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Planning Under
Co-operative Mandates

Kaupapa Mäori Framework and Literature Review of Key Principles

by

Nathan Kennedy and Richard Jefferies

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FRST-funded Research Program on the Quality of Environmental and Community Planning and Governance in New Zealand

MIHI

E tapu te rangi nā Io te ätua E tapu te rangi ruanuku Kia rere mai te maramara Kua piri, kua tau Kia rere mai te kongakonga Kua piri, kua tau Torotika e!

Kei te karanga atu ki a Io, ki a Ranginui, ki a Papatüänuku, kia tū mai anō ngä āhuatanga o te taiao. Kua te tukuna hoki ngä whakaaro ki te wähi ngaro, ki a rātou mā, nā rātou te whenua i poipoia i te wā i nohotahi ai te tangata me ana uri, arā ngä uri o Rangi rāua ko Papa.

He tīmatanga körero tēnei i a mātou e rapu nei e kimi nei i ngä körero, otira ngä mätauranga hei āwhina i a mātou, otira i a tātou te hunga e noho kuare ana ki ngä āhuatanga Mäori.

Ko te wawata, te tūmanako, kia mārama ake ai tātou, ngāi Mäori i ngä tikanga, ngä kaupapa, me ngä körero a ngä mātua, tüpuna, kia kaha ake ai tātou ki te tiaki, poipoi, manaaki hoki i te taiao e noho nei tātou.

Nā māua iti nei Nā

Richard Jefferies – Ngäti Tukorehe

Nathan Kennedy – Ngäti Whänaunga

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Preface

This report on ***Kaupapa Māori Framework and Literature Review of Key Principles*** was developed as a Supplementary Document to the worksheets and user guides in Report 2, *Ngä Mahi: Kaupapa Mäori Outcomes and Indicators Kete* (Kennedy and Jefferies, 2009b). It is one of two supplementary documents to the Kete, the other being Report 3, *Māori Provisions in Plans*, Kennedy and Jefferies, 2008a). The Kete and its two supporting documents have been designed for use by staff in councils, iwi and Crown agencies applying our kaupapa Mäori framework to the assessment of outcomes for Mäori from statutory plans.

The kete and its two supplementary documents come after 5 years work by the PUCM Maori research project, which aimed to develop a *Kaupapa Mäori Environmental Outcomes and Indicators Framework and Methodology* (PUCM Māori Report 1, Jefferies and Kennedy, 2009). The project was led by Richard Jefferies, director of KCSM Consultancy Solutions Ltd, Opotiki. Research took place within a wider research programme on *Planning Under Co-operative Mandates* (PUCM), led by the International Global Change Institute (IGCI), a self-funding research institute within Te Whare Wänanga o Waikato – The Waikato of University, in association with several partners.

PUCM is a FRST-funded programme that since mid-1995 has been sequentially examining the quality of policies and plans (Phase 1), plan implementation (Phase 2), and environmental outcomes (Phase 3) under the 1991 *Resource Management Act* (RMA) and more recently the 2002 *Local Government Act* (LGA). An important part of this planning and governance research was consideration of the interests of Mäori as Government's Treaty partner.

Following Phase 1 analysis of RMA plan quality, Richard Jefferies of Ngäti Tukorehe and his firm, KCSM Consultancy Solutions Ltd were brought onto the PUCM research programme in 2002 to lead the Mäori component of the research. KCSM staff initially assisted with interpretation of findings relating to plan implementation and Mäori interests. Nathan Kennedy, an environmental officer for Ngäti Whanaunga iwi and with experience working in local government, was employed at the beginning of PUCM Phase 3 to undertake research on Mäori environmental outcomes.

The PUCM Mäori team has published a series of working papers and reports as a means for making public its research findings, and in an effort to influence change in response to observed issues with plan quality and implementation, and the environmental results, especially as they relate to Mäori. These documents are downloadable from http://www.waikato.ac.nz/igci/pucm.

Located in grey in Figure 0.1 next page is the Phase 3 Mäori RMA Objective with its published reports identified in the lower row of boxes; the one shaded grey being this report.

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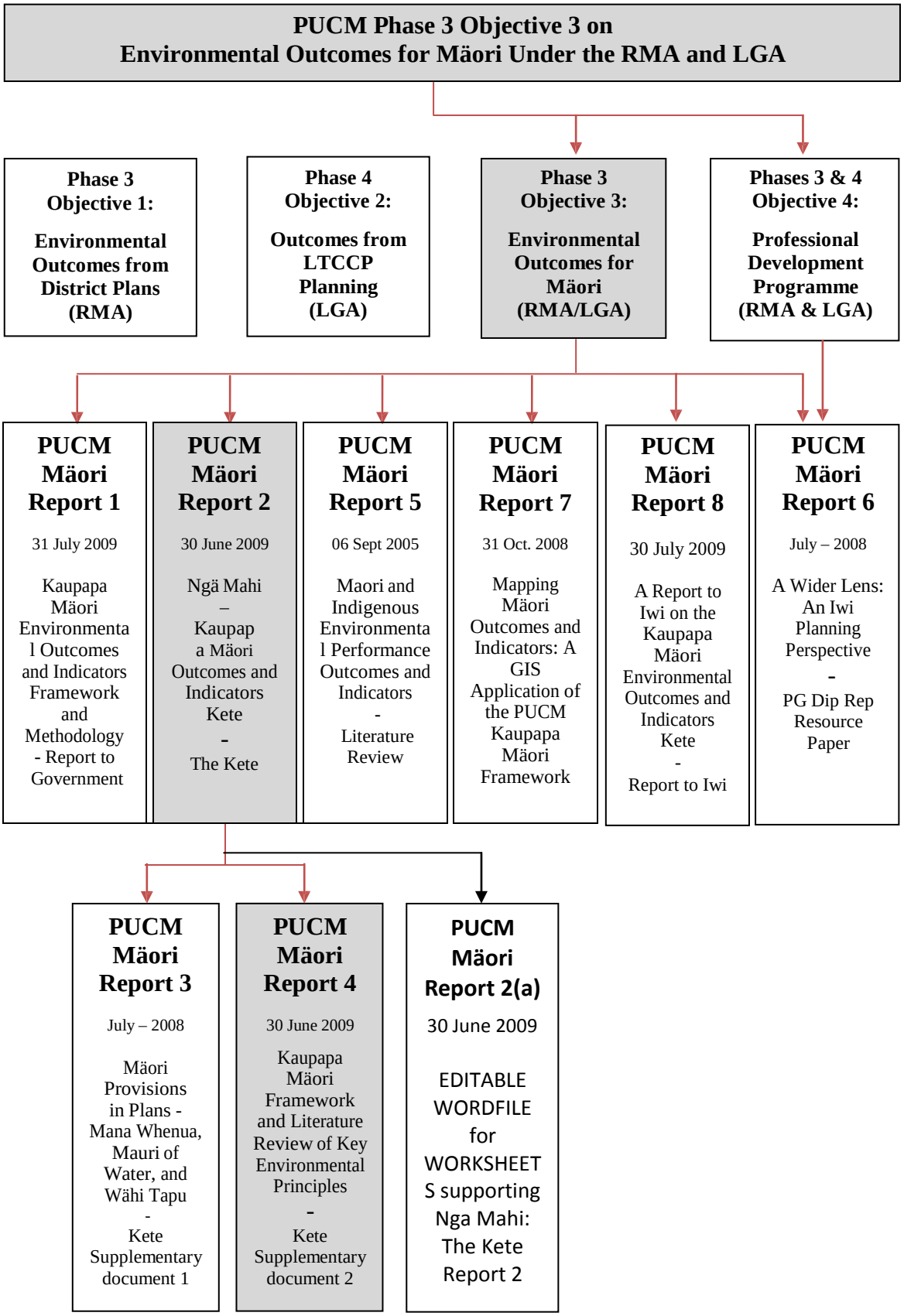

Figure 0.1. Mäori Report 4 in context of the PUCM Research Programme on Planning Under Co-operative Mandates RMA (1991) and LGA (2002)

Acknowledgements

The PUCM Research Programme (Phases 3 and 4) was funded by FRST-PGSF under contract number UOWX0308 with the University of Waikato, and subcontracts to Planning Consultants Ltd (Auckland), KCSM Consultancy Solutions Ltd (Opotiki), Lawrence Cross Chapman and Co. Ltd (Planning and Resource Management Consultants, Thames), and Lincoln University. We appreciate the support of FRST and that of the PUCM team.

Special thanks are due to the many peer reviewers in two tangata whenua working groups who contributed to the Mäori component of the overall PUCM Research Programme, and the Mäori project in particular. The "Mäori experts group" was comprised mostly of Mäori working within councils and Crown agencies. The "Practitioners group" was comprised of iwi environmental officers. The following peer reviewers have participated in these two groups at different times: Hori Parata, David Taipari, Tikitu Tutua-Nathan, Nassah Steed, Antoin Coffin, Reg Profit, Garth Harmsworth, Todd Taiepa, Waaka Vercoe, Beverley Hughes, Vaughan Payne, Rhonda Cooper, Barney Thomas, Nick Tupara, Saul Roberts, and Te Warena Taua.

We also give special thanks to the staff of our partner iwi, Ngäti Awa and Ngäti Maru, for assistance and guidance with both developing and trialling the environmental outcomes and indicators framework and outcomes and indicators kete. And, we thank staff of Matamata-Piako District Council and Environment Bay of Plenty and members of the tribal representatives on the Mana Whenua forum of Matamata-Piako District Council for their assistance and feedback.

We wish to acknowledge members of the wider PUCM team, who have contributed valuable advice throughout the research period, especially: Jan Crawford, Maxine Day, Neil Ericksen, and Lucy Laurian. Also thanks to Katarina Simons, IGCI PhD candidate, for insightful conversations. We give special thanks to Neil Ericksen, PUCM Research Programme leader, who supported our desire to develop a kaupapa Mäori research approach and then encouraged us throughout the research endeavour. We are also grateful for him having reviewed and commented on drafts of this report.

Richard Jefferies and Nathan Kennedy

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INTRODUCTION

The literature review in this report was the starting point for the development of a Mäori research strand within the *Planning Under Co-operative Mandates* (PUCM) research programme. PUCM is funded by the New Zealand Foundation of Research, Science and Technology (FRST-PGSF), and has been attempting to test the assumption that implementation of the *Resource Management Act* 1991 (RMA) and *Local Government Act* (LGA) has resulted in sustainable management of the environment.

PUCM Phase 1 evaluated the quality of policy statements and plans produced under the RMA and the organisational factors that influenced their preparation (1995-97); Phase 2 evaluated the quality of plan implementation through resource consents (1998-2002); and Phase 3 is currently studying environmental outcomes from plans, including outcomes for iwi and hapü (2003-2009). Toward the end of Phase 2, KCSM Consultancy Solutions Ltd (Opotiki) joined the PUCM team with the goal of developing a kaupapa Mäori research framework for examining environmental (and other) outcomes for Mäori.

An early task was to review the literature and it resulted in two reports (Jefferies and Kennedy, 2005 and Kennedy and Jefferies, 2005). It is our intention to further review the literature and up-date this current report. It contains one of two reviews that were completed in 2005 (see PUCM Mäori Report 5 for the other). The review was preceded by a front-piece outlining the kaupapa Mäori framework that was then under development. Since then, the framework and associated methodology has been completed. It is driven by self-guiding worksheets and is contained in *Ngä Mahi: Kaupapa Mäori Outcomes and Indicators Kete* (Jefferies and Kennedy, 2009, PUCM Mäori Report 2).

There are two supplementary documents to *Ngä Mahi*, this one, Report 4, and *Mäori Provisions in Plans* (Kennedy and Jefferies, 2009, PUCM Mäori Report 3). PUCM Mäori Reports 2, 3 and 4 make up the Kete of tools for applying our kaupapa Mäori environmental outcomes and indicators framework and methodology, the overall development of which is explained Jefferies and Kennedy, 2009, PUCM Mäori Report 1.

The original purpose of this report *Kaupapa Mäori Framework and Literature Review of Key Principles* was to establish definitions of environmentally significant concepts of kaupapa and tikanga Mäori. The intention was not to undertake the definitive review of the literature (i.e., to identify every writing on each concept), but to identify some substantial writings on each of the concepts, and then encapsulate the definitions and descriptions of these into a concise analysis on each. This was to provide a basis upon which we could build a framework upon which the kaupapa Mäori environmental outcomes and indicators could hang.

