



**Tūhonohono mai rā
ki a
“Tū Mai Te Tiriti”**

Welcome to our lunchtime seminar series

Kaikōrero/Guest Speaker:

Adjunct Professor Te Imaima Annette Sykes

Kaitaurima/Host for Ako Aotearoa:

Dr Joe Te Rito

Tuesday 29 August 2023

12pm-1pm Presentation; 1pm-1.25pm Questions

Brought to you by Ako Aotearoa - The National Centre for Tertiary Teaching Excellence

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Tū Mai Te Tiriti
Upraising the Treaty
in Tertiary Education

Ako
AOTEAROA



Preamble - Whanaungatanga

The Purpose of Te Tiriti o Waitangi is to:

- Protect Māori rights and property
- Keep peace and order
- Establish spheres of influence.



It envisages relationships of care, partnership and protection as well as autonomy and self-determination for hapū and limited authority for the Crown.

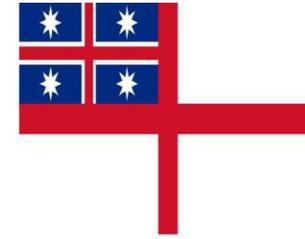
Whanaungatanga is:

the active process of building relationships through shared experiences and connections, critical to Tiriti-based practice and a prerequisite of authentic engagement.

It sets the tone for all relationships with Māori.



Article One - Kāwanatanga

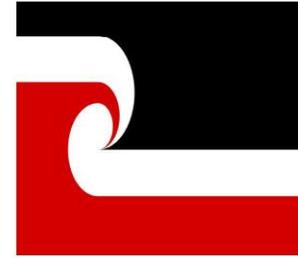


- Confirms that Rangatira (Chiefs) agreed to the British having a Governor to exercise Kāwanatanga over British people.
- Kāwanatanga is a nominal and delegated authority that gave the Queen control of her people.
- This interpretation aligns with contemporary understandings that Māori did not cede sovereignty to the British.
- The power granted to the British Crown to govern their people (Kāwanatanga) sits beneath the power affirmed for hapū (Tino Rangatiratanga).
- This is the defined meaning of kāwanatanga in the Declaration of Independence and the meaning understood by the rangatira who signed Te Tiriti o Waitangi.
- Kāwana was a Western-based notion that highlighted the rights of the individual and was hierarchical in nature. This is sharply contrasted with the collective rangatiratanga of many rangatira.

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Article Two - Tino Rangatiratanga



- Tino Rangatiratanga is understood to mean absolute authority over lands, settlements and all that was and is valuable to Māori (Taonga).
- In Te Ao Māori, Rangatiratanga is a power subordinate to no other. Therefore, it could not be ceded through a Treaty.
- Rangatiratanga was entrusted to the living to nurture and hand on to the generations to come.
- As a gift from the ancestors, it was both spiritually incomprehensible and legally impossible to even contemplate giving it away.

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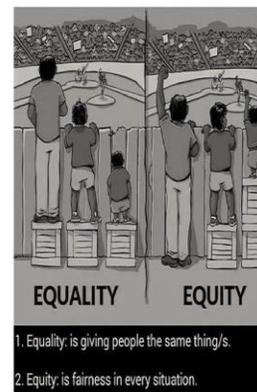


Article Three - Ōritetanga

- Translation:

This is also the arrangements for the agreements to the kāwanatanga [control of her subjects] of the Queen – the Queen of England will care for all the Māori people of New Zealand and will allow them all the same customs as the people of England.”

- The Crown promised to Māori the benefits of royal protection and full citizenship. This text emphasises EQUITY.
- Equality is about the same treatment, whereas equity is a more complex term that includes history, access versus opportunity and structural disadvantage.
- As long as socio-economic disparities remain for Māori, we have not fulfilled the obligations of Te Tiriti o Waitangi.



