

## **Some resources for consideration and reference for the ‘Local authorities and their performance with regards to Treaty matters’ sessions, Quaker Treaty of Waitangi Issues Weekend, October 2013**

### **• List of issues of significance for Maori (Auckland Council)**

“The first list of issues of significance for Maori created by the Independent Maori Statutory Board is grouped under Treaty of Waitangi principles and is wide ranging, covering issues in central and local government. It includes issues with engagement/consultation/inclusion, access to justice, kaitiakitanga, wahi tapu protection, Maori representation, CCOs, resource consents, infrastructure process/development, regional planning and development, community development, customary rights, health, urban Maori, papakainga housing authorities, marae development, infrastructure, rates, affordable housing, education, economic development, tourism, and Treaty settlements.”

### **• A possible framework for assessing local authorities performance<sup>1</sup>**

#### **Ten areas:**

1. Knowledge of obligations,
2. Policies,
3. Processes, Systems and Data,
4. Roles and Responsibilities,
5. Decision Making,
6. Consultation and Engagement,
7. Capacity,
8. Training and Awareness,
9. Communication, and
10. Monitoring.<sup>2</sup>

#### **Details of what each area includes:**

**1. Knowledge of obligations** - including knowledge of Treaty principles, Maori legislative rights, requirements from Memoranda of Understanding and service agreements.

**2. Policies** - including a commitment to the Treaty; policies in relation to consultation and engagement, identification and management of wahi tapu and sites of significance, commitment to partnership, co-management and co-governance agreements, Maori place names for sites, Maori freehold land rates remission, management of taonga, protection and management of sensitive information from Maori, management of Treaty settlement requirements for the local authority, management of Memoranda of Understanding, management of service agreements, management of court order agreements, contribution of Maori in decision making, acquisition and disposal of Maori freehold land, the establishment joint management agreements, transfer of powers under the Resource Management Act 1991. In addition, the Local Governance Statement should include a record of the local authority’s position on the option of establishing Maori wards or constituencies, the opportunity to change them. and policies for liaising with, and memoranda or agreements with Maori; the Hearings Policy should include the requirement for the local authority to recognise tikanga Maori and to receive written and spoken evidence in Maori, who is responsible for determining if it is appropriate to recognise tikanga Maori, guidance on these matters, and the need to protect sensitive information to avoid serious offence to tikanga Maori or to avoid disclosure of

the location of wahi tapu; and the Significance Policy should include what a significant decision on land and water is.

**3. Processes, Systems and Data** - including the ability of the local authority to capture, analyse, share and adequately restrict access to underlying data, and to utilise that data within key processes and systems, for example, in relation to wahi tapu and sites of significance; values, interests, aims and aspirations of Maori; consultation and engagement with Maori; Memoranda of Understanding, service agreements and co-management / co-governance agreements with mana whenua; court order agreements; human resources / recruitment; resource consents; transfer of powers and joint management agreements; and acquisition and disposal of Maori freehold land.

**4. Roles and Responsibilities** - is there reliance on a Maori local authority unit (or similar) for “all things Maori” stemming from a lack of clarity on other’s roles and responsibilities in ensuring the local authority meets Maori legislative rights? A local authority may comprise a governing body (mayor and councillors), local boards, a local and / or regional council, and council controlled organisations - is there clarity in relation to roles and responsibilities across these?

**5. Decision Making** - local authorities have statutory obligations with regard to decision making processes, in accordance with the Local Government Act 2002 s4, ss14(1)(d), 77(1)(c) and 81. To give effect to the Treaty principle of partnership, both parties must “act reasonably” and “in good faith”. Active and early consultation is a partnership responsibility, as is ensuring partnership is reflected in all levels of activity.

In addition, the Resource Management Act 1991 requires local authorities to recognise and provide for the following matters of national importance in relation to managing the use, development and protection of natural and physical resources: s6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga; s6(g) the protection of protected customary rights; s7(a) kaitiakitanga; s7(aa) the ethic of stewardship; and s8 principles of the Treaty.