In addition, the review sought to identify and briefly describe significant variations between understandings of the key concepts without attempting to reconcile these. Such variations were anticipated because of tribal or geographic separation, and it has been neither our place nor intention to make judgments as to relative merits. However, where there is substantial agreement on a particular concept this is acknowledged, with variations subsequently identified.

It should be noted that the researchers explicitly follow the tikanga, or rule; that the local interpretation of tikanga and kaupapa is the interpretation that holds. We considered it important to recognise instances where one writer‘s discussion of a concept is substantially informed by another writer who is also cited. This is explicitly noted. This is the case where Barlow’s understanding seems sometimes to be informed by Marsden. Similarly, Mead’s work regularly cites Best, the difference being that the source is generally acknowledged at point of reference. Such recognition is not always possible, particularly where there is substantial agreement in the literature regarding a particular point.

As the purpose of the review in 2005 was to inform the development of a kaupapa Mäori methodology for the identification and development of Mäori environmental outcomes and indicators, we paid particular regard to Mäori perceptions of the environment and the relevance of each concept in environmental terms.

Kaupapa Mäori Framework

The purpose of developing a Kaupapa Mäori framework as the basis for Mäori environmental outcomes and indicators research comes from the concern that almost all of the existing literature and research into environmental management comes from a Western world view. Indigenous peoples throughout the world, including Mäori in Aotearoa/New Zealand, struggle to find a “space” within the hegemony of the majority – and colonising – culture to express, acknowledge and expand their own knowledge, values and beliefs. This holds true for knowledge domains that are widely now espoused as environmental management, resource management, and sustainable management.

While there have been numerous attempts in Aotearoa/New Zealand – as detailed in this report – to represent and acknowledge mätauranga Mäori, these efforts are largely flawed (from a kaupapa Mäori perspective) in that the perspectives, approaches, paradigms, and conceptual frameworks within which these efforts have been made are not Mäori. As is widely discussed in Mäori research circles, this approach has been colloquially referred to aa “tack-on” research because Mäori knowledge is considered after the overall framework has been confirmed and often after the research proper is already well underway. Such an approach requires the mätauranga Mäori to be re-formatted in order to fit into a totally different framework which means the holistic, fundamental connections, and patterns within mätauranga Mäori are distorted and/or lost.

Much of the published research and literature available with a focus on Mäori environmental views has been based on existing Western world perspectives and approaches to environmental management.

An example of this can be found within the Ministry for the Environment's (MfE) Mäori environmental indicators programme. While the importance of including Mäori environmental perspectives was acknowledged early on in the project, and a working group of respected Mäori scholars established, the members in their final report criticise the approach taken by MfE in the EPI programme. They found that Mäori knowledge and indicators are treated as an add-on to the programme, and that there are issues relating to Western v Mäori knowledge that have not been considered by the Ministry. The panel reported that:

> *There has been an attempt by the Ministry's methodology to 'plug-in' Maori concerns without clear consideration of either the Treaty of Waitangi or the aspirations of methodologies arising from Maori knowledge* (Ministry for the Environment, 1998).

Even amongst Iwi environmental management plans, there are few that have as a framework a kaupapa Mäori basis. One of the few examples, *Whaia te Mahere Taiao A Hauraki – the Hauraki Iwi Environment Plan* is said to be structured according to a Hauraki Mäori world view. It is divided into 6 parts, Whakamohiotanga (providing understanding), Nga Matapono (the correct ways – vision for the future), Te Whenua o Hauraki - He Taonga (the treasured land of Hauraki), Nga Nekenekehanga (ways to move forward - strategies), Hauraki Whenua Whai Taonga (framework for action toward pursuing our objectives), and Te Ao Hurihuri (the ever changing world – the need to review what we are doing) . The analysis of environmental issues is undertaken according to the domains of the ätua they fall within, "whose tikanga helps guide the wise use and management of resources" Atua identified are Papatüänuku (the earth mother), Ranginui (the sky father), Tane Mahuta (god of the forest world), Tangaroa (god of the sea), and Rongo-ma-Tane (god of cultivated foods).

Unfortunately, these kinds of examples are all too rare. Environmental management literature is dominated by Western world views and paradigms, and we have also found this to be true amongst the bulk of the international, indigenous literature we have seen. (See *Mäori and Indigenous Environmental Outcomes and Indicators*, Kennedy and Jefferies, 2009, PUCM Maori Report 5.)

What we are concerned with here is the development of a conceptual framework that allows us to look at first the world, and secondly the environment, through a Mäori "lens" and then to make measurements with a Mäori "ruler". We must start with the world view because the Mäori world view inextricably links all of its domains. The common Western science approach that compartmentalises knowledge contradicts and minimalises a Mäori world view. Indeed, the term "environmental management" is not one that fits well within kaupapa Mäori perspectives, understandings, and te reo Mäori (Mäori language) and restricts the opportunity for Mäori to maintain their unique perspectives.

For example, the original intent of the wider PUCM research programme for our Maori project was to focus on "water quality" as a component of environmental management, but this is not appropriate. Instead, we will likely look at concepts such as "tapu" (sacred or

restricted), and then identify the extent to which "tapu" may have some impact on issues of "water quality". Tapu is a world view concept and has many implications, some of which are relevant to the ‗environment' as defined in western science. Similarly, "mauri" (life force or life principle) as a concept will provide another perspective to understanding Mäori values associated with water.

Thus, by confirming and defining key principles and knowledge into a kaupapa Mäori framework, we intend to provide a basis, perspective and paradigms from which the world, and within it environmental management, can be viewed from a Mäori perspective.

In order to establish a framework, we identified three potential models or formats for layering or ordering mätauranga Mäori (Mäori knowledge). The three models considered were:

1. Wä-based model (i.e., time-based)
2. Ätua-based model (i.e., gods-based)
3. Tikanga/kaupapa-based model (i.e., principles and customs-based)

Our view was that while the Wā-based model is most closely linked to the presentation of mätauranga Mäori, it would prove difficult to work up into a framework that would be easily applied nationally. The very nature of this framework is localised to the narrative of the hau käinga (the home people).

The ätua-based model is an important one in trying to understand the holistic way in which Mäori perspectives look at all parts of the environment – including people. The ätua-based model presents the original whänau (family) – Ranginui (the Sky Father), Papatüänuku (the Earth Mother), and their children including Täne (god of the forest), Tū (god of war), Tangaroa (god of the sea), and many others – squarely presents the relationships between mankind and all other parts of the universe – we are all related by whakapapa (genealogy). Despite this, the ätua-based model also appeared problematic as a foundation for our framework. Firstly, although the majority of iwi (tribes) ascribe to most of the same ätua, there are some significant variations between iwi. Secondly, it is very difficult to categorise parts of the knowledge system to various ätua as such an exercise inevitably leads to links, upon links, upon overlaps. It quickly becomes a very circular exercise and most confusing.

The kaupapa/tikanga-based model was chosen because it is the least complex model to follow and allows for a close examination of key terms and concepts already in wide use in the domain of environmental management. By utilising the perspective of a key concept like tapu, the links to key issues such as wähi tapu are more easily made. Therefore, the decision came down to a pragmatic one about which model would be both appropriate in terms of a Mäori world view, and easiest to work with for both Mäori and others.

By Mäori, for Mäori

The Mäori researchers at IGCI, University of Waikato, and at KCSM Consultancy Solutions, Opotiki, were keen to ensure this kind of research is kaupapa Mäori, that is,

"by Mäori, for Mäori". Thus, the primary focus in the design and implementation of the overall research was to meet the needs of Mäori, while at the same time having a framework and methodology that could be used by Crown and local government in reviewing Mäori provisions in their statutory plans.

Thus, while the kaupapa Mäori environmental outcomes and indicators that emerge from this project will primarily reflect Mäori perspectives, they will also be useful to, and be used by, councils, consultants and other practitioners operating in the field of environmental and resource management.

Recognition of Iwi and Hapü Interpretations

It is not our intention to present the definitive guide to writing on tikanga Mäori. We follow the tikanga (custom) that the local interpretations will always apply. Shirres (1997) takes a similar view:

> *Different words are used for the same reality and the use of the different words itself gives us a better understanding of that reality. I do not want to impose the understanding of tapu as presented here on people who have a different view of tapu and who use different terms for tapu. But I do hope this will widen our discussion of tapu, deepen our understanding of tapu and encourage us to share our thinking on tapu. Our sharing should renew and enhance the tapu of each people* (Shirres, 1997).

The definitions developed for this research are our interpretation, understanding, values and beliefs. In the first instance, our interpretation has been shaped by what we have learnt over the years. Secondly, these views have been re-worked through the learnings acquired by way of a literature review. Furthermore, this report will remain as a Working Draft and will be re-fashioned as the research programme develops. In particular, the writers will be conducting interviews with kaumätua (Mäori elders) in an effort to enhance their understanding and this learning will be further reflected in future drafts.

Colonisation and its Impacts

One of the main reasons we believe it is important to clarify the interpretations of key concepts in use here is the way in which understandings of many Mäori concepts have suffered through inadequate translation – the determination by those translating to find an English direct language equivalent even where none exists, and the tendency to adapt the Mäori concept or value to fit a European view of the world.

The field of environmental management provides some classic examples. Kaitiakitanga as a word in Mäori probably did not exist – and was certainly not in common use - until the emergence of legislation and policy in the 1980s associated with the concepts of "guardianship" and "conservation" at this time, the term "kaitiaki" was used by Mäori to describe somebody who looks after, or cares for, the environment. Indeed, in many areas, the word "kaitiaki" is used to mean a talismanic object, often taking the form of an animal (sometimes a taniwha), and in the spirit of an ancestor, that dwells in a certain locality or place (often a river or part of a river) and looks after the people and sometimes a place.

However, the new use of the word Kaitiakitanga has seen a new understanding of the root word, (kai) tiaki. Nowadays, many people seek to clarify the meaning of the word Kaitiakitanga from a kaupapa Mäori perspective. However, this cannot be done because the word has emerged as a response to a construct from the English language. While it can be argued that any living language needs to evolve, we believe this is a case where the adaptation of a word to suit a non-Mäori concept is leading to a lesser understanding of the Mäori meaning and a confusion of the basis for the terms in common use.

Sources

The sources reviewed here are by a combination of Mäori and non-Mäori writers, who are recognised to be authorities in, or have written substantial investigations into, Tikanga Mäori. Interestingly, most of the works are books, or collections of essays in books, with far fewer journal articles than one would expect to find, as for example when undertaking a literature review.

Six or seven writers are cited for almost all concepts, while there are many others who are cited in relation to one or more specific concepts where their perspectives are thought to contribute a clarifying, contrasting, or otherwise adding to a view.

Importance of te Reo Mäori

Knowledge, culture, and language are all bound up in the term – mätauranga Mäori. Culture – knowledge, beliefs, values – are bound up in language and this is particularly so for te reo Mäori. We argue that it is difficult to develop a true Kaupapa Mäori framework in English. Therefore, we declare this as a limitation in the work.

The use, understanding and interpretation of key words often vary across tribes and regions. It is also suggested that variations have developed over time – particularly through the interface over the last 200 years with the dominant English language and culture. Shirres (1997) makes similar points, here using tapu and mana as examples:

> *Each tribe has its own understanding of tapu and as is evidenced in the Mäori manuscripts, what one Mäori writer referred to as tapu, another referred to as mana. Today too, where some tribes speak of tapu, others speak of mana. Different words are used for the same reality and the use of the different words itself gives us a better understanding of that reality.*

We agree with the view that a better understanding is gained of "reality" by better understanding the various uses of these words. A form of analysis that is important in building and clarifying understanding is the breaking down of Mäori words into their component parts. Like many indigenous languages, te reo Mäori is a poetic language known for its extensive use of allegory, metaphor, and symbolism as well as a basis often in ngä körero a ngä tüpuna – the teachings of the ancestors. Words and phrases are often directly related to the names of key ancestors and ätua, or particular occurrences from ancient tribal histories. Therefore, an analysis of the words themselves is utilised below as part of the exercise to define and clarify the base concepts upon which the kaupapa Mäori framework will be developed.

It is suggested that the low-level of Mäori language use and the limited complexity and range of language in use – compared to the past – is a limitation. We were surprised by how much was learnt through this form of analysis, which highlighted to us the importance of having a better grasp of te reo Mäori in order to better understand the concepts discussed.

