the resources of cultivated foods;

Haumietiketike - kaitiaki of uncultivated foods;

Tūmatauenga - kaitiaki of people and tribal conflicts; and

Tāwhirimātea - kaitiaki of the elements.

It is the responsibility of people as kaitiaki to ensure the protection of cultural and spiritual health and well-being of themselves and the resources for which it is their duty to protect. This is achieved by performing **kawa** or ceremonial rituals according to the **tikanga** or laws/rules of those rituals.

There are three key spiritual elements (*taha wairua*) of kaitiakitanga which define health and well-being for Māori. They are **mauri**, **mana** and **tapu**.

2.1 Mauri

Mauri is the active life-giving principle, or physical life-principle. It is imbued by *Io* the Supreme Being, into all things animate and inanimate making it possible for them to move and exist within the conditions and limits of their own creation and surrounding environment. The flesh of a bird is different to that of an animal, a fish, or a tree, and Māori consider that the mauri of each should not be mixed.

Mauri is a form of energy, and in this regard generates, regenerates and upholds creation. From this source, the mauri radiates outwards both to the environment and more specifically to the species for which it was intended. This provides conditions within the environment that harmonise and balance the processes of the earth's ecosystems and aids the regeneration process. *Mauriora* has been described as the human form of mauri, and is of higher genealogical order to the mauri of non-human objects⁶.

Mauri is unable to protect itself against unnatural changes to the environment⁷, though does have the ability to mend and heal given appropriate time and conditions. When the mauri is strong, humans, fauna, flora and the landscape flourish. When it is depleted and weak those forms of life become sickly and weak.

⁶ Marsden, M (2003) *The Woven Universe: Selected Writings of the Rev. Māori Marsden*, edited by Te Ahukaramu Royal, Te Wānanga ā Raukawa, Otaki.

⁷ Massey University Course Notes (1990) *New Zealand's Natural Heritage*. Paper 21.103. Case Study No. 3 Manukau Harbour.

Today it is for those who hold mana whenua status to exercise kaitiakitanga and protect the mauri of significant resources to ensure their sustainability and availability for generations to come.

2.2 Mana

Mana means spiritual authority and power. In a theological sense, it has been taken to mean ‘charisma’, in terms of authority it denotes the lawful permission delegated by the atua to their human agent to act on their behalf and in accordance with their revealed will.

(a) *Mana Atua*

The sacred, enduring, indestructible power of the atua, beginning with Io the Supreme Being and known as *Te Ahi Kōmau*. This power is handed down to those persons who conform to sacred rituals and principles.

(b) *Mana Tīpuna (Tūpuna)*

The power of authority handed down from generation to generation through chiefly lineage or from others who possessed it. Those who inherit mana tīpuna (tūpuna) also inherit the responsibility for conducting the various rituals and duties required to maintain that authority and power.

(c) *Mana Whenua / Moana*

Mana o te whenua / moana – Authority, dignity and integrity of the land/sea :
The inherent power of the land and water to produce the bounties of nature. When the world was created, the atua imbued procreative power into the womb of Papatūānuku (the earth mother). This power is maintained by its mauri which provides the potential for the growth and development of all animate and inanimate things. Māori avail themselves of this power provided by the atua when they exercise *manaaki manuhiri* (hospitality) and provide their guests with the bounties produced within their tribal domain.

Mana ki te whenua/moana - Authority, dignity and integrity to the resources of the land/sea : The relationship of iwi, hapū and whānau to the land and sea, and the natural resources within their tribal *rohe* (boundaries). These boundaries are established by *ahi-kā-roa* (long standing fires of occupation), whakapapa (genealogy) and /or *raupatu* (conquest). It is from this concept that the expression *tāngata whenua* (people of the land) was generated.

Mana ki te whenua is also about the status of tāngata whenua because status is determined not by ownership of the land, but by the demonstration of hospitality. This is noted in a number of traditional whakatauāki (proverbs) such as:

“*Mehemea koe e kore e whāngai i te tāngata,
me pehea te iwi e mōhio ai e whai mana koe*”.

