

Statutory Requirements on Local Authorities in regards to Te Tiriti o Waitangi

Why is it important to consider local authorities and the Treaty/Te Tiriti?

Local Authority (LA), covers city and district councils, regional councils and also Council Controlled Organisations such as the Auckland's Watercare Services Ltd.

Local authorities are agents of the Crown, and are tasked with regulatory functions and delivery of public services that impact on rights guaranteed to iwi Māori under Art 2 of the Treaty/ Te Tiriti, which means that LA s are very significant when thinking about the performance of the Crown's Treaty obligations.

Art 2 or Art 3 Treaty/Te Tiriti rights?

It isn't always clear whether the legislation is referring to Art 2 or 3 rights, but it may be useful to consider whether it makes a difference in the particular case you are looking at, i.e. whether the legislation is consistent with Māori self determination; Art 2, or is providing for mainstream delivery with a degree of recognition of tikanga: Art 3 rights. The Local Government Act 2002 (LGA) refers variously to Māori, iwi and hapu, and so covers Art 2 and Art 3 rights. The Resource Management Act 1991 (RMA) refers to iwi authorities which are authorities established by iwi, and is therefore focused on Art 2 rights.

Māori are citizens and ratepayers also have Te Tiriti Art 3 rights. Under the LGA LA s are required by s 14 to have regard to the views of all its communities. The implication is that Māori will, if they prefer, be able to access services provided in a way that is in accordance with tikanga Māori.

TRG's suggested exercise

TRG's invitation was to start the process of becoming better informed; what do you as citizens and ratepayers know about your LA's performance in terms of Treaty issues? It would be useful to know more about your LA's policies that relate to Treaty issues. You may like to undertake a case study looking at how the LA has dealt with a particular issue.

Legislation and Policy areas – Points to note:

- There are statutory requirements on LAs in regards to the Treaty, but your search might have started with LA policies because these guide LA operations and implementation of requirements and best practice.
- Council long term plans and annual plans under the LGA, and district plans, regional policy statements and plans under the RMA will also be areas where issues arise or could be addressed.
- Areas where issues might have arisen are water management; coastal protection, sites of significance, wahi tapu. Te Ao Māori encompasses all things, so naming of streets could be relevant.
- There are usually issues of capacity for iwi Māori, so iwi are likely to focus on the issues of significant concern.
- You might look at such issues as the LA's relationship with iwi within its boundaries, representation of Māori, consultation, the conduct of hearings, and land rates.

General Statutory Requirements on Local Authorities

This table lists key requirements under the Local Government Act 2002 (LGA), Resource Management Act 1991 (RMA), Public Works Act 1981, and Local Government Rating Act 2002 (LG Rating Act). It suggests documents you can ask for to find out about how the LA is meeting its statutory obligations with regards the Treaty/Te Tiriti. Other local acts impose requirements specific to the local authority.

Area of action	Requirement i.e. the local authority MUST/SHOULD ...	Comment	Statutory reference
Information management	Keep iwi contact details, including information on the exercise of kaitiaki in the district or region	Would call for at least regular contact	S 35A (1)(a) and (c) RMA
	Hold planning documents recognised or provided by iwi authorities	Depends whether iwi choose to identify or provide such documents	S 35A (1)(b) RMA
Representation	Include in the local governance statement, information on the option of Māori wards and constituencies	See local governance statement	S 40(1)(d) LGA
Consultation	Ensure processes are in place for consulting with Māori	There should be a policy on engagement or consultation with Māori	S 82(2) LGA
Policies and planning	Include in the local governance statement, information on policies for liaising with, and memoranda or agreements with Māori	Ask for the statement including this information	S 40 (1)(i) LGA
	In achieving the RMA's purpose of sustainable management of resources, recognise and provide for the relationship of Māori culture and traditions with ancestral lands etc.	Ask for examples	S 6(e) RMA
	Take into account the principles of the Treaty, when exercising functions and powers under the RMA	Ask for examples	S 8 RMA
Decision-making	Provide opportunities for Māori to contribute to the LA decision-making processes, develop Māori capacity to contribute, and provide them with relevant information	Ask for any engagement or consultation policy	S 14 (1)(d), s 81(1)(a), (b) and (c) LGA,

Area of action	Requirement i.e. the local authority MUST/SHOULD ...	Comment	Statutory reference
	Have regard to iwi planning documents	Depends whether iwi choose to identify or provide such documents, but if iwi provide or recognise planning documents these must be taken into account in the regional council strategic policy statement and plans, and by the territorial authority in its district plan	S 61 (2A) RMA, and s 66 (2A)
	Consider what amounts to a significant decision in relation to land and bodies of water, and in such cases take into account the relationship of Māori and their culture and traditions with their ancestral land etc.	Identified in decision-making, see Annual Plan and Long-term Plan	S 77(1)(c) LGA
	State the resource management issues of significance to iwi authorities in the region and policies for those issues	See Regional Policy Statements and any regional plans to address iwi concerns	S 62 (1), s 65 (3)(e) RMA
Hearings	Recognise tikanga Māori where appropriate for hearings and accept evidence in te reo	Ask what information is provided to guide staff	S 39 RMA
Rates	A policy on the remission and postpone of rates with regards Māori freehold land and state the policy objective	Policy document	S 144 LG Rating Act and ss 102 and 108 LGA

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