References to Mäori Concepts in Law

For most of the concepts investigated here, an analysis of its treatment within the law has been included. This includes findings and interpretations from the various law courts, but most importantly the Waitangi Tribunal which has become recognised over time by the "mainstream" courts as the primary source of definitions and advice on tikanga Mäori. Accordingly, while treatment in law is generally considered at the end of each section, Waitangi Tribunal references are considered to be authoritative, and in line with Mäori understandings, and are therefore included in the body of each section.

This was an important part of the analysis for the downstream research needs of our project. The analysis of the use of these concepts in law – in particular, environmental law – starts contextualising the concepts towards the resource and environmental management areas within which the indicators and outcomes was developed. It also helps highlight the extent to which these concepts have been further adapted, changed, and manipulated in these fields.

Case law is investigated in relation to each concept, where these are either discussed, taken into account in coming to a judgement, or defined. And, where such exists, the development of a substantive jurisprudence is identified. It was not possible during this review to undertake investigation of Mäori Land Court decisions. Instead, we relied on secondary sources to identify significant cases. It is possible that substantive consideration of tikanga Mäori has occurred within the Mäori Land Court and Mäori Appellate Court and has not been reported here.

References to, or definitions of, Mäori concepts within statutes or other high-level Crown documents are identified and such treatment analysed, as are those (to a lesser degree) in subordinate documents, such as statutory policy statements or plans of regional authorities.

Finally, references such as advisory papers written for the Crown or Courts are considered. Organisations such as the Law Commission, which have statutory responsibilities to advise the Crown on matters of law, have commissioned substantial reports discussing Mäori concepts, such as *Mäori Custom and Values in New Zealand Law* referred to repeatedly throughout this review. Similarly the Ministry of Justice commissioned *He Hinätore ki te Ao Mäori: A Glimpse into the Mäori World - Mäori Perspectives on Justice*. These kinds of report are generally written by a group of respected Mäori academics, or extensively reference Mäori commentators on tikanga. They are relevant, particularly in the absence of definitions for Mäori concepts established in statute or case law, as they no doubt unofficially provide the understandings of tikanga based on which the people they are written for proceed.

The majority of recent court cases through to 2005 refer generally to Mäori spiritual and cultural values or the (principles of the) *Treaty of Waitangi* (1840), rather than tikanga, and for the purposes of our investigation no distinction is made between them. Cases specific to particular concepts are discussed within the relevant sections.

In *Huakina Development Trust v Waikato Valley Authority* (1987) the Court found that where Mäori spiritual and cultural values were shown to exist they must be considered in applications for the granting of water rights; stating "customs and practices which include spiritual elements are cognisable in a Court of law provided they are properly established, usually by evidence."

What is interesting about this finding is that it related to the *Soil Conservation Act* (1967). That statute preceded by a decade the first legislation with specific provision for Mäori spiritual values *Town and Country Planning Act* (1977). Section 3(1)(g) of that Act defined as a matter of national importance recognition of the relationship between Mäori and their culture and traditions with their ancestral lands (along with 6 other matters including the protection of high quality soils). Other Acts that make provision for Mäori values include:

- *Marine Mammals Protection Act* (1978);
- *Fisheries Act* (1983),
- *Fisheries Act* (1986);
- *Environment Act* (1986),
- *Conservation Act* (1987);
- *Foreshore and Seabed Endowment Revesting Act* (1991);
- *Resource Management Act* (1991);
- *Historic Places Act* (1993);
- *Mäori Fisheries Act (1993);*
- *Hauraki Gulf Marine Park Act* (2000); and most recently
- *Local Government Act* (2002).

As of 2005, the *Treaty of Waitangi* (1840) is referred to in 62 separate Acts of Parliament. A new type of legislation with specific provision for Mäori values are the Waitangi claim settlement acts, which have references to tikanga Mäori concepts. These can be seen as being influenced by the Waitangi tribunal reports. Even these references are almost always in the Schedules to the Acts, drafted by the recipient iwi to reflect their views and beliefs.

Intellectual Property

The references used in this report are all from the public domain – either published documents and reports or un-published material easily sourced through publicly available domains. As this report is further developed, the writers will ensure appropriate referencing is made of sources, and that any primary material collected by the research team and included in the report is with the explicit permission of the contributors.

The purpose of the exercise is to encourage more Mäori – and other stakeholders – to engage in the discourse towards an enhanced and improved appreciation by all of the mätauranga Mäori under investigation. It is our concern that unless the written word is better utilised to encourage this research, more of this important knowledge will be lost.

Format

The format for this report groups related or similar kaupapa and associated tikanga together for consideration and comparison. In each section, we provide an initial discussion of their understanding of the concepts, dictionary definitions are listed, literature that provides substantive consideration of the concepts is reviewed, and case law dealing with the particular tikanga is discussed. After each of the concepts investigated, we provide a summary. Finally, at the end of major sections a conclusion provides an overview of the various concepts dealt with, considering the similarities and differences between these, and attempting to locate each tikanga in terms of contemporary Mäori environmental management.

Citations appear in italics, as do references to journal articles. Mäori words do not generally appear in italics, unless there is likely to be confusion with English text, for example the word take (meaning dispute or issue).

2

KAUPAPA, TAKE, TIKANGA & KAWA: OVER ARCHING TERMS

This section covers the over arching terms associated with fundamental beliefs and in some cases, the practices that are based on those beliefs. Tikanga, kaupapa, kawa and take are words that have a range of meanings and they are also used differently in different tribal areas. This section looks at the range of meanings associated with each word and comes to an understanding and interpretation of the meaning of each – to be defined for the purpose of this research.

That is not to say that these definitions are the 'only' or 'correct' definitions. Throughout this report, these definitions are the writers' for the purpose of establishing the foundation for our work. to avoid ambiguity or confusion when these words are used further in our research process. That is, as we go about developing a framework and methodology for evaluating kaupapa Mäori environmental outcomes and indicators in the plans of central and local government and iwi.

The terms covered in subsequent sections are the kaupapa themselves and each has tikanga and kawa associated with, or resulting from it.

Kaupapa

In determining the range of meanings associated with Mäori words, it is sometimes useful to break the work down to its root or base meaning(s).

The base word for 'kaupapa' is the word 'papa', which is the common term for the ground or earth, and is rooted in the name of the earth mother, Papatüänuku. This suggests a close association with the beginning of the world – its foundations – and the links through whakapapa to the first ancestors of the Mäori.

The word 'papa' also has many of the same meanings in Williams as 'kaupapa', iincluding:

1. *Flat rock, slab, board*
2. *Earth floor*
3. *Bed of a lake*
4. *The name for Earth*
5. *Ground covered with certain vegetation*
6. *Ground of dispute*
7. *Flax foundation of a dog skin cape.*
8. *Width, strip, in mat weaving*
9. *Mesh, of a net.*
10. *Shell, of crayfish, molluscs, etc.*
11. *Lying flat*

The word also has variations in the words papanga and whakapapa – again relating to layers and flat foundations.

The images and ideas the word‘s meaning present suggest a foundation, a basis, a meshing. These meanings underscore the meaning of the words ‘papa’ and ‘kaupapa’.

The ‘kau’ part of the word is likely an intensifier or link word that confirms the ‘papa’ part as the base word. It does not change the meaning of the base word, but intensifies its meaning. This construction can be seen in other words such as ‘kaupare’ (intensifying the word ‘pare’), ‘kauawhi’ (intensifying the word ‘awhi’ and ‘ kauika’ (intensifying the word ‘ika’). Williams Dictionary definitions for kaupapa include:

1. *Level surface, floor, stage, platform, layer*
2. *Raft*
3. *Groundwork – of a cloak*
4. *Fleet of canoes*
5. *Medium for intercourse with an ätua or wairua*
6. *Sticks used in the nui rite of divination*
7. *Original of a song*
8. *Trail, track*
9. *Gauge for meshes of a net*
10. *Present at a marriage by the groom to brides father*
11. *Even in length*
12. *n. Plan, scheme, proposal*

From the list, a number of similar ideas are seen – definitions 1, 2, 3, 7, and 12 all suggest a foundation, a beginning, a basis, and preparation.

Even definitions 4, 5, and 6.suggest the fundamental links – whether through whakapapa, history, or karakia – between Mäori and their past, between Mäori and their beliefs. The fleets of canoes were the beginnings of Mäori in Aotearoa.

In modern times, as bilingual Mäori have adapted words in common use from Mäori into English, the word ‘kaupapa’ has been commonly used much in line with the last of the definitions above, and translated to mean purpose, reason, cause, or plan.

Some of the translations of kaupapa offered in the literature include: fundamental purpose or policy (Waitangi Tribunal, 1988) Mäori protocol (Waitangi Tribunal, 1987), and policy, rules of operation (Barlow, 1993).

Barlow provides the most substantial discussion of ‘kaupapa’ he approaches this by providing several examples of usages of the term kaupapa. Given that there is little discussion on kaupapa, and that nothing in the literature conflicts with Barlow, the descriptions he provides are cited at length. He refers firstly to the kaupapa of a new whare:

> *..the kaupapa of the house refers to such things as the ancestor after whom the house is to be named, the different ancestral figures to be carved on the support posts around the perimeter of the house, or the decorative and painting art work.*

This could conceivably fit with Definition 12 above, although it also suggests the reason, or purpose of the whare – see the explanation of ‘take’ below.

Secondly, Barlow refers to the rules and policies associated with the administration of a marae; including speaking order, tangi protocol. In this later discussion Barlow's examples, according to the general understanding in the literature reviewed, is more akin to tikanga or kawa than kaupapa. He suggests that "the word kaupapa can be associated with almost any organisation in terms of its policy and practices, particularly in relation to administration" (Barlow, 1993).

Te Ohu Kaimoana, as per the above definitions, describes as kaupapa the rules relating to iwi organisations which must be adhered to in order to meet the Crown imposed standards for fisheries allocation, for example:

> *Kaupapa 1: The constitution must acknowledge the Iwi organisation's obligation to act for all members of the Iwi* (Te Ohu Kai Moana, 2001).

Kaupapa is such a widely used term, that it seems to be taken for granted that the word's meaning is universally understood, as evidenced by the scarcity of discussion in the literature, its meaning is little explored. Yet the word 'kaupapa' is used repeatedly in the literature, often with no description to explain its intention. For example the Muriwhenua Land Report uses 'kaupapa' 13 times in the body of the report, once having defined it as "fundamental purpose or policy" (Waitangi Tribunal, 1988). This scarcity of discussion contrasts markedly with that regarding tikanga, as indicated by the following section. As previously cited Hohepa considers that: "Tikanga can be defined as law in its widest sense, while kaupapa and kawa is the process and ritual of tikanga" (Hohepa, 1996).

In fact the distinctions between the meanings of tikanga, kaupapa, kawa, and take are not always obvious. For example, at formal occasions a usual feature of the mihi is the identification of the kaupapa of the meeting – "te kaupapa o te ra" This is understood to mean the reason or purpose for being there, and in this sense can be seen to have cross over with 'take' the issue requiring attention, which is discussed in a later section. Similarly the word 'kawa' is used as 'policies or rules' equating to the particular way of doing things of a tribe, such being similar to the use of the term kaupapa by Te Ohu Kaimoana and the Waitangi Tribunal above.

Kaupapa Mäori

Another usage of 'kaupapa' is within the term kaupapa Mäori, or kaupapa Mäori theory. Kaupapa Mäori theory has become used to refer to academic investigation undertaken according to a Mäori world view, and based on Mäori principles of understanding.

Pihama, Cram, and Walker (1998) in their article *Creating methodological space: A literature review of Kaupapa Mäori research* suggest that: "The term Kaupapa Mäori captures Mäori desires to affirm Mäori cultural philosophies and practices" (Pihama, et al., 2002). Smith, Fitzsimons and Roderick, expanding on this understanding write that:

> *Kaupapa Mäori is the term used by Mäori to describe the practice and philosophy of living a Mäori, culturally informed life. It has a political connotation in that it also invokes the stance of identifying with, and pro-actively advancing, the cause of 'being Mäori' (not wholly assimilated) as opposed to 'being Päkehä' (fully assimilated)* (Smith, et al., 1998).