If you do not demonstrate true hospitality,
how shall people know that you are a person of mana.

In accordance with Māori customary belief, ancestral land cannot be bought or sold, as you cannot own, buy or sell your own mother. The land is handed down and gifted to a particular people in trust, carrying responsibilities and obligations for its care. This also applies to rivers, lakes, harbours and seas which are a source of life for the people.

In contemporary times, Māori are largely powerless to act in their kaitiaki role unless specifically mandated by statute or agreement. Deep wounds are created within the people who once held kaitiaki responsibilities as they can only witness the pollution and destruction (both physical and spiritual) of their lands and other resources.

In terms of these resources, Ngāi Tahu have noted the importance of *mahinga kai*⁸ to its culture and provides the centre that holds the tribe together. Without mahinga kai, Ngāi Tahu consider that they would lose a key component of their cultural identity⁹.

Maintaining the mauri of resources such as mahinga kai, will sustain healthy ecosystems, support a range of cultural uses, and reinforce the cultural identity of the people¹⁰.

(d) *Mana Tangata*

The power acquired by an individual according to his or her ability to perform the functions of kaitiakitanga assigned to them. The functions of kaitiakitanga are many and diverse, for example a skilled warrior was able to acquire mana through the art of tribal conflict or warfare and would be assigned as kaitiaki within the realm of Tūmatauenga (the Spiritual Guardian of tribal conflict).

A type of mana specific to women (obtained at birth) is that of their role as *whare tangata* (child bearers). Others include their role in welcoming visitors on marae, and as kaitiaki of marae protocols, amongst other things.

⁸ ‘Mahinga kai’ literally means ‘food works’, and it is an all-inclusive term that encompasses the ability to access (both physically and legally) the resource, the site where gathering occurs, the activity of gathering and using the resource, and the good health of the resource – it must be fit for cultural use.

⁹ Te Rūnanga o Ngāi Tahu (1999) *Freshwater Policy Statement*. Te Rūnanga o Ngāi Tahu, Christchurch.

¹⁰ Ministry for the Environment (1997) *Environmental Performance Indicators: Proposals for Air, Freshwater and Land*. Ministry for the Environment, Wellington.

In contemporary Aotearoa New Zealand, mana has often been expressed to mean sovereignty. In this regard, when Māori talk about mana they are talking about their active right to share in resource distribution and decision-making.

2.3 Tapu

“Ko te tapu te mauri me te mana o te Ira Atua”.

Tapu is the sacred life giving essence and authority, dignity and integrity of the spiritual guardians.

“Ko tenei mea te tapu he tohu ture whakatūpato kia kore e whara te mauri me te mana. I ahu mai te tapu i te Ira Atua, ko tōna Amokapua, Amorangi, ko ngā Tohunga Ahurewa. Mehemea ka whakatōtia te tapu ki runga i te papanga whenua, he tohu tenei kua e rawaweketia e te ringaringa tangata, na te mea ko tōna whakautu ko Aitua”.

The law of tapu is intended to protect the mauri (the life giving essence) and mana, (the authority, dignity and integrity) of all things.

Tapu is an element which was deposited by the atua into the care of *tōhunga* (high priests). If a rahui (limitation of use or trespass) was placed on the landscape for whatever reason, it was done so to recognise the intrinsic tapu of that landscape or event. People knew that whilst in this heightened state of tapu, any infringement would meet with misfortune.

As tapu is regarded as the sacred link to the mauri and mana of the spiritual guardians, the protocols of tapu become the mechanism that controls human behaviour in regard to their use of resources. It is therefore a key spiritual element of kaitiakitanga.

All things created have tapu because they link with one or other of the atua and ultimately with Io the Supreme Being. Specific iwi and hapū have their own understanding of tapu, however a generic view is that tapu is used, amongst other things, to protect;

- People (especially children) from entering dangerous places;
- Resources from inappropriate use or overuse;
- Quality of life (mauri and mana);
- The deceased from being defiled;
- The sanctity of *waahi tapu* (sacred places); and
- The community from adverse external or unnatural influences.