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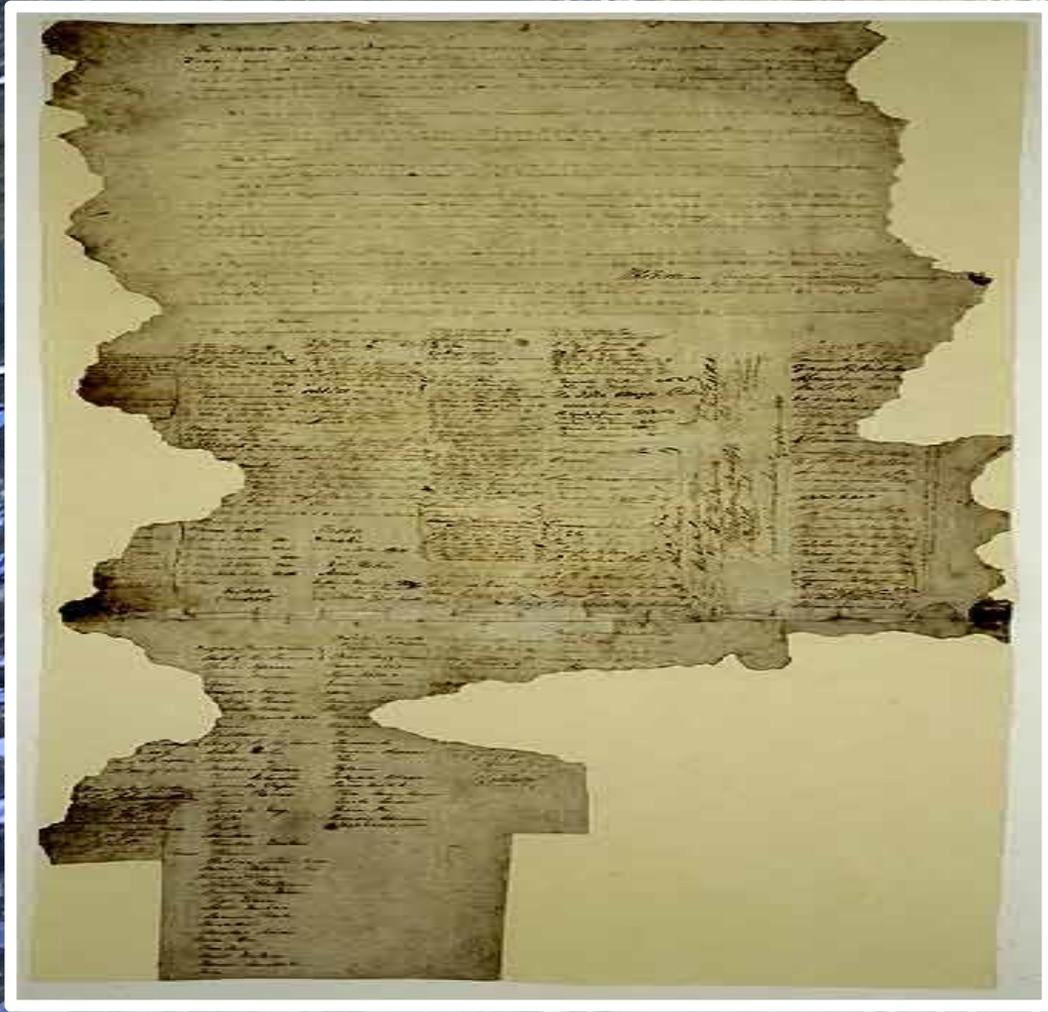
Article Four - Wairuatanga



- Translation: "The Governor says that the several faiths (Whakapono) of England and of the Wesleyans and Rome and also Māori custom shall alike be protected."
- The failure to engage with Wairuatanga also represents a potential breach of *te Tiriti*, which guarantees religious freedom in the broad sense - requiring our recognition and respect for indigenous principles, and willingness to uphold and support indigenous practices.

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Te Tiriti o Waitangi



“...ki nga Rangatira me
nga hapu...”

Ko Wai?