In the Hauraki Customary Indicators Report a definition of the 'Mäori world view' given by Tuakana Nepe of Ngäti Porou is cited, which is described in terms of kaupapa Mäori:

> *[It] is the conceptualisation of Mäori knowledge that has been developed through oral traditions. It is the process by which the Mäori mind receives and internalises,*

> *differentiates and formulates ideas and knowledge exclusively through te reo Mäori ... It is knowledge that validates a Mori world view and is not only Mäori owned but also Mäori controlled ... Kaupapa Mäori knowledge influenced, framed, and regulated Mäori society's kin relationships and the societal kinship relationships of production and exchange, its disciplines of power and its system of educating each successive generation* (Hauraki Mäori Trust Board, 1999).

Pihama, et.al., posit that kaupapa Mäori theory functions to expose colonial and post colonial power relations:

> *Also inherent in Kaupapa Mäori theory is the critique of power structures in Aotearoa that historically have constructed Mäori people in binary opposition to Pakeha, reinforcing the discourse of Mäori as the Other. Kaupapa Mäori theory aligns itself with critical theory in that it seeks to expose power relations that perpetuate the continued oppression of Mäori people* (Pihama, et al., 2002).

Kaupapa Mäori is probably mostly widely used and known as part of the new Mäori language immersion schools, Kura Kaupapa Mäori – or school with a Kaupapa Mäori philosophy.

The only statutory reference to Kaupapa Mäori located is within the RMA(1991), where Section 253 requires that:

> *When considering whether a person is suitable to be appointed as an [Environment Commissioner] or [Deputy Environment Commissioner] of the [Environment Court], the Minister of Justice shall have regard to the need to ensure that the [Court] possesses a mix of knowledge and experience in matters coming before the [Court], including knowledge and experience in:*
>
> *(e) Matters relating to the Treaty of Waitangi and kaupapa Mäori.*

Noteworthy here is the reference to kaupapa Mäori, rather than to tikanga Mäori, which is might have been expected. There is no definition or discussion provided of what kaupapa Maori means. The preamble to Te Ture Whenua Act (1993) includes a reference to 'kaupapa' in the Mäori version, this is translated into ‒principles‖ in the English, and is not referred to again.

Summary

The word 'kaupapa' is derived from the base word 'papa' and suggests the basis, foundation, principles, philosophy, reason or purpose. Its root is in the name of the Earth Mother, Papatüänuku is also significant and suggests a range of linkages between kaupapa, whakapapa, and ätua.

Therefore, the writers will utilise the term 'kaupapa Mäori' as meaning the underlying and fundamental principles, beliefs, knowledge and values held by Mäori. Accordingly, the basis for the Kaupapa Mäori Framework developed here will be the fundamental principles, beliefs and concepts widely held within most, if not all, iwi throughout Mäoridom.

As it refers to, and incorporates mätauranga Mäori or Mäori knowledge, kaupapa is in essence fundamental knowledge. The writers will leave the references made above concerning practices and policies as best ascribed to, or associated with, the terms 'tikanga' and 'kawa' below.

Take (pütake)

The term or word ‘take’ appears to be closely aligned to the term kaupapa. Like kaupapa, the term suggests something permanent, fundamental, and foundational. It also suggests the source or basis – the root that provides the sustenance of life to the plant.

Most of the definitions from Williams Dictionary below refer to the base (basis), reason, subject, origins or beginning. Therefore, the *take* of something is its fundamental underpinning or the cause to the effect.

Williams Dictionary definitions include:

1. *Root, stump*
2. *Base of a hill*
3. *Cause, reason*
4. *Means*
5. *Origin, beginning*
6. *Post*
7. *Subject – of an argument*
8. *Incantation, charm*

Definition 8 identifies areas of overlap with meanings above for tikanga and kawa – further confirming the links and connections between these concepts and terms.

The word, ‘putake’ is also used for ‘take’ and further reinforces the fundamental aspect of the word by prefacing with the word ‘pu’ meaning the origin or source. pütake

As per the preceding observation regarding kaupapa, there is little discussion of the meaning of ‘take’ in the literature. However, the explanations below tend to suggest that take is the specific reason or cause of some effect.

Ballara (2003), describes take as the noun ‘cause’, but distinguishes it as ‘proper cause’. The context in which Ballara considers *take* is specifically conflict, where the *take* is a cause for war. She writes:

> *Such offences against tapu and against tikanga, including the rules pertaining to social relations, to property and to land tenure, whether deliberate or inadvertent, were regarded as take (reasons for action, or matters requiring restitution* (Ballara, 2003).

Ballara seems to consider take as relating to negative events or actions, she writes only in terms of the need to restitution. This might simply be due to the text being an investigation into Mäori warfare, thereby avoiding the need for consideration of positive *take*.

Mead refers to *take* within his ‘ake, utu, ea’ model – which is discussed further in the section on utu. Here he considers *take* to be the event that causes an imbalance to occur, thereby requiring utu – an action intended to restore balance, ea being the resulting state whereby balance has been restored (Mead, 2003). In this context Mead identifies rähui as a response to a *take*:

> *Probably the most useful way of beginning to differentiate between various examples of rähui is by examining the take, and/or the sequences of events when a rähui was regarded as an appropriate response.*

Given that Mead continues to describe both drowning and conservation rähui in terms of such *take*, this is a somewhat different understanding to that explored by Ballara, in that *take* might presumably be accidental or natural phenomena, such as kaimoana depletion caused by environmental pressures (Mead, 2003).

While Mead and Ballara both speak in terms of *take* being negative events, as the section on utu demonstrates utu is required to restore balance in response to either positive or negative events. We found no writing that described positive take. In a more general sense, Metge defines *take* as 'main purpose', and 'topic' in relation to the content of mihi (Metge, 1976).

The report He Hinätore ki te Ao Mäori (Ministry of Justice, 2001) describes take as the rights (supported by occupation) on which iwi / Mäori base claims to land. They cite the following variations:

- *take taunaha or take kite - discovery*
- *take raupatu - land taken by conquest*
- *take tukua - gifting of land. The land would be ceded in compliance with some custom such as paying a taua as recompense for infidelity*
- *take tipuna - an ancestral right validated by reciting one's whakapapa.*

In the sense that these refer to the way the rights came about, they can be loosely described as the causes, means, or origins of that association consistent with the dictionary definitions.

The Waitangi Tribunal referred similarly to such take in relation to rights to land:

> *We do not propose to review the court's decision which examined the customary take such as ancestry (take tupuna), conquest (take raupatu), gift (take tuku) and the important question of actual occupation (ahi kä) which must accompany a take* (Waitangi Tribunal, 1991).

Take is nowadays more widely used as the subject, reason, or purpose of some event.

Summary

Take is defined here as the cause, the reason, or purpose and as described above there may be all manner of *take*. It is seen here as being more specific than kaupapa, in that the general understanding appears that there is usually a specific *take*, which leads to some kind of response – that is, the cause or reason.

Therefore, for the purposes of our Kaupapa Mäori Framework, the term *take* will be used in a more specific sense than kaupapa.

Tikanga

The word tikanga comes from the root word, 'tika', which means correct or right.

The 'nga' part identifies tika as a noun as opposed to the uses of tika as a verb or adjective. The use of 'tangata' in words such as 'Maoritanga', 'rangatiratanga', and 'whanaungatanga' follows the same rule.

Williams Dictionary definition: (Listed as a derivative of Tika)

1. *Rule, plan, method*
2. *Custom, habit*
3. *Anything normal or usual*
4. *Reason*
5. *Meaning, purport*
6. *Authority, control*
7. *Correct, right*

There are four main ideas apparent amongst these definitions. Definition 7 confirms the underlying root word meaning of something which is right and correct. Definition 2 likely confirms the most common usage of the word – a custom, behaviour or habit that has become the norm – as per definition 3. The rules and controls that determine what those customs and habits should be are further confirmed by definitions 1 and 6.

Definitions 4 and 5 suggest a similar meaning to one of those given for kaupapa above – the reason or basis for the particular custom, habit, or rule. This provides a direct link to the basis upon which tikanga are practiced.

It is appropriate to open a review such as this with an analysis of the treatment of Tikanga within the literature. The range of interpretations above is consistent with the extent to which tikanga pervades every aspect of Mäori life, as Joe Williams indicates it is "essentially the Mäori way of doing things – from the very mundane to the most sacred or important fields of human endeavour" (Williams, 1998).

While the translations used vary, Tikanga is generally understood to include Mäori beliefs, values and correct practices, behaviour or conduct (McCully, 2003; Mead, 2000; Hohepa, 1996; Metge, 1976; Patterson, 1992; Waitangi Tribunal, 1997; and Durie, 1998).

A footnote from *Mäori Custom and Values In New Zealand Law*, which lists those aspects Mäori concepts that constitute tikanga as indicated by several prominent Mäori writers (New Zealand Law Commission, 2001):

- *Durie's list of fundamental principles or values that underpin Mäori law is sevenfold and includes whanaungatanga, mana, manaakitanga, aroha, mana tupuna, wairua and utu: E T Durie Custom Law (unpublished Confidential Draft paper for the Law Commission, January 1994) 4–5.*
- *Manuka Henare's comments from the Royal Commission on Social Policy identify whanaungatanga, wairuatanga, and mana Mäori (including mana, tapu and noa, tika, utu, rangatiratanga, waiora, mauriora, hauora and kotahitanga).*
- *Henare's list of ngä pou mana were whanaungatanga, taonga tuku iho, te ao turoa and turangawaewae. Clustered with whanaungatanga are tohatoha and manaaki: New Zealand Royal Commission on Social Policy, The April Report – Report of the Royal Commission on Social Policy – Te Kōmihana A Te Karauna Mō Ngä Āhuatanga-Ā-Iwi, Wellington, The Commission, c1988 (Appendix to the Journals of the House of Representatives of New Zealand, 1998, H2).*
- *Cleve Barlow gives mauri prominence: Tikanga Whakaaro – Key Concepts in Mäori Culture (Oxford University Press, Auckland, 1994).*
- *Mason Durie would consider adding tupu to the list, reflecting growth and survival of future generations: Mason Durie Letter to the Law Commission commenting on the draft of ‑Mäori Custom and Values in New Zealand Law‖ 19 February 2001, 1. Hohepa has stated that the more important of the principles which support and guide tikanga include tapu, mana, pono, whanaungatanga, aroha and utu: Professor Pat Hohepa and Dr David V Williams The Taking into Account of Te Ao Mäori in*

Relation to the Reform of the Law of Succession NZLC MP6 (Wellington, 1996) 14.

- *Dame Joan Metge summarises the important values into six main groups: aroha, together with the associated value of whanaungatanga; the complementarity of taha wairua and taha tinana, together with the associated paired concepts of tapu and noa, ora and aitua, tika and hë; mana, with the associated values of whakapapa,* mana *tüpuna, mana ätua , mana tangata, mana whenua, mana täne and mana wähine; ngä mahi-a-ngākau, obligations arising from aroha and/or mana; utu; and kotahitanga:*

Tikanga is also often described as customary law, however Mutu/McCully posit that it is the Mäori equivalent of English law (McCully, 2003). In his recent book *Tikanga: Living by Mäori Values,* Mead provides the following substantial definition:

> *Tikanga is the set of beliefs associated with practices and procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do. Tikanga are tools of thought and understanding. They are packages of ideas which help to organise behaviour and provide some predictability in how certain activities are carried out. They provide templates and frameworks to guide our actions and help steer us through some huge gatherings of people and some tense moments in our ceremonial life. They help us to differentiate between right and wrong in everything we do and in all of the activities that we engage in. There is a right and proper way to conduct one's self* (Mead, 2003).

As Mead's analysis of tikanga is the most substantial (and recent) of the sources referenced here, we will often use his discussion as a reference point for this section, and relate other observations back to it. Mead's description is essentially consistent with the discussion on tikanga in the literature, although his qualification in terms of being subject to what the individual or group can do is not specifically stated elsewhere in the works referred to here. Rather, as Paterson posits, "values are concerned with ideals, and ideals are only rarely achieved" (Patterson, 1992) tikanga are generally considered to be standards to which Mäori aspire, such that the tikanga is/are not revised to fit the capacity of the group.

Mead uses the word tikanga to describe both the overarching set of rules, and singularly to describe individual beliefs and practices. He recognises, applying the latter application, that tikanga differ in scale:

> *Some are large, involve many participants and are very public . . . Other tikanga are small and are less public. Some of them might be carried out by individuals in isolation from the public, and at other times participation is limited to immediate family. There are thus great differences in the social, cultural and economic requirements of particular tikanga* (Mead, 2000).