Mechanisms for enabling Maori input in decision-making might include Maori Advisory Group/s or Mana Whenua Forums.

**6. Consultation and Engagement** - local authorities have statutory obligations with regard to consultation with Maori in accordance with the Local Government Act 2002 s82, and to give effect to the Resource Management Act ss6(e), 6(g), 7(aa) and schedule 1.

Root causes for lack of consultation and engagement may be: requirements to consult are not known (knowledge of obligations); lack of policy guidance (policies), unclear processes (processes, systems and data); lack of measures / examples demonstrating successful consultation (monitoring); knowledge sharing on Maori values and interests and sites of significance is limited or ad-hoc (processes, systems and data); Maori may be unable to input into every decision (capacity); lack of clarity of roles and responsibilities (roles and responsibilities); no framework for Memoranda of Understanding / agreements (processes, systems and data); need to determine when to consult / engage (decision making) and different views on who should be consulted with (processes, systems and data).

**7. Capacity** - limited capacity in terms of time, expertise and funds may affect the ability of the local authority to consult with Maori and for Maori to contribute to local authority decisions. In accordance with the Local Government Act 2002, ss 4, 14(1)(d) and 81, local authorities are required to improve and provide opportunities and processes to enable Maori to contribute to decision making.

**8. Training and Awareness** - to increase awareness of the Treaty and Maori legislative rights across the local authority, as well as matters such as consultation processes, Treaty principles, tikanga Maori, and Maori values, issues and interests.

**9. Communication** - effective communication and information sharing between the local authority and Maori; as well as within the local authority.

**10. Monitoring** - of compliance with Treaty principles, Maori legislative rights, and requirements from Memoranda of Understanding and service agreements; and of the effectiveness of policies, processes and controls.

### • **Auckland Council : Statutory responsibilities**

Council's statutory duties and responsibilities to a large degree determine how the relationship with Mana Whenua and Mataawaka will occur. These duties and responsibilities fall across a range of acts of Parliament. These primarily include:

- Local Government (Auckland Council) Act 2009 (the 2009 Act)
- Local Government Act 2002
- Resource Management Act 1991
- Waitākere Ranges Heritage Area Act 2008
- Hauraki Gulf Marine Park Act 2000
- Land Transport Management Act 2003
- Reserves Act 1977
- Local Government Official Information and Meetings Act 1987
- Local Government Ratings Act 2002
- Local Electoral Act 2001
- Te Ture Whenua Maori Act 1993
- Te Uri o Hau Claims Settlement Act 2002
- Ōrākei Act 1991
- Marine and Coastal (Takutai Moana) Act 2011

### • **Te Puni Kokiri: Legislation containing clauses requiring some action in respect of the Treaty**

- Conservation Act 1987 (section 4)
- Crown Pastoral Land Act 1998 (section 25, section 84)
- Crown Research Institutes Act 1992 (section 10)
- Crown Minerals Act 1991 (section 4)
- Education Act 1989 (section 181(b) (added 1990))
- Energy Efficiency and Conservation Act 2000 (section 6)
- Foreshore and Seabed Endowment Revesting Act 1991 (section 3)
- Harbour Boards Dry Land Endowment Revesting Act 1991 (section 3)
- Hauraki Gulf Marine Park Act 2000 (section 6)
- Hazardous Substances and New Organisms Act 1996 (section 8)
- New Zealand Public Health and Disability Act 2000 (section 4)
- Resource Management Act 1991 (section 8)
- State-Owned Enterprises Act 1986 (section 9)
- Treaty of Waitangi Act 1975 (section 6 (1))

- **Te Puni Kokiri: Legislation containing other Treaty references not amounting to a direction to act**