Iwi, Hapū, ahi kā, marae, hapori should decide themselves who is mandated to represent their interests based on the principles of *Mana Whakahaere*, and *Mana Motuhake*

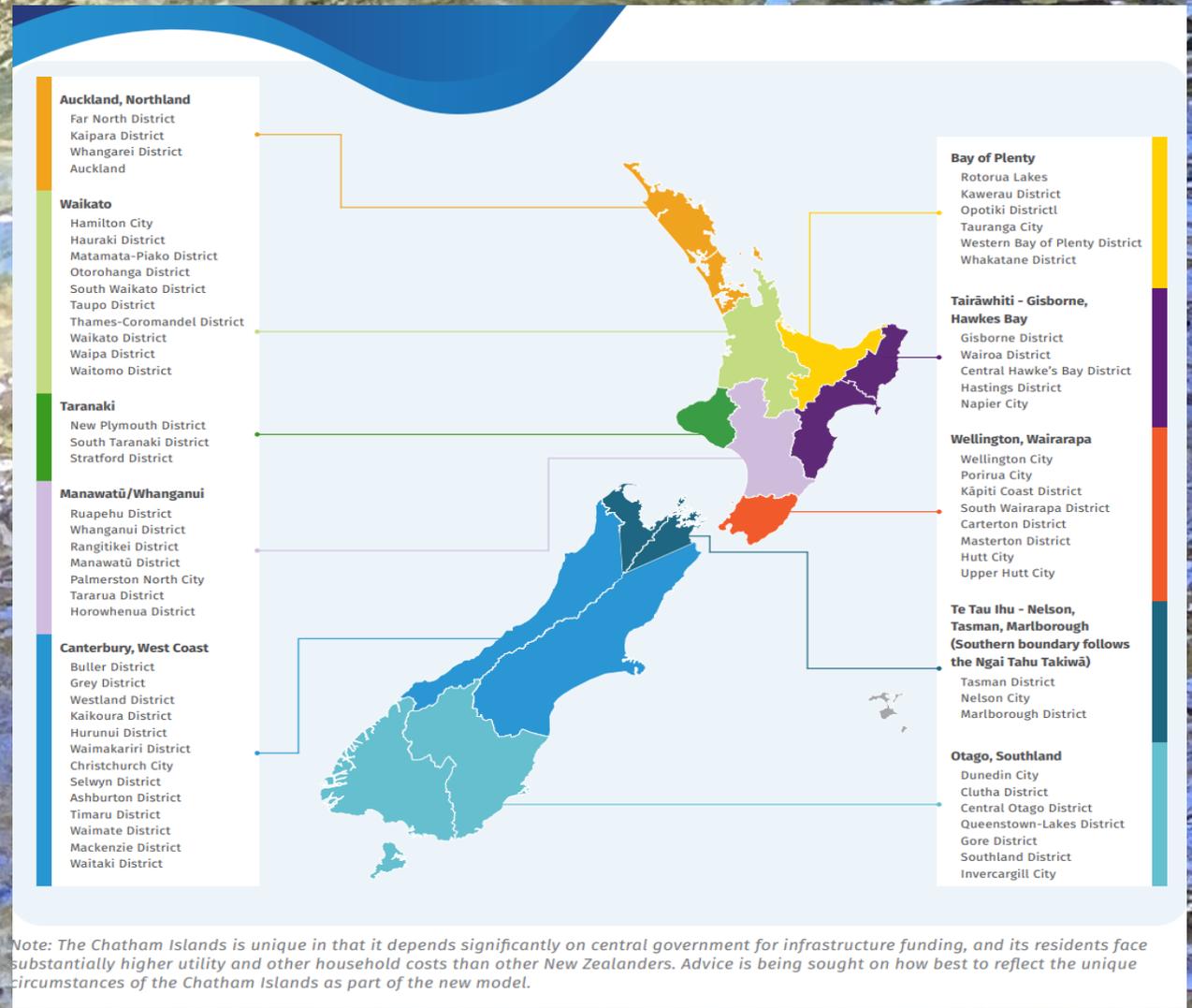




Co-governance is a bottom line in giving effect to, and honouring te Tiriti o Waitangi

3 Waters – co-governance or not?

What does this mean for how we organise and participate in this process?



A high-angle, close-up photograph of water flowing over rocks, creating a complex pattern of ripples and reflections in shades of blue, green, and brown.

Māori Rights and Responsibilities relevant to the Resource Management Reforms

Māori Rights and Responsibilities relevant to the Resource Management Reforms

This report and accompanying table has been prepared by Te Tai Kaha Māori Collective (Kāhui Wai Māori, New Zealand Māori Council, and the Federation of Māori Authorities) as a contribution to work on the reform of Resource Management legislation and Māori Rights, Interests and Responsibilities in Freshwater.