Some personal tikanga Mead identifies are: the practice of separating the household wash into clothing and bedding on the one hand and cloths associated with food on the other; appropriately treating and burying the whenua (placenta) and the pito (umbilical cord) after a birth; and christening a child by the local river (Mead, 2003).

Mead's discussion appears to be is in line with the description by Williams above. But Hohepa/Williams distinguish between the underlying rules and their practice "Tikanga can be defined as law in its widest sense, while kaupapa and kawa is the process and ritual of tikanga" (Hohepa, 1996).

Tikanga can be universal to all Mäori, or particular to certain groups. This is consistent with Mead's observation that tikanga are "established by precedents through time, are held to be ritually correct, are validated by usually more than one generation" Mead makes the point that tikanga is not static, but evolves over time, with "ideas, interpretations and modifications added by generations" Mutu/McCully confirm both these observations from their own tribal perspective:

> *In Te Whänau Moana and Te Rorohuri's case, this [tikanga] is a vast body of knowledge, wisdom and custom. It derives from the very detailed knowledge gained from residing in a particular geographic area for many hundreds of years, of developing relationships with other neighbouring communities as well as those further afield, and learning from practical experience what works and what does not* (McCully, 2003).

As per Mead's observation regarding the static nature of tikanga, the Waitangi Tribunal emphasised the fluidity of tikanga:

> *Although custom law is often portrayed as immutable, change was happening all the time. As Mäori law was based on values rather than a rigid set of rules, change could be readily accommodated, provided the underlying principles were maintained. Thus, by remaining true to its basic values, Mäori culture was able to adopt and adapt while retaining its essential form* (Waitangi Tribunal, 1997).

Paterson similarly observes:

> *One popular Päkehä conception is that Mäori values are uniform and static. That is false. As in any dynamic culture, the values of the Mäori are able to adapt to changing circumstances and to vary from person to person and from group to group* (Patterson, 1992).

Mead refers to these values as tapu, mana, noa, manaakitanga, take, utu, ea, and many others, which he reports all play a part in explaining Mäori customary practices (Mead, 2003).

Value lessons and codes of conduct for Mäori are prescribed within Körero Tawhito, the traditions and 'myths' many of which are universally held by Mäori. As Walker posited:

> *A myth might provide a reflection of current social practice, in which case it has an instructional and validating function or it is an outward projection of an ideal against which human performance can be measured and perfected* (Walker, 1978).

(The writers do not ascribe to the use of the term 'myth' as it brings with it a range of connotations, usages, and understandings from the English language and many – predominantly European – cultures. In particular, the thought they are somehow imaginary or make believe is dismissed by Mäori – as any Christian would dispute the chronicles of the *Holy Bible* related as myths. Instead, we use here the generic term, ngä körero a ngä tüpuna, or basically the teachings of the ancestors.)

Several writers stress that tikanga (as indicated by the root of the word being tika – correct) must be carried out correctly (Mead, 2003; McCully, 2003; Hohep,a 1996; and Waitangi Tribunal, 1997). This is the central lesson conveyed in several of the traditions. Walker explains, for example, the incorrect reciting of a tohi by Maui's father as being the Mäori rationale for man's loss of immortality, and as emphasising the importance of the correct performance of ritual. Similarly the transgression by Maui's brothers in cutting up Te Ika a Maui before the proper rituals had been completed (Walker, 1978).

Mead alone of the writers referenced here also refers to what he calls "the social validation of tikangs":

> *The witnessing of the event is necessary to validate socially the individual performance of the tikanga. People, including members of the performing hapü, need to be convinced that the tikanga was carried out properly and completely.*

The social precedents and value lessons that stem from the traditions confirm that tikanga itself is seen as descending from the gods, although this point is not specifically made within the sources reviewed, perhaps being taken as understood. However, it is implicitly recognised in Mead's observations regarding the consequences of failing to correctly conduct ritual:

> *There is a belief that if the rituals are not performed properly some misfortune will be visited upon the group. Thus there is a strong incentive to get it right. The belief that individuals who trample on tikanga or mangle how they are put into practice will cause misfortune to the group is still very strong among several iwi. Some misfortune is expected to be visited upon the culprits as punishment for offending the ancestors and the Gods of the Mäori world* (Mead, 2003).

Patterson finds that like myths, whakatauäkï (proverbs) provide precedents for proper behaviour. He cites examples relating to the practice of understanding and caring for the natural environment, encouraging diligence, courage, honesty and reciprocity (Patterson, 1992).

Tikanga and the Law

While the marae is unquestionably the place for issues of tikanga to be discussed and resolved, Mäori are now subject to the jurisdiction of the Päkehä courts. Accordingly, tikanga has been variously considered, described, defined, and even (arguably) applied within the statues, and the legal system in Aotearoa / New Zealand. Here we will look at some such treatments, also considering the relative powers and jurisdictions of the various institutions in terms of their contemporary treatment of tikanga Mäori.

According to a search in February 2001 by Dr Alex Frame the following statutes include references to tikanga:

Ngai Tahu Claims Settlement Act 1998 (70 times)
Te Ture Whenua Maori Act 1993 (22 times)
Waikato Raupatu Claims Settlement Act 1995 (11 times)
Resource Management Act 1991 (8 times)
Ngati Turangitukua Claims Settlement Act 1999
Fisheries Act 1996 (3 times)
Biosecurity Act 1993 (2 times)
Education Act 1989 (2 times)
Building Act 1991 (once)
Crown Minerals Act 1991(once)
Health Research Council Act 1990 (once)
Maniapoto Maori Trust Board Act 1988 (once)
Te Runanga o Ngati Awa Act 1988 (once)
Local Government Official Information and Meetings Act 1987 (once)
Waitangi Day Act 1976 (once)
Treaty of Waitangi Act 1975 (once)
Maori Trust Boards Act 1955 (once)

It should initially be noted that treatment of Mäori rights (and particularly Mäori concepts) by the courts has been subject to the prevailing dominant Päkehä attitudes of the day. Accordingly, Mäori have generally received little recognition of the validity of their perspectives, or protection of their rights as guaranteed under the *Treaty of Waitangi*, the doctrine of aboriginal law, and British common law. Such treatment at any particular time has likely been influenced by international trends in the status of indigenous rights; however we will not investigate these international developments here.

As a result of this, with the possible exception of the early colonial period, and occasional enlightened rulings, the recognition and provision for Mäori concepts referred to here should be recognised as being a recent development. Courts finding in favour of Mäori on the basis of recognition of mana or protection of mauri would have been unthinkable thirty years ago.

A fundamental shift in position that has facilitated recent court decisions in favour of Mäori is willingness by the courts to (attempt to) view the evidence before them from a Mäori perspective. This change in perspective is referred to, and examples provided, later in the review.

This review will not substantially investigate the social and political developments that have lead to this change. Nor will it seek to consider the legislative regimes that have been imposed on Mäori, and which have fundamentally undermined Mäori society over the last two centuries, rather we will concentrate on contemporary (e.g. the last 20-30 years) legislative and legal developments.

The Waitangi Tribunal has been a critical element in articulating an authoritative Mäori perspective based on treatment of Mäori by the Crown in terms of the *Treaty of Waitangi.* As discussed later, the authority of the views of the Waitangi Tribunal have won recognition by the mainstream courts, with judgements that relevant findings of the Tribunal must be taken into account by the courts when making their decisions.

The Waitangi Tribunal's *Whanganui River Report* provides a valuable analysis of the changing treatment over time of Mäori property rights and values by various law courts. Providing an insight into the manner in which earlier courts investigating Mäori rights functioned, and the relative jurisdiction of the Waitangi Tribunal, the Tribunal in the *Whanganui River Report* had this to say:

> *Apart from the finding that Atihaunui owned the bed at 1840, we consider that the decisions in the courts now have limited value for this inquiry. The factual base on which the legal findings depended is now too much in question. Special legislative authority was needed for the Mäori Appellate Court to act. It was not operating within its normal jurisdiction. Also, the matters before that court were matters of fact not law – matters of custom and Native Land Court process – but its findings of fact were determinative. Nor are they binding on us. Though the results are binding on the parties unless overturned, we are not a court, and on questions of fact (not law) we can inquire beyond the evidence that was before the court. On the application of facts to law, or in our case to the principles of the Treaty, this claim differs in two critical respects. First, it is concerned with the river entire. To fit the jurisdiction of the Native Land Court, the litigation concerned only the bed, creating an artificial division of the river. This appears to have influenced the approach taken. The nature of the case before us is not that which was before the courts. Second, the claim before us is founded on the rights of the claimants under the Treaty of Waitangi. The Treaty rights of Atihaunui were not in issue in the*

> *riverbed litigation; they were not within the jurisdiction of the courts to consider at that time* (Waitangi Tribunal, 1999).

As a result of social and political changes, often precipitated by legal victories internationally and nationally, and due to the work of the Waitangi Tribunal, New Zealand legislation has started to reflect Mäori rights, values and concepts. For example, Section 3 of the *Te Ture Whenua Mäori Act* (1993), perhaps the most significant legislation dealing with and incorporating Mäori concepts, defines tikanga Mäori as "Mäori customary values and practices" the same definition as included in the RMA (1991).

Therefore, the Mäori Land Court - because of Sections 27 and 29 of Te Ture Whenua Maori - has become the defacto forum for determining tikanga issues (along with the Mäori Appellate Court). Bennion observes that the requirement in the Act that the court determine interests in Mäori customary land "according to tikanga Mäori" rather than according to "the ancient customs and usages of the Mäori people" as required by the previous *Mäori Affairs Act* (1953) is an important change. He sees this as requiring the court to determine the matter from a Mäori perspective looking outwards, rather than from the "outside looking in" (Bennion, 2001).

The New Zealand Law Commission suggests that the specialist knowledge largely possessed by the Mäori Land Court is not knowledge of custom but of the complex laws designed to replace customary tenure (New Zealand Law Commission, 2001). However, where such an inquiry concerns a matter of tikanga, the Chief Judge can appoint two or more persons with "knowledge and experience of tikanga Mäori "to the court. (See Whakapapa in Law section for further discussion) It is unfortunate that there is no similar provisions for the Environment Court as it would likely assist them in determining such matters – currently left largely to the discretion of the presiding judge in any case.

Both the Mäori Land Court and High Court have the discretion to refer matters of tikanga to the Mäori Appellate Court under sections 60 and 61 of *Te Ture Whenua Mäori Act*, as was the case in *Hauraki Mäori Trust Board & Anor vs. The TOKM & Ors* (1995). The Mäori Appellate Court under Section 62 may also appoint two additional non judicial members with knowledge and experience in tikanga Mäori. Decisions of the Mäori appellate Court in matters of tikanga are binding on the Mäori Land and High Courts. To our knowledge, this has happened on only very few occasions.

For example the *Ngäti Ruanui Claims Settlement Act* (2003) Schedule 5 states:

> *The pa remains one of the areas where the footsteps of our Tupuna remain pristine. The area remains uncut, uncultivated, and in its unspoiled state. It is a remote place where the people would be able to sit and reflect on the life of their ancestors sensing the Ihi (power), Wehi (fear), and the mauri (life force) emanating from the land.*

And Schedule 11:

> *The mauri (life force) of all species is important to Ngäti Ruanui, the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All species of the natural environment possess a life force, and all forms of life are related.*

While definitions of Mäori concepts have been presented as evidence before the courts, they have generally avoided defining these, preferring to leave this to Mäori. This is demonstrated in the *Ngäti Hokopu Ki Hokowhitu v Whakatane District Council* Environment Court case:

> *We start with the proposition that the meaning and sense of a Mäori value should primarily be given by Mäori. We can try to ascertain what a concept is (by seeing how it is used by Mäori) and how disputes over its application are resolved according to tikanga Ngati Awa. Thus in the case of an alleged waahi tapu we can accept a Mäori definition as to what that is (unless Mäori witnesses or records disagree amongst themselves).*

Bennion reports that Judge Jackson (revealing a rare insight) felt that the majority of New Zealand cultures tended to take a dualistic view which distinguished physical and spiritual things, but the Mäori view of "relationships" which was imported into the RMA was monadic, making "no rigid distinction between physical beings, tipuna (ancestors), ätua (spirits) and taniwha". Yet there could be a meeting of the two worlds (Bennion, 2003, p.3) Contrasting with this analysis, the courts have tended to discuss Mäori values very generally. The two apparent exceptions to this have been wähi tapu and wairua/mauri. This seems to be because of the repeated reference to these by Mäori in submissions under the RMA 1991. Even in these cases, the courts have been more concerned with balancing the requirement to recognise Mäori values against the other requirements of the Act(s) than with providing legal guidance as to their definitions. Examples of these cases are included in the sections relating to wähi tapu, and mauri.