- Crown Forests Assets Act 1989
- Education Lands Act 1949
- Environment Act 1986 (long title)
- Fisheries Act 1996
- Legal Services Act 1991
- Local Legislation Act 1989
- Maori Fisheries Act 1989
- Maori Language Act 1987
- Ngai Tahu Claims Settlement Act 1998
- Ngai Tahu (Pounamu Vesting) Act 1997
- Ngai Tahu (Tutaepatu Lagoon Vesting) Act 1998
- Ngati Turangitukua Claims Settlement Act 1999
- Orakei Act 1991
- Te Ture Whenua Maori (Maori Land) Act 1993
- Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
- Treaty of Waitangi (State Enterprises) Act 1988
- Waikato Raupatu Claims Settlement Act 1995
- Waitutu Block Settlement Act 1997

**Note:** interestingly the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990 are not included in the above lists, neither is the Public Works Act 1981.

- **Te Tiriti o Waitangi / the Treaty of Waitangi principles (Auckland Council)**

**Note:** it can be useful to look at how local authorities perceive the Treaty - for example, Auckland Council's explanation of the Treaty principles begins with "*reciprocity or recognition of the essential bargain whereby Maori ceded sovereignty and the right to govern in return for guarantees to protect rangatiratanga*" (!!).

"Te Tiriti o Waitangi/the Treaty of Waitangi principles have been expressed through the courts (High Court, Court of Appeal and Supreme Court(7)) and the Waitangi Tribunal. Principles relevant to the local government context include:

- **reciprocity or recognition of the essential bargain** – whereby Maori ceded sovereignty and the right to govern in return for guarantees to protect rangatiratanga
- **rangatiratanga** – the duty to recognise Maori rights of independence, autonomy and self-determination, including the capacity of hapū, Mana Whenua and Mataawaka to exercise authority over their own affairs. This principle enables the empowerment of Maori to determine and manage matters of significance to them
- **shared decision-making** – a balance of the kāwanatanga role in Article 1 and the protection of rangatiratanga in Article 2
- **partnership** – the duty to interact in good faith and in the nature of a partnership. There is a sense of shared enterprise and mutual benefit where each partner must take account of the needs and interests of the other

- **active protection** – the duty to proactively protect the rights and interests of Maori, including the need to proactively build the capacity and capability of Maori
- **ōritetanga (and mutual benefit)** – to recognise that benefits should accrue to both Maori and non-Maori, that both would each participate in the prosperity of Aotearoa giving rise to mutual obligation and benefits. Each needed to retain and obtain sufficient resources to prosper, and each required the help of its Treaty partner to do so. This includes the notion of equality (for example, including education, health and socio-economic considerations)
- **options** – recognising the authority of Maori to choose their own direction, to continue their own tikanga (customary practice) as it was or to combine elements of both and walk in two worlds. This principle includes recognition of Maori self-regulation
- **the right of development** – Te Tiriti o Waitangi/the Treaty of Waitangi right is not confined to customary uses or the state of knowledge as at 1840, but includes an active duty to assist Maori in the development of their properties and taonga (a treasured item)
- **redress** – the obligation to remedy past breaches of Te Tiriti o Waitangi/the Treaty of Waitangi. Redress is necessary to restore the honour and integrity of Te Tiriti o Waitangi/the Treaty of Waitangi partnership, and the mana and status of Maori, as part of the reconciliation process. The provision of redress must also take account of its practical impact and the need to avoid the creation of fresh injustice. While the direct obligation to redress grievances sits with the Crown, council has an important role in implementing the principle of redress at the regional and local level, particularly where the redress includes resources within the region

Te Tiriti o Waitangi/the Treaty of Waitangi principles are not exhaustive and further principles may be developed in the future. It is important to note that these principles must be considered holistically rather than in isolation. This acknowledges the unstated overlaps and synergies between them.”

- Peace Movement Aotearoa, October 2013

## References

<sup>1</sup> Te Tiriti o Waitangi Audit, Independent Maori Statutory Board, March 2012

<sup>2</sup> In four of these areas (knowledge of obligations, policies, consultation and engagement, and capacity), the Audit found significant weaknesses or gaps which are almost certain to compromise Maori legislative rights; and in the other six, found serious weaknesses or gaps which are likely to compromise Maori legislative rights.