Resource management legislation and regulation is about management and control of “natural resources.” To give effect to Te Tiriti of Waitangi requires knowledge and understanding of current Māori rights, interests, duties, responsibilities, and obligations (“rights”) in relation to “natural resources” and te Taiao.

This work is designed to assist Māori in their relationship with Central and Local Government, and to support their inclusion, participation, and role as “partner” under Te Tiriti of Waitangi in resource management matters.

This work captures the status quo, and addresses what are the relevant rights, interests and responsibilities that need to be provided for in governance relating to Resource Management, Three Waters, and Local Government reform.

It is also relevant more broadly to te Tiriti relationship between the Crown and Māori.

Hierarchy of Māori Rights and Responsibilities

Table 1 sets out the sources of Māori constitutional legal rights and responsibilities, the nature of those “rights,” and who is the holder of those “rights” in relation to natural resources.

Māori rights and responsibilities existed pre-Te Tiriti of Waitangi and have developed over time, through various legal processes, including judge made “common law.”

Māori rights and responsibilities exist in accordance with tikanga and state law. All relevant rights translate to the practice of whānaungatanga, mana, manaakitanga, kaitiakitanga, tapū/noa/utu and rangatiratanga.

The starting point, and primary source of all Māori rights and responsibilities is within Te Ao including mana atua, mana tangata and mana whenua, and tikanga Māori as the framework of Māori law.

Table 1: Hierarchy of Māori Rights and Responsibilities

Source of Right	Explanation & Examples	Rights Holder
1. Tikanga Māori	<ul style="list-style-type: none"> • Based in Māori laws, values, and practices • Affirmed and protected by Te Tiriti o Waitangi • Recognised by Courts in common law • Affirmed in Aotearoa New Zealand’s constitution, legislation 	Primarily hapū <ul style="list-style-type: none"> • ancillary rights held by ahi kā / landowners / individuals • whānau • hapū collectives, confederations
2. Te Tiriti o Waitangi	<ul style="list-style-type: none"> • Based in tino rangatiratanga, and Article 2 • Reaffirmed by Supreme Court as having “constitutional significance” • Recognised by Courts and Cabinet • Recognised in Legislation 	Primarily hapū <ul style="list-style-type: none"> • ancillary rights held by ahi kā / landowners / individuals • whānau • hapū collectives, confederations

Source of Right	Explanation & Examples	Rights Holder
3. Common Law (Judge Made)	<ul style="list-style-type: none"> • Rights recognised through the common law doctrine of native title • Crown fiduciary duties, administrative law rights and international law rights including rights set out in UNDRIP 	<ul style="list-style-type: none"> • Hapū • ahi kā, landowners, individuals • Māori representative bodies, e.g., NZMC, FoMA
4. Property Rights	<ul style="list-style-type: none"> • Recorded in present Torrens titles • Traceable back to tikanga (customary) rights and native title • Te Ture Whenua Māori Act 1993 • Treaty settlement legislation 	<ul style="list-style-type: none"> • Hapū • ahi kā, landowners and individuals • Māori representative bodies, including Trusts, Incorporations and entities set up to own Treaty settlement assets • Particular iwi/Post Settlement Governance Entities (PSGEs) specified in legislation
5. Statute	<ul style="list-style-type: none"> • Treaty Settlement legislation • Māori Community Development Act 1962 • Treaty of Waitangi Act 1975 • Marine and Coastal Area (Takutai Moana) Act 2011 • RMA 1991 e.g., Te Mana o te Wai, Joint Management Agreements 	<ul style="list-style-type: none"> • Iwi, PSGEs • Particular hapū specified in legislation • Māori representative bodies e.g., NZMC, Māori Committees under Māori Community Development Act 1962, FoMA, PSGEs • Ahi kā, landowners, individuals
6. Relationships and Crown Policy and Practice	<ul style="list-style-type: none"> • Policies such as Whānau Ora • Crown relationships with NZMC, FoMA, Iwi Leaders Group • Ministerial / Crown expectations e.g., as to the disposal of land (Protection Mechanism (OTS), etc) 	<ul style="list-style-type: none"> • Hapū • ahi kā /landowners/individuals • PSGEs • Māori representative bodies e.g., NZMC, FoMA, ILG

A more detailed two-page version of Table 1 is at Appendix 1, which cites relevant sources and evidence that supports this analysis.

