Waitangi Tribunal

EMBARGOED: 5am, Saturday 2 July 2011

Ko Aotearoa Tēnei – Factsheet 4

Resource Management

"While the RMA originally promised considerable protection for kaitiaki interests in mātauranga Māori [Māori traditional knowledge] and taonga Māori, it has failed to deliver on that promise."

– *Ko Aotearoa Tēnei: Taumata Tuarua*, Chapter 3.

Ko Aotearoa Tēnei is the Waitangi Tribunal's report into the claim known as Wai 262, which concerns the place of Māori culture, identity and traditional knowledge in contemporary New Zealand law, and government policy and practice.

Chapter 3 relates to taonga in those parts of the environment controlled under the Resource Management Act. This factsheet provides a brief overview of that chapter.

Key points

Iwi and hapū are obliged to act as kaitiaki (cultural guardians) towards taonga (treasured things) in the environment such as land, natural features, waterways, wāhi tapu, pā sites, and flora and fauna within their tribal areas.

Current laws and policies do not support those kaitiaki relationships to the degree required by the Treaty.

Reform will not only strengthen Māori culture and identity; by harnessing Māori knowledge and values it will also strengthen and add greater depth to environmental decision-making.

Why the Resource Management Act matters to Māori

Relationships with the environment are fundamental to the Māori culture. Every iwi and hapū sees itself as related through whakapapa to the landforms, waterways, flora, fauna and other parts of the environment within their tribal areas. These parts of the environment are taonga, for which iwi and hapū are obliged to act as kaitiaki. They have inherited knowledge relating to these taonga, explaining their whakapapa relationship and their kaitiaki obligations. This kaitiaki obligation is a form of law, controlling the relationships between people and the environment. Kaitiaki relationships are also important sources of iwi and hapū identity.

In a very practical sense, relationships with taonga in the environment created Māori culture. It was through interaction with the environment that early Polynesian settlers became Māori, acquiring among other things knowledge and technology (for example, relating to food, clothing, shelter, and medicine); Aotearoa-specific systems of law and social control, and of value exchange; and inspiration for forms of expression and cultural works such as mōteatea (song-poetry), carving, and the ubiquitous 'koru' or 'pitau' form.

The exercise of kaitiaki relationships with taonga in the environment is therefore vital to the continued expression of Māori culture itself.

What the Treaty requires

The Treaty gives the Crown the right to govern, but in return requires the Crown to protect the tino rangatiratanga (full authority) of iwi and hapū in relation to their 'taonga katoa' (all that they treasure). The courts have characterised this

exchange of rights and obligations as a partnership.

In a resource management context, therefore, the Treaty allows the Crown to put in place laws and policies to control the sustainable use and development of the environment. But in doing so the Crown must to the greatest extent practicable protect the authority of iwi and hapū in relation to taonga (such as lands, waters, flora and fauna and the ecosystems that support them, wāhi tapu, pā and other important sites), so that they can fulfil their obligations as kaitiaki.

What the Tribunal has found

The Treaty entitles kaitiaki to fulfil their obligations to protect and care for taonga in the environment. But, while Māori interests and kaitiaki relationships are important, this does not mean that iwi and hapū should have a generally applicable veto. In a modern resource management context, other interests should also be considered, including the health of the environment, and the interests of property owners, resource users, those affected by resource use, and the wider community.

These interests must be balanced fairly and transparently, case by case. After these interests are balanced, a Treaty-compliant resource management regime would deliver kaitiaki control of a taonga when the kaitiaki interest is entitled to priority; partnership or shared decision-making where kaitiaki are entitled to a say in decision-making but other voices should also be heard; and in all other cases kaitiaki influence on decisions made by others with an appropriate degree of priority for the kaitiaki interest. The degree of kaitiaki control, partnership, or influence would depend on how important the taonga was to iwi or hapū culture and identity, and on the other interests at play.

The Tribunal found that the Resource Management Act (RMA) provides a mechanism for balancing competing interests in the environment. But the Act, and the way it has been implemented, only very rarely support kaitiaki control or partnership in relation to taonga.

The RMA delegates most decision-making to local authorities, which guide and control resource management through regional policy statements, regional plans and district plans, and through the resource consent process. Although it contains mechanisms allowing local authorities or the Minister for the Environment to delegate control, or for local authorities to establish partnerships, these are difficult to use and are very rarely used to delegate decision-making powers to iwi. The RMA allows iwi to set out their resource management priorities in so-called 'iwi management plans', but in practice these have little influence over local authority decision-making. As a result, Māori are generally limited to the reactive roles of being consulted on local authority policies and plans, and objecting to resource consent applications.

The Tribunal found that, for the RMA regime to more effectively support kaitiaki relationships, engagement between tangata whenua and local authorities needed to become compulsory, formal, and proactive. It recommended the development of a system allowing kaitiaki priorities for the environment to be integrated into local authority decision-making. This system should be built around enhanced 'iwi resource management plans' setting out iwi policies and priorities for managing the environment within their tribal areas. These plans should be negotiated with local authorities and, once finalised, should bind local authority decision-making just as regional policy statements, regional plans, and district plans do. For this system to work, the Crown will need to provide resources to allow iwi to obtain scientific, legal and other expertise necessary for the development of their plans.

The Tribunal also recommended:

- changes to existing RMA provisions to remove unnecessary obstacles to the delegation of decision-making powers to, and establishment of partnerships with, iwi; and
- greater use of national policy statements to guide local authorities over the involvement of Māori in decision-making.

See *Ko Aotearoa Tēnei* chapter 3 for full details of the Tribunal's findings and recommendations.