Provision for Mäori values (and other factors) within the RMA and other legislation is complicated further by the inclusion of statements that suggest varying approaches and levels of emphasis within the legislation, including the requirements to: "take into account", "have particular regard", "recognise and provide for" or "give effect to" different aspects of tikanga Mäori and the *Treaty of Waitangi*.

In all the investigations by the Courts concerning tikanga - in addition to consideration of the Mäori values themselves – two recurring questions are evident. These are how to interpret intangible Mäori concerns (i.e. spiritual values), and the balancing of Mäori values (tangible or otherwise) with the other matters to be taken into consideration under the various statutes. Mäori values have received vastly varying treatment in this regard.

Both of these are encapsulated in this judgement given in the *Mahuta & Ors v. Waikato Regional Council* case in 1998, where Waikato sought to prevent discharge of contaminants into the Waikato River:

> *It is our judgement that because of the community value of the proposed expansion of the dairy factory, and because the cultural interests of the Waikato-Tainui people would be provided for in so many other ways which avoid tangible harm to the river, the perceptions which are not represented by tangible effects do not deserve such weight as to prevail over the proposal and defeat it*.

These dynamics are investigated further in the later sections.

Summary

The circular references between the four key terms covered in some of the references in this section confirms the overlaps, links and holistic nature of the understandings associated with each term. The differing interpretations also highlight the way in which language has developed differently in different tribal areas. This is particularly evident in some of the references to tikanga covered in this section which would fit just as well in the section under kaupapa above.

Therefore, tikanga is defined here as appropriate or correct behaviours, practices, actions, customs and habits and the rules which define them.

Although tikanga is also commonly used to explain the reasons or basis for particular tikanga, this meaning defaults within this Kaupapa Mäori Framework to the term 'kaupapa'.

It is suggested here that tikanga is grounded in kaupapa and that while tikanga changes over time, kaupapa does not. For example, the kaupapa of tapu and noa – based in the common *püräkau* or story of the battle between *Tawhiri* and his sibling ätua following the separation of their parents - has led to a range of tikanga that have adapted over the years. Prior to colonisation, an example would have been the practice of feeding tohunga to ensure their *tapu* body at no time came into contact with the *noa* food. A modern adaptation is the tikanga of not sitting on a table – also ensuring the tapu associated with your body does not make contact with a place set aside for food.

As the above discussion of legal treatment reveals, it was apparent to the writers the strongly contrasting positions the courts have taken in relation to tikanga Maori issues, particularly those of different judges in the Environment and High Courts.

While there has been some apparent progress in terms of the courts attempting to understand and address matters of tikanga, such treatment is minimal and often inconsistent. The provisions that the Maori Land Court and the High Court have to call on additional non judicial members with knowledge and experience in tikanga Mäori is seldom used. The anomaly of the Environment Court not having this discretion is of concern given that this court is hearing a large proportion of those cases of particular significance in terms of tikanga Maori.

Some of the process and structural issues associated with the law are covered further in the sections below.

Kawa

The Williams Dictionary includes a range of definitions, including:

3. *Charmed, protected by the ceremonies of kawa*
4. *A class of karakia or ceremonies*
7. *v. Perform the kawa ceremony*
8. *Effect - with accompanying kawa ceremony.*
9. *Open - a new house*

The key idea within these is the fact that a kawa was a class of *karakia* – or incantation or prayer calling on those who have gone before. Unlike prayer, karakia not only call on deity or gods, but also the full range of ancestors known through whakapapa, and including

what might fit into the notions of: gods; demi-gods; deities; talisman; ancestors; spirits; fairies; and other spiritual beings. This denotes a classification of karakia into differing types, and also suggests a more formal subset of *tikanga.*

Common use of the term today is more consistent with translations and definitions in the literature, especially protocols and procedures – especially as they relate to formal, marae based procedure. (See: Hauraki Mäori Trust Board, 1999; perspectives (Patterson, 1992); formal marae procedure (Karetu, 1975); protocol and custom (Waitangi Tribunal, 1992) Appendix 6.)

In his chapter *Language and Protocol of the Marae* Timoti Karetu (1975) gives an in depth discussion of kawa. He describes various kawa to do with different occasions and kaupapa. Karetu gives examples of karanga, tauparapara, whaikörero, oriori, pätere, and waiata which might be used for different kaupapa, and discusses the reasons behind the kawa discussed. Examples of kawa Karetu includes are: appropriate speaking order; what is generally said; and the order of events relative to particular kaupapa. Karetu includes a large number of excerpts of whakatauäkï, waiata, and popular whaikörero as examples of the kawa he describes.

Referring to the kawa associated with welcoming people of particularly high mana onto the marae, Marsden asserts the importance of observing kawa:

> *As such, they cannot be treated with indignity and impunity without incurring the wrath and retribution of the gods. It is this last consideration which makes the ritualistic observance of marae protocol (kawa) so formal and even rigid. For both guests (manuhiri) and hosts (tangata whenua), the formal observance of local kawa ensures the avoidance of transgression and the giving of offence* (Marsden, 1977).

Mead also emphasises the requirement to observe kawa correctly, in relation to the ceremony of lifting the tapu from a newly opened/carved house:

> *Today kawa is usually regarded as marae protocol, a set of procedures that follow in some order. Indeed, that is the sense of its use in the term 'he tā i te kawa'. The ceremony involves a series of activities such as the tohunga striking or touching some of the artwork, especially key pieces, or the walls of the structure. There is a procedure to follow* (Mead, 2003).

As briefly discussed in the preceding section on Kaupapa, Barlow's description regarding kaupapa and kawa in Tikanga Whakaaro blurs the distinction between the two. To investigate this further, and because this offers a valuable discussion on kawa, the following is a substantial excerpt from that work:

> ***Marae Protocol:*** *Here the term kaupapa refers to the rules and policies associated with the administration of a marae, and in particular, the protocol for formal speech-making, for welcome calls, for welcoming guests and, in the case of tangi (funerals), for caring for the deceased. Each tribe has its own rules also, and ways of carrying out these functions on the marae. With speech-making, for example, in some areas it is not until all the speakers on the hosts' side have spoken that the visitors are given the opportunity to respond. This custom is known as pāeke. In other districts, for example, in the Tainui area, the kaupapa is known as 'tū atu, tū mai'. After a speaker from the host people has spoken, one of the visitors responds and the procedure continues in this alternating fashion. When all the speakers are finished, the final speech is given by a member of the host group. With regard to*

funeral ceremonies, it is customary for the deceased to lie in state on the marae. In some areas, such as the Tai Tokerau, the coffin is placed at the back of the meeting house at the foot of the centre back post. In other areas, the coffin might be placed by the right-hand side wall, by the right-hand side of the front porch, or in a specially erected house or tent.

As indicated, this discussion is consistent with other authors' descriptions of kawa, given that Barlow describes as 'kaupapa' the protocols or way of doing things of various marae. (e.g., see Karetu, 1975; Mead, 2003; and Marsden, 1977. However, Barlow includes both English and Mäori versions for each of his discussions of Mäori concepts, and he starts this writing in the corresponding te reo Mäori section with the heading 'kaupapa Kawa Marae', which he translates as 'Marae Protocol'. Similarly, he refers to 'tikianga' in the Mäori version only. This might indicate that Barlow is describing what he understands to be kawa, but he uses only the word 'kaupapa' to refer in the English text o 'the way of doing things' as variously described in the Mäori.

Kaumatua remain responsible for the retention and passing on of local kawa. Api Mahuika observes that, while a new group of young leaders have become authoritative – particularly in "European affairs", these "educated rangatira respect the kaumätua as their elders, and in many cases because of their knowledge of tribal kawa and history" (Mahuika, 1992).

The Crown has paid limited recognition in legislation to the paramount importance Mäori place in observing kawa, particularly when dealing with kaupapa Mäori and issues of tikanga.

Section 66 (1)of *Te Ture Whenua Act* (1993) - Conduct of proceedings generally – provides that Any Judge conducting or presiding over any hearing may apply to the hearing such rules of marae kawa as the Judge considers appropriate. Kawa is apparently deemed to be universally well understood as to not require any definition or explanation.

Similarly, the *Treaty of Waitangi Act* (1975) provides under its second schedule (clause 5(6) the authority to 'adopt such aspects of te kawa o te marae' as the Tribunal thinks appropriate, and it may regulate procedures in such manner as the members think fit. However, such respect has yet to flow through To 'non- Mäori' legislation with anything like the preceding level of accommodation for kawa.

The RMA (1991) does make some allowances for tikanga Mäori, for example Section 39 allows authorities administering the Act to conduct hearings at the marae:

Section 39. Hearings to be public and without unnecessary formality— the authority shall [generally] hold the hearing in public and shall establish a procedure that is appropriate and fair in the circumstances.

.(2) In determining an appropriate procedure for the purposes of subsection (1), the authority shall—

.(a) Avoid unnecessary formality; and (b) Recognise tikanga Mäori where appropriate, and receive evidence written or spoken in Mäori and the Mäori Language Act 1987 shall apply accordingly… And, under Section 269 - Environment Court procedure-

.(1) Except as expressly provided in this Act, the Environment Court may regulate its own proceedings in such manner as it thinks fit.

.(2) Environment Court proceedings may be conducted without procedural formality where this is consistent with fairness and efficiency.

.(3) The Environment Court shall recognise tikanga Mäori where appropriate.

This section appears to allow for the conducting of Environment Court sittings on the marae and according to marae kawa. However, while this may have occurred the writers have no record of any examples to report.

Conclusion

The terms ‘kaupapa’, ‘tikanga’, ‘kawa’ and ‘take’ are inter-related and provide over arching meanings for the Kaupapa Mäori environmental outcomes and indicators framework and methodology we are aiming to develop. We confirm our understandings of these four over-arching principles in this way:

- ‘Kaupapa’ and ‘take’ – Underlying knowledge in the form of principles, beliefs, values, and körero that underpin and provide a basis for ‘tikanga’ and ‘kawa’. The bulk of *kaupapa* and *take* are shared and common across iwi throughout Aotearoa, although there are variations in the ways in which they are interpreted. They largely have not, and should not, change over time – although some interpretations have arguably been lost to the past.

- ‘Tikanga’ and ‘kawa’ – Practices, protocols, procedures, customs, and modes of behaviour that are based on ‘kaupapa’ and ‘take’. These vary widely across iwi and hapü and have changed significantly over time - and will continue to do so.

Across each of the kaupapa that follow in the sections below, there are examples of *kaupapa* and *take* – underlying principles, philosophies, concepts, beliefs, values and stories. For each of the kaupapa, there are also related tikanga and kawa – protocols, procedures, customs and modes of behaviour.

3

MANA, TAPU, AND NOA

Ko te tapu te mana o ngä ätua - Tapu is the mana of the spiritual powers. (From Grey, translated in Shirres.)

Mana and tapu (and therefore noa) are the most fundamental concepts that underpin kaupapa Mäori. As the reference above from Grey's manuscripts point out, the two terms reflect related and overlapping concepts associated with the power, respect, and metaphysical forces that support and generate life which all began with the ätua .

In explaining tapu, Shirres further explores the intersects:

> *The primary meaning given to tapu in this study is made up of two elements, one from reason and the other from faith. Both elements link tapu with mana. The element from reason sees tapu in its primary as 'being with potentiality for power'. The element from faith sees tapu as the 'mana of the spiritual powers' of Taane, Tangaroa, Tuu, Rongo and so on.*
>
> *To look on tapu as 'being with potentiality for power' is to leave out the most important element of tapu, the faith element, the link with the spiritual powers. In the understanding of tapu presented here, every part of creation has its tapu, because every part of creation has its link with one or other of the spiritual powers, and ultimately with Io, Io matua kore, 'the parentless one'. Io taketake, 'the source of all'. It is important to note that this is one view of tapu, a view based on some of the Mäori writings of the 1840s and 1850s. Each tribe has its own understanding of tapu and as is evidenced in the Mäori manuscripts, what one Mäori writer referred to as tapu, another referred to as mana. Today too, where some tribes speak of tapu, others speak of mana. Different words are used for the same reality and the use of the different words itself gives us a better understanding of that reality* (Shirres, 1997, p. 33).

Therefore, while each of the words is analysed individually below, mana and tapu (and with it noa) are overlaying and intertwined concepts.