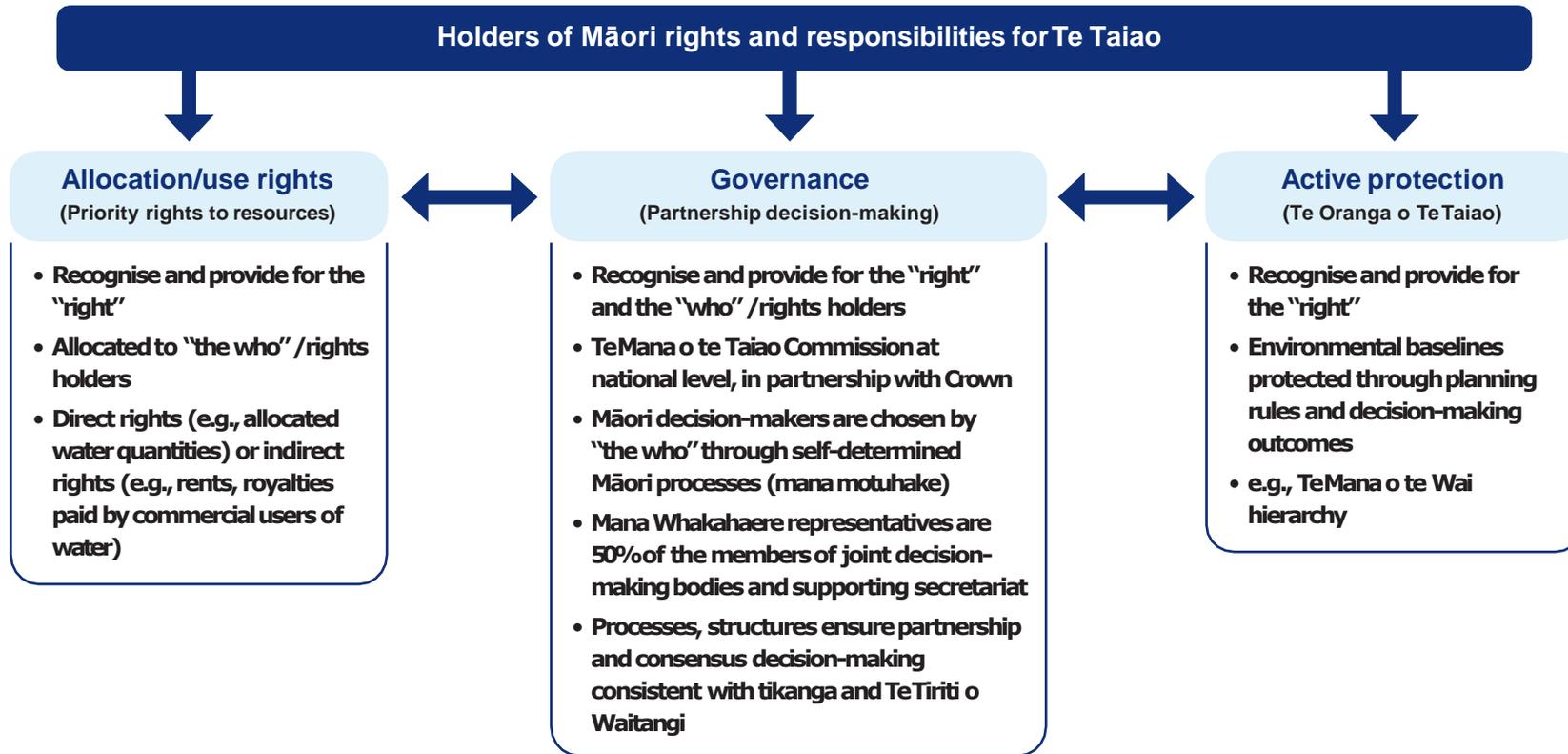
The conclusion is that in accordance with tikanga Māori and Te Tiriti of Waitangi the primary “rights holders” in the natural resource space is primarily hapū, with ancillary or relational rights held by ahi kā / landowners/ individuals, whānau and hapū collectives / confederations.

