

Whakatane District Council
Treaty Principles Bill Workshop

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Outline of Workshop

1. Introduction
2. Background and context to Treaty principles
3. Treaty Principles Bill – what does it say
4. Key issues
5. Wānanga: Implications for Whakatane District Council



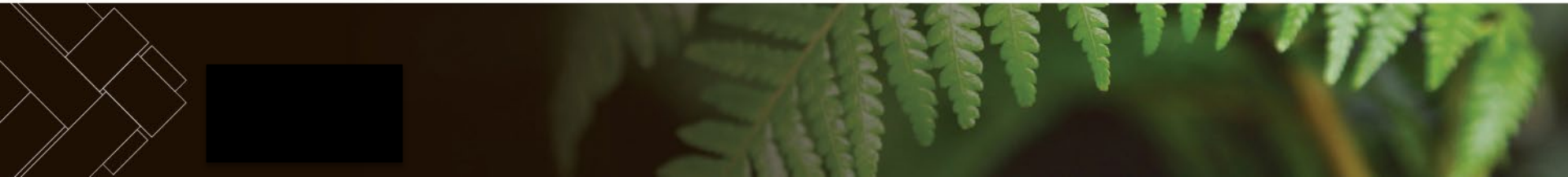
Te Tiriti o Waitangi / the Treaty of Waitangi

English Version

1. The Chiefs cede “sovereignty” to the Queen.
2. Her Majesty confirms and guarantees “full exclusive and undisturbed possession of 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”. Also re-emption rights.
3. Queen extends to the natives “her royal protection” and impacts to them “all the rights and privileges of British subjects”.

Te Reo Version

1. The Chiefs gave “kawanatanga” to the Queen.
2. The Queen guaranteed the chiefs “tino rangatiratanga” over their whenua, kainga and taonga katoa. Also pre-emption rights.
3. Queen will “tiakina” “ngā tangata Māori katoa” and give them the same rights and privileges as those from England.



Background and Context to Treaty Principles

1. Treaty principles first introduced into legislation in Treaty of Waitangi Act 1975
2. Now pepper-potted throughout legislation including s 4 of the Local Government Act 2002.
3. Can be considered a pragmatic way to bridge irreconcilable gap between Maori and English text of Te Tiriti.
4. Not un-controversial. Māori have long made calls for Te Tiriti (the text not principles) that they signed to be honoured.
5. Significant body of jurisprudence developed over last 50 years by Courts and Waitangi Tribunal.
6. Now a relatively high degree of certainty around them i.e. partnership, good faith, active protection, options, good government, equity, redress, tino rangatiratanga.



Treaty Principles Bill

Principle 1: Civil Government

The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws:

- a) in the best interests of everyone; and
- b) in accordance with the rule of law and the maintenance of a free and democratic society.

Principle 2: Rights of hapū and iwi Māori

- (1) The Crown recognises, and will respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it.
- (2) However, if those rights differ from the rights of everyone, subclause (1) applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.



Treaty Principles Bill

Principle 3: Right to equality

- (1) Everyone is equal before the law.
- (2) Everyone is entitled, without discrimination, to—
 - (a) the equal protection and equal benefit of the law; and
 - (b) the equal enjoyment of the same fundamental human rights.

Other clauses:

- **7:** principles must be used to interpret an enactment if the principles of the Treaty of Waitangi are relevant to interpreting that enactment (whether express or by implication).
- **8:** Act does not apply to Treaty settlements
- **9:** Nothing in the Act amends the text of the Treaty of Waitangi / Te Tiriti o Waitangi.



“If this Bill were to be enacted, it would be the worst, most comprehensive breach of the Treaty/te Tiriti in modern times.

If the Bill remained on the statute book for a considerable time or was never repealed, it could mean the end of the Treaty/te Tiriti.”

Waitangi Tribunal – 2024



Some Key issues

1. Unilateral amendment.
2. Partnership and good faith relationship would cease to exist.
3. The Bill bears no resemblance to Te Tiriti itself or its principles (legal fiction). That is:
 - a) Te Tiriti provides for bridled and fettered Crown power. Principle one would make it absolute.
 - b) Principle 2 removes rangatiratanga (guaranteed by Te Tiriti) and limits Māori rights to only what is recognised in Treaty settlements.
 - c) Mis-represents the guarantees in article 3 and expands them to apply to everyone.
4. Treaty settlements are used in a way that was never intended – to confine, limit and codify the present and future application of Te Tiriti.
5. Te Tiriti would have no effect in legislation for unsettled iwi and the rights and interests of those that are not “settled groups” would disappear.
6. Māori rights would become frozen at 1840, foreclosing on their right to development.
7. It would create significant uncertainty within the law i.e. how would s 8 of the RMA apply?
8. It has not fostered a healthy national conversation. Instead, the debate is based on misinformation.
9. It is disingenuous to purport to not amend the text of Te Tiriti when the effect is to do so.



Brainstorm: what are the implications for Whakatane District Council?



Some possible implications for WDC

1. Creates significant uncertainty within the law and manner in which Council's engage with Māori and Māori issues.
2. Puts into jeopardy any positive work that has gone into building meaningful and trusted partnerships and relationships with Māori.
3. Co-governance and co-management (outside of Treaty settlements) may need dismantling.
4. Engagement strategies with Māori would likely need to change.
5. Any policies around relationships (i.e. Te Toi Waka Whakareii) may need overhauling.
6. Council on the ground and front-line bear the brunt of non-recognition of Māori rights – strain on relationships.
7. No consultation with iwi or local government.

WDC has 7 iwi, 80 hapū, 69 marae and other Māori entities within the District.

Māori make up 46.8% of the population.

Other Councils

Hutt City Council: yesterday unanimously passed motion to oppose the Principles of the Treaty of Waitangi Bill. Public reporting indicates that motion was to: oppose the bill, affirm Te Tiriti o Waitangi underpins the core work of local government; and reaffirm the council's commitment to its partnership with mana whenua through Tākai Here, a partnership agreement signed between mana whenua and Wellington City Council.

Auckland Council: Decision not yet taken. A paper identifying likely themes online included the following:

- Recognition that Bill unlikely to receive support to pass.
- High-level summary of potential impacts to Council if enacted.
- Outline Council's existing strategic framework to deliver its Te Tiriti obligations.
- Advice on the Bill with a focus on procedural issues including lack of engagement with Māori and timing.
- Support for robust Crown engagement with mana whenua to maintain Crown-Māori relationship.
- Support for a well-developed long-term national constitutional conversation (enabled through partnership with Māori).
- Support for greater Crown resourcing and support for civic education to facilitate understanding of Te Tiriti.
- Stating view that as local government is an integral part of NZ's constitutional arrangements it should be engaged on a wide constitutional conversation.
- Support for clarifying the role of local government in relationship to Tiriti.