In summary, the primary purpose of tapu is to protect - through recognising the whakapapa (genealogical relationship) between Ira Atua (the life principle of the Spiritual Guardians) and Ira Tāngata (the life principle of mankind), and adhering to tikanga (custom).

3. Kawa

Kawa are the ceremonial (and liturgical like) protocols, rituals or actions of kaitiakitanga that must be performed meticulously for major events. Any deviation or error would be regarded as a grave breach of kaitiakitanga and was taken as an ill-omen¹¹. Examples of events requiring specific kawa include:

- Child birth;
- Cultivation;
- Hunting or fishing;
- Death;
- Marae activities;
- Protecting and conserving natural and historic resources;
- Wānanga (the passing on and acquiring of knowledge);
- The use of resources for manufacturing purposes;
- The building of whare, waka etc; and
- Other events that enhance the welfare, health and spiritual sustenance of the community.

Simply defined, kawa describes what is required in order to fulfil duties and obligations.

4. Tikanga

Tikanga are essentially a set of ethics expressed as customs and traditions that have been handed down through many generations and accepted as a reliable and appropriate way of achieving and fulfilling certain objectives and goals. Such proven methods together with their accompanying protocols (or kawa) are integrated into the general cultural institutions of society and incorporated into the cultural system of standards, values attitudes and beliefs¹².

Simply defined, tikanga describes the ethical and moral basis for how the kawa must be implemented or undertaken.

¹¹ Marsden, M (2003) *The Woven Universe: Selected Writings of the Rev. Māori Marsden*, edited by Te Ahukaramu Royal, Te Wānanga o Raukawa, Otaki.

¹² *ibid.*

Appendix 3: Principles of Te Tiriti O Waitangi / Treaty of Waitangi

There is no single point of reference that defines the principles of the Tiriti o Waitangi / Treaty of Waitangi, though the principles of partnership, protection and participation are well-established in Treaty jurisprudence. In addition, due to differences in meaning, the courts have long recognised that both the English and Māori versions of the Treaty should be recognised and taken into account.

The Court of Appeal decision in *New Zealand Māori Council v Attorney General 1987* sets out the original definition of the principles derived from both versions of the Tiriti o Waitangi / Treaty of Waitangi. In summary these are:

- the obligation to act reasonably, in the utmost good faith and in a manner that is consistent to partnership;
- the requirement to make informed decisions;
- the obligation to actively protect Māori interests;
- the obligation on the Crown to not unduly impede or diminish its capacity to provide redress where a valid Treaty grievance is established.

The Court of Appeal has made the following statements about the principles of the Treaty of Waitangi.

a) ‘Acting reasonably and exercising utmost good faith and the requirement to make informed decisions’

“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 impact of the principles of the Treaty”. [Richardson J, *New Zealand Māori Council*, p683]

b) ‘Actively protecting Māori interests’

“The duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable”. [Cooke P, *New Zealand Māori Council*, p664]

c) ‘The obligation on the Crown in relation to Treaty grievances’

“The obligation of the parties to the Treaty to comply with its terms is implicit. Just as it is the obligation of the Crown to grant some form of redress for established grievances, so is the right to redress for breach which may fairly be described as a principle ...” [Somers J, *New Zealand Māori Council*, p693]

Subsequent claims to the Waitangi Tribunal continue to build on these and other principles of the Treaty of Waitangi on a case by case basis.

Appendix 4: The Treaty of Waitangi (the text in English)

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 number 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 to 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 Preemption 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.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and

Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.
Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc]

Appendix 5: The Treaty of Waitangi (the text in Māori)

[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 wakaetia 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 wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, 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 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 wakaetanga 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.

(Signed) WILLIAM HOBSON,

Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.¹³

¹³ Treaty of Waitangi Act 1975, First Schedule.