This hierarchy of Māori rights and responsibilities is directly relevant to Crown – Māori engagement on resource management matters. It also has implications for Local Authorities. It will be important that the reformed system is based on a sound understanding of the source of the current relevant “rights” and who are the “rights holders” within the sphere of kāwanatanga influence. The reformed system must accommodate the different layers of Māori rights, interests and responsibilities.

Translating rights and responsibilities into a new Te Tiriti compliant Resource Management System

Diagram 1 below explains how Māori rights and responsibilities at a conceptual level should be translated into the new Resource Management System. Māori decision-makers (Mana Whakahaere representatives) should be determined through self-determined processes consistent with the principle of Mana Motuhake, and the guarantees in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) that Indigenous peoples are entitled to choose their own representatives.

Diagram 1: Translating rights



Te Tai Kaha have adopted the principle of Mana Whakahaere, consistent with that principle in Te Mana o te Wai. It is an expansive term, which accommodates the hierarchy of Māori rights, interests and responsibilities.

Mana Whakahaere:

Iwi, hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource.

Mana Whakahaere representatives should be acknowledged leaders with skills, knowledge, and experience, including Mātauranga, tikanga, sciences, law, and planning. Appointments should constitute a broad representation, including women, youth, and urban Māori. A residential requirement in the region / catchment may also be required.

There should also be requirements for Mana Whakahaere representatives to regularly report and consult with those who hold relevant rights, interests, and responsibilities; as well as mechanisms to allow for Mana Whakahaere representatives to be held to account and replaced in defined circumstances.

Primary legislation should specify timeframes for when Mana Whakahaere representatives are chosen, the region, and the number of representatives to achieve 50:50 partnership at all levels. Arrangements should also be specified that include appropriate mediation and resolution processes/ determinator mechanisms, which should also be time bound.

This process achieves timely outcomes and “certainty” for all and will build enduring relationships over time.

Funding to build the capacity and capability of hapū, ahi kā / landowners, iwi / Māori to engage in the reformed system is required.

There will also be a need to provide resourcing to support the process of selection of Mana Whakahaere representatives.

Treaty Settlements Transition

Te Tai Kaha acknowledge that Treaty Settlements with Post Settlement Governance Entities (PSGEs) are legally binding and that specific obligations in relation to resource management will, as appropriate, be transferred into the new resource management system. However, any transition needs to ensure rights holders based on tikanga are not usurped through this process.

PSGEs should not determine how rights held by hapū (e.g. takutai moana rights) are incorporated into governance arrangements.

PSGEs have no general mandate to represent hapū as customary rights holders and should not be assumed by the Crown to do so unless hapū free and prior informed consent is demonstrated.

Te Tai Kaha recommend that Māori representation in the reformed resource management system needs to be based on the principle of Mana Whakahaere, enabling all those with rights, interests and responsibilities to come together.

Conclusion

It will be critical to ensure that the new Resource Management system in Aotearoa New Zealand provides for all holders of rights and responsibilities to be represented as Te Tiriti partners in the new system.

Māori rights and responsibilities should not be defined by the last 40 years of Crown policy on the settlement of historical Crown breaches of Te Tiriti, and the emergence of Crown established PSGEs.

PSGEs have an important place in the rich tapestry of Māori society today and going forward. They should however not be a “one-stop” shop, with PSGE / Iwi as the sole voice of Māori expression of rangatiratanga across all kāwanatanga activities.

Partnership and participation must encompass those who are the “rights” holders, primarily hapū.

A Te Tiriti compliant reformed Resource Management system requires an “inclusive process,” based on the principle of mana whakahaere.

It is not for the Crown to determine, or to “pick winners” e.g. PSGEs. This is not a policy choice to be made or directed by the Crown.

The solution lies in a reformed Resource Management system which is inclusive of hapū, ahi kā, landowners, marae, iwi / PSGEs underpinned by the principle of equity, mana whakahaere, kaitiakitanga, and manaakitanga, and mana motuhake. A system where Māori partnership is based on the principle of Mana Whakahaere and the formation of Mana Whakahaere Committees.

Te Tai Kaha Māori Collective are confident that PSGEs, Iwi, Hapū, ahi kā, marae, hāpori, can work together on this innovative and inclusive pathway forward.

Ngā mihi



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