Mana

Williams Dictionary definitions:

1. *Authority, control.*
2. *Influence, prestige, power.*
3. *Psychic force.*

Mana is widely described as authority, power and prestige. It is ultimately derived from the gods. Mana is (along with Tapu) a central principle underlying and ordering Mäori society and also the place of Mäori within their physical and spiritual world. As Mead explains:

> *Mana has to do with the place of the individual in the social group. Some individuals are regarded as having a high level of mana and others have varying*

levels. People with mana tend to be persons in leadership roles in the community (Mead, 2003).

This divine origin of mana is universally accepted within the literature, but so to is the recognition that mana is subject to human influence. The Waitangi Tribunal provide a useful functional assessment of mana within Mäori society:

The concept of mana shows how Mäori authority was neither centralised nor institutionalised, and how power moved up from the people and not down from a central authority. Accordingly authority was not divorced from personal power and influence. Although the necessary leadership traits were reinforced by beliefs that mana was a divine delegation, it was unlike the English divine right of kings in that power was only partly inherited and mainly acquired. The society was thus basically democratic and there was room for class mobility (Waitangi Tribunal, 1997).

Other characteristics of mana include charisma, and the ability or power to perform certain acts or deeds (Marsden, 1977). A crucial component of mana is the ethic that it came not from the accumulation of material goods for personal gain, but conversely from one's contribution to the community. Professor James Ritchie is cited by the Waitangi Tribunal, speaking about this aspect, of mana being enhanced by generosity. Here Ritchie speaks regarding the mana of the group, rather than that of individuals, and these of course are directly linked. He refers to this as Mana huänga:

[Mana huanga], that mana which rises from riches, the possession of resource-rich territories or waters, the fruits of the bush, its birds, the eels, gardens and waters, inland or oceanic. These not only sustained the iwi but with these good things they could make their mana material through the hospitality they could offer and the koha which they could carry when they travelled or joined others in celebration, or to mourn (Waitangi Tribunal, 1999).

Mana is recognised as being of several primary categories; these are mana ätua, mana tupuna, and mana tangata. These distinctions will be considered below. This notion of mana not being static is explored further within the discussion on mana tangata.

Barlow recalls an account of the origin of mana as ahi kōmau, the sacred fire/power of the gods, and makes a distinction between this specific traditional embodiment and modern understandings, the later being more in line with the general understandings of mana as indicated by the literature:

Mana is the enduring, indestructible power of the gods. It is the sacred fire that is without beginning and without end. Tane ascended by the sacred vine in order that he might retrieve the mana or sacred power of the gods, which was known to the ancestors as the ahi kōmau. Täne was not successful in his attempt to retrieve the ahi kōmau, but he did bring back to earth the knowledge of how one might acquire this sacred power. When the priestly experts carried out their ritual at the altars on the marae, they would light a fire as a symbol of the ahi kōmau, that is, of the sacred power of the gods. In these rituals, which were performed under priestly direction, it was possible for one to enter the confines of the whare maihi or sacred carved house. In modern times the term mana has taken on various meanings, including the power of the gods, the power of ancestors, the power of the land, and the power of the individual (Barlow, 1993).

These distinctions align with the types of mana described below.

As previously observed, Mana and Tapu are closely associated - it is evident that the higher the mana of a person of object the greater the associated tapu. While this relationship is evident within the literature on Mäori concepts, it is little explored in the sources referred to here. Mead recognises the association thus:

> *The protection of the self is closely linked to tapu and the attribute of mana, which is allied to tapu. I shall describe mana separately. Here however, it needs to be said that as the mana of an individual grows, the tapu rises at the same time* (Mead, 2003, p. 45).

It is a universal tikanga within Te ao Mäori that mana must be respected, and actions that diminish mana result in trouble. Results of transgressions of mana will not be considered here, however transgressions against tapu are considered in the following section.

Mana has been discussed within various courts, most notably recently in relation to employment, where employers have been accused of acting in a manner that damaged personal mana. Under the recent Employment Relations Act the employment tribunal has been sympathetic to Mäori perspectives and some landmark rulings have been made in favour of Mäori employees.

For example, in the *Sutherland v Board of Trustees of Marlborough Girls' College* case in 1999 the Employment Court found that there was a requirement on the Board of Trustees to deal with issues of discipline, and to conduct issues so as to preserve the mana and dignity of the teacher / employee, and that (amongst other things) they had failed to do this (1 ERNZ 1999, p. 665).

In *Shortland v Accident Compensation Corporation* (1994) the applicant sought additional compensation to take account of a "loss of mana" as he was unable to undertake marae associated responsibilities.

ACC accepted this made the effects of the injury more serious than for some other accident victim. The applicant argued that the injury meant the appellant could not stand on each occasion visitors entered the meeting house, in accordance with marae kawa. He was granted a modest increase (Bennion, 2001).

It seems that a jurisprudence relating to personal mana is slowly building

Mana Ätua

As the name suggests, mana ätua is that mana which is imbued from the gods, and is most inherent in those of high birth. However, as the above descriptions indicate, all mana is divine, and the term mana ätua therefore has additional significance. Mana ätua is obviously, by virtue of the distinction, different to mana tupuna (which is also ultimately inherited from the gods), and mana tupuna.

McCully / Mutu define mana ätua as being "the very sacred power of the gods which is given to those persons who conform to sacred ritual and principles." (McCully, 2003) Such power is suggested by McCully / Mutu to be not only a birthright of rangatira, but also held by tohunga, both craft specialists and specialists in ritual and religious matters. Metge expands on this point:

> *[Specialists in ritual and religious matters] comprise on the one hand the tohunga*

ahurewa, priests selected from rangatira families but also tested for their intellectual capacity, and on the other those marked out by evidence of direct access to the gods and mana ätua, matakite (seers and prophets) and tohunga mäkutu (experts in sorcery).

Metge goes on to observe a change since colonisation, whereby mana ätua is then held by Christian priests and ministers, exemplified by Mäori prophets such as Ratana, Te Kooti, Te Whiti, and tohunga who specialis in healing (Metge, 2001).

Mana tupuna

Mana tupuna is the mana inherited from the ancestors, through ones parents. McCully / Mutu make the distinction that such mana is authority and power handed down through chiefly lineage (McCully, 2003). Yet recalling Mutu / McCully above, all living things including all people are imbued with mana, therefore it is surely the level of mana that varies.

Mead similarly emphasises the rangatira aspect, also linking mana tupuna back to the social structures of Mäori society:

They [people of high mana] are well placed in terms of whakapapa and come from chiefly lines or from important families. People of mana draw their prestige and power from their ancestors. This power is socially founded upon the kinship group, the parents, the whänau, hapü and iwi.

He also recognises that not only which ancestors, but what order they were born influences inherited mana:

Mana is in turn mediated by the value placed on the tuakana/taina standing of a person. Tuakana - older siblings, male or female - have a higher position socially than taina, younger siblings (Mead 2003, p. 29).

This dynamic will be explored further in the section on whänau and whakapapa. Barlow concurs with the idea that mana tupuna comes from chiefly lineage, but adds that there is a requirement that recipients of such mana must carry out the various rituals and duties to maintain that power from the ancestors. Karetu cites proverbs that recall both inheritance generally and chiefly inheritance as influencing qualities associated with mana:

'E kore e taka te parapara a ōna tüpuna; tukua iho ki a ia - He cannot fail to inherit the talents of his ancestors; they must descend to him',

'Tōku toa, he toa rangatira - My bravery is inherited from the chiefs who were my forebears' (Karetu, 1987, p. 79).

We suggest that while it is accepted that all people and living things have some degree of mana, the literature focuses on those of high mana as these individuals are considered to exemplify the qualities of mana. The Waitangi Tribunal discusses this distinction between chiefly and ‘common’ mana. Here though they refer only to mana, without distinguishing mana ätua or tupuna, however the reference to supernatural capabilities is in line with the preceding discussion on mana ätua :

Mana was said to be delegated from the gods. All people had it, but some had more than others and those with an abundance were regarded as having supernatural

capabilities (Waitangi Tribunal, 1997).

Mana Tangata

Mana tangata is the dimension of mana that is influenced by personal endeavour and achievement. Personal skills and achievements, knowledge gained in particular areas, and also the contribution an individual makes to the group over time are widely recognised as important factors toward increasing personal mana (Mead, 2003, p. 29; McCully, 2003). Barlow recognises this potential for personal accumulation of mana, while continuing to make a link back to the gods:

> *This [mana tangata] is the power acquired by an individual according to his or her ability and effort to develop skills and to gain knowledge in particular areas. For example, a skilled warrior was able to acquire mana through the arts of combat and warfare under the code of law of Tümatatenga, the god of war* (Barlow, 1993)

Mana tangata provides the potential for individuals in Mäori society to rise above their inherited station, the 'class mobility' identified by the Tribunal referred to earlier. As with many Mäori values the traditions include examples of people elevating their social standing by great deeds.

Mana tangata or one's political acumen and leadership qualities were traditionally very important and are perhaps even more important today. The cunning, exuberance and courage of Maui Tikitiki, the youngest of Taranga's five sons which saw him become the leader of his people is the most famous mythological example of mana tangata in operation. A person (whether male or female) with impeccable whakapapa to claim a role as a rangatira may none the less be relegated to a ceremonial, minor, or only token role, unless the appropriate skills of mana tangata are shown (New Zealand Law Commission, 2001).

In relation to the function of mana tangata in Mäori society Williams states that the interplay between mana tüpuna and mana tangata in particular has tended to accentuate the importance of accountability between rangatira and people of a tribe both traditionally and today.

He goes on to say that Rangatira were, and are, continually required to affirm the consensus of the people in public forums. Thus the institution of the hui and the rünanga, when people gather to discuss important issues, were and remain the real seat of power and lawmaking. (Williams, 1998) The function of mana within society is further explored by the Waitangi Tribunal, in particular the relationship of mana with the accumulation of wealth:

> *The personal use of resources was surrounded by social obligations to contribute to the hapü according to its laws, and was conditioned by the ethic that mana came not from the aggregation of property rights for personal gain but from one's contribution to the community. Those persons who built an eel weir, for example, may have claimed it as theirs, not to secure an exclusive ownership but to secure the honour, or the mana, of having made it. Thus, Mäori could fiercely debate the right to something but at stake was a question of mana, not an individual gain in wealth. The incidence of property accumulation as understood by Europeans was not the primary or key motivator for Mäori action. The ethic or value of providing for the group was* (Waitangi Tribunal, 1999).

Mana Wahine

Contrary to the position of women in Mäori society espoused by early missionaries and subsequent ethnologists, women in Mäori society were and are recognised as having particular mana, and could hold positions of authority. Metge emphasises the importance of relating respect for mana wähine to a number of factors:

> *"... .to the centrality of Papatüänuku in Mäori thinking of women as –te whare tangata‖ whence issues new life (the basis of whakapapa), and to the significance of female ätua in Mäori cosmology, among other things as the repositories and sources of knowledge"* (Metge, 2001).

Women are the eponymous ancestors of many hapü, and they were and are active leaders in all aspects of Mäori endeavour. A number of women were among the rangatira who signed the *Treaty of Waitangi*. The following observations are made in a NZ Law Commission paper on Tikanga Mäori concepts in NZ law:

> *While Te Rauparaha is remembered as a great rangatira, much of his success depended upon his brother Nohorua, a tohunga, and his sister Waitohi, a diplomat. As Mäori law recognised ambilateral and ambilineal descent, it is equally as important to whakapapa through tüpuna who were women as through those who were men. In Mäori cosmogony female figures are not merely incidental to a patriarchal narrative as they tend to be in biblical mythology. Te reo Mäori is gender inclusive in ways that the English language is not – ia means both he and she. An affirmation of mana wähine is of paramount significance in order to understand the values of tikanga Mäori* (New Zealand Law Commission, 2001).

Ngäti Porou are renowned for the status accorded their women, particularly the custom of women speaking on the Marae. Mahuika observes in Ngäti Porou more of the senior hapü are named after females than males. He notes that:

> *"if one wanted to establish status in any of these hapü, one would trace a line of descent from the woman who gives her name to the hapü. In Ngäti Porou, this was done by tracing descent from the founding ancestor through as many first-born issue as possible, regardless of their sex."*

Mahuika posits that the fact that women in Ngäti Porou have the right to speak on the marae indicates they were leaders in the fullest sense (Mahuika, 1992).

Barlow observes also that women have personal power in respect of their role in taking care of children and, on the marae, in welcoming and caring for visitors. (Barlow 1993) Recognition is also given of the manner in which men and women balance each other on society and each make an essential contribution by the phrase 'Mana Täne - Mana Wähine.'

Kupenga, Rata and Nepe, in their article *Whaia Te Iti Kahurangi: Mäori Women Reclaiming Autonomy*, recognise this essential balance between mana and woman in Mäori society, and note the following:

> *He rerekē te mana o te wähine, he rerekē te mana o te Täne – the authority/prestige of woman is different to that of men great. Ko ētahi mahi, e kore e taea e te Täne, ko ētahi mahi, e kore e taea e te wähine – some tasks are more appropriately performed by men and similarly some tasks are accomplished by women* (Kupenga,

1990).

They refer to female gods in Mäori myths who are evidence of the autonomy of women, such as Papatüänuku, Hineahuone, Murirangawhenua, and Mahuika. There are many great women within the traditions including Wairaka, Hinemoa, and Rongomaiwähine, who personified greatness through their qualities of bravery and strength, love, and beauty (Kupenga, 1990).

Kupenga, et al., consider at length the change in the status of women since colonisation, based on the imposition of a European social order, but we will not investigate this subject further here, but for the description in the following reference:

> *Before the Treaty of Waitangi was signed, Mäori women had access to, and exercised powerful social and political roles. Mäori women were significant as the nurturers and organisers of whänau and hapü, and they could carry rank within a tribe. Mäori women could also have use-rights over land and resources. These rights would not become her husband's property if she married, and she could hand them on to any or all of her children. The traditional role of Mäori women was inconsistent with the colonial culture in which power and authority vested in the Victorian male. As Mäori began to internalise colonial values, or these values were imposed, the position of Mäori women was undermined. Exposure to land alienation, disease and Christianity also led to the subordination of Mäori women in society* (New Zealand Law Commission, 1999).

Marsden observes the following essential distinction between the mana of the male and that of the female:

> *Whilst the mana of the male was viewed as being positive, that of the female was regarded as negative. Hence the mana of a high-born female was regarded as particularly potent in negating or neutralising tapu. As a consequence, the act of a woman stepping over a man instead of going around him was highly improper and reprehensible since such an action depleted the male of his mana* (Marsden, 1977).

Mana Whenua

Mana whenua and tangata whenua are similar concepts, the tangata whenua holding mana whenua within their rohe. As indicated below, the terms tangata whenua and mana whenua are sometimes used interchangeably, with the tangata whenua being called mana whenua. According to McCully:

> *Mana whenua is the mana that the gods planted within Papa-tua-nuku (Mother Earth) to give her the power to produce the bounties of nature. A person or tribe who 'possesses' land is said to hold or be the mana whenua of the area and hence has the power and authority to produce a livelihood for the family and the tribe from this land and its natural resources* (McCully, 2003).

The intrinsic link between Mäori and their lands are recognised in same word – whenua - being used for the earth and the afterbirth, which signifies the link back to Papatüänuku and which is buried back into the earth to reinforce and maintain that link. McCully discusses the return of the pito and tinana to the earth:

> *One means of ensuring that mana whenua is upheld and enhanced is to return the pito or whenua (afterbirth) of a child to his/her ancestral lands at points specifically designated for the purpose. But the most powerful means, once the spiritual element*

> *has departed from a person (i.e. the person has died), is to return the human body to the ukaipo, the place from which his or her true sustenance and being came, that is, his or her ancestral lands. This is perhaps one of the main reasons why tribes will fight to have a body returned to his or her own ancestral lands for burial. Furthermore, the greater the person's mana, the bigger the fight, especially if the person has ancestral rights in more than one tribal area* (McCully, 2003).

As well as rights (to use the resources) there are inherent responsibilities of protection associated with mana whenua. These will be discussed further in the section on kaitiakitanga.

Mana whenua is a gift from the gods and always remains with the tribe of an area. The imposition of European title, for example, cannot remove mana whenua from a tribe (McCully, 2003). Mana whenua would have changed hands with the conquest of one group by another and subsequent occupation of the land. Also the convention of tuku whenua was practiced, where lands were gifted by one group to another in response to some actions or events. There is a substantial body of literature on raupatu, and also tuku whenua, but I will not investigate these further. However it is obvious form the proceedings under the RMA and Waitangi Tribunal today, that even peoples who lost possession of lands through raupatu or tuku continue to recognise kaitiaki obligations to those places.

In the Mäori Land Court a different perspective of a more recent origin of the term mana whenua was described:

> *Mana whenua in Tainui tikanga (different meanings might apply for other iwi) refers to "mana-o-te-whenua", a "traditional veto mechanism" whereby owners gave authority to the Mäori King to veto all offers to purchase the land* (MLC - Re Ngati Toa Rangatira Nelson MB 1, 8 December 1994).

However, this understanding is contrary to the definition of mana whenua elsewhere in the literature.

Mana Moana

There are conflicting accounts as to whether mana moana is a new term or traditional. Obviously the moana was seen as having great mana, as the domain of Tangaroa, but whether this term was used is debated.

For example, McCully argues that mana moana is the equivalent of mana whenua as it applies to the sea and its resources. And that the two forms of mana overlap considerably since the land is considered to extend well into the sea, while the sea's effects impinge some distance inland (McCully, 2003).

Conversely in the Mäori Land Court the following observation was made:

> *It was also noted that mana moana is not a concept from tikanga Mäori but is a construct "rooted in greed and ignorance" arising from contemporary fisheries settlements.* (MLC - Re Ngati Toa Rangatira, 1994; 21 Nelson MB 1, 8 December 1994)

In fact the term Mana Moana is not referred to in the *Fisheries Act* (1996) the *Fisheries Settlement Act* (1992), or any other legislation. But the term has been used substantially within the discussions and documentation relating to settlement options and the

specifically in relation to the contentious model for allocation that Te Ohu Kaimoana has been developing and negotiating. Here the mana whenua – mana moana model, whereby a tribe‘s right to marine resources are determined by their adjacent traditional land holdings, is the favoured formula.

The Mana of “things”

McCully / Mutu describe the mana inherent in all parts of the physical world:

> *There are many different types of mana and many aspects of it as it manifests itself in everyday life. For example, all living things, animals, trees and plants, fish and birds, as well as human beings, are imbued with a mana of their own, a mana implanted by the gods. So also are many inanimate objects such as meeting houses and mountains which are personified and addressed in Mäori as ancestors and relations* (McCully, 2003).

The mana of the meeting house (or the threat to such mana) was to be investigated by the Waitangi Tribunal in the Pipitea Street hearing. The Tribunal, satisfied that the proposed building would constitute a “serious, indeed a devastating and unacceptable invasion of the tapu and mana” of the marae, commenced an urgent hearing.

The land in question was also subject to claim by the former Mäori owners, who sought a recommendation that the Crown purchase the land for land banking, which would also prevent the development. The enquiry was adjourned when the Crown indicated that it had purchased and land-banked the land (Bennion, 2001, p. 306).

In the Waitangi Tribunal Te Whanganui-a-Orotu case, Professor Ritchie spoke of the whakapapa links between Mäori and the rest of their world:

> *By whakapapa, Mäori link also to the gods, and since the gods produced not only people but all life-forms, and even things that have a force of their own – the mountains, rivers, wind, and rain – Mäori see themselves as related to these things in a personal way* (Waitangi Tribunal, 1999).

That Mäori are actually genealogically related to all elements of the physical world is a critical element in the Mäori environmental ethic, and is discussed further in the sections on whakapapa and kaitiakitanga. The Waitangi Tribunal in their *Whanganui River Report* explore this further in relation to the mana of the Whanganui River:

> *There is a sense in which all life forms and significant natural phenomena are sacred on account of the scheme we have described; that is, as part of the earth mother or the works of her offspring gods. Certainly, the river was seen as deserving of high respect and as having mana or power. This could apply to all rivers, but the Whanganui River, perhaps because of its length and the large attendant population, was held in special esteem. It was prayed to and was used in ritual, for healing, or as a medium to keep contact with the gods. Its awesome nature was enhanced by the many who had populated its length for generations, for in the result, numerous ancestral spirits came to be held within its flow. Accordingly, it is still regularly prayed to for healing purposes, as a prelude to an undertaking of some kind, or simply as a matter of course* (Waitangi Tribunal, 1999).

Mana in law

While mana is referred to in the RMA, in terms of mana whenua which is defined as "customary authority exercised by an iwi or hapü in an identified area", the RMA has no mechanism for considering issues of mana whenua. As previously stated this review was not able to include investigation of Māori Land or Appellate Court cases – and it is possible that substantive investigation into mana has taken place in those courts. Rather, secondary sources such as Bennion's Māori Law Review have been relied on to identify important decisions.

The most important case law relating to mana has recently come from the Employment Courts, where employees have successfully argued failure to recognise and appropriately protect personal mana. For example in *Good Health Wanganui v Burberry [2002] 1 ERNZ 668* the Employment Court in favour of a Māori health worker who had been refused three days annual leave in order to attend a kapa haka festival, where she was responsible for the provision of health services.

The employee had been dismissed after she attended the kapa haka, and the Court criticized the refusal, and the way the employee was subsequently treated. It found that the onus was on the employer to be culturally sensitive, not on the employee to assert her mana Māori, recording that: "The fact that an employee is Māori and is working in a Māori setting should have been sufficient to alert them to a need for an appropriate procedure."

As an example the employer was criticized because the woman had been welcomed to the job with a powhiri, but was not given a poroporoake upon leaving: "The question must be asked why, having been granted that respect on their arrival, they could not be afforded the dignity of a poroporoaki or farewell. If it is appropriate at the beginning of employment it should be appropriate at the end even when the circumstances are difficult."

Similar decisions were returned in *Sutherland v Board of Trustees of Marlborough Girls' College* (1999) and *Materoa v New Zealand Aluminium Smelters Ltd* (2001), where attacks on the mana of the aggrieved parties was an issue addressed by the Courts in both cases. Damages awarded in these cases have been substantial, for example in the three cases cited above damages of between $30,000 and $40,000.

It is interesting that the *Employment Relations Act* (2000) makes no mention of mana, or any Māori-specific provisions at all. The decisions relating to failure by employers to provide for tikanga Māori and specifically mana have resulted from interpretation of the general provisions of that Act in a way that recognizes and accommodates Māori values. While these decisions have obviously related to employment issues, specific protection of mana in this Court has legal implications for other jurisdictions, establishing the principle that mana Māori is defensible in NZ law.

Tapu

Williams Dictionary defines tapu as:

1. *Under religious or superstitious restriction*
2. *Beyond one's power, inaccessible*
3. *Sacred*
4. *Ceremonial restriction, quality or condition of being subject to such restriction*

The laws of Tapu are considered by some to play the most influential role in regulating

Māori society (McCully, 2003). Tapu is regularly translated as untouchable, sacred, and associated with the gods (Marsden, 1977; Durie, 2000; Barlow, 1993; Williams, 1998, p. 15; and Mead, 2003, p. 46).

Barlow provides a description of tapu: *Everything has inherent tapu because everything was created by Io (Supreme God), each after its kind or species. The land has tapu as well as the oceans, rivers and forests, and all living things that are upon the earth* (Barlow, 1993, p. 128).

While some people do not recognise Io in their traditions, this observation holds true, the tapu being seen to flow from Ranginui and Papatüänuku. Marsden explores further this divine aspect of tapu:

A person, place or thing is dedicated to a deity and by that act it is set aside or reserved for the sole use of the deity. The person or object is thus removed from the sphere of the profane and put into the sphere of the sacred. It is untouchable, no longer to be put to common use. It is this untouchable quality that is the main element in the concept of tapu. In other words, the object is sacred and any profane use is sacrilege, breaking of the law of tapu. In a secondary sense a tapu object may be classified as an accursed or unclean (poke) thing. The condition of tapu is transmitted by contact or association and a person can be contaminated and polluted by it. Where contamination occurs through contact with sacred objects in the normal course of a tohunga's duties, he must cleanse himself before resuming his secular life if he is to avoid spreading this contamination or avoid offending the gods (Marsden, 1977).

Barlow also speaks at length about good and bad tapu in a Christian analysis, associated with good / god and evil / the Devil. Of the writers referred to here Barlow is the only one who explores a Christian manifestation of tapu at any length.

In terms of social function Durie observes that tapu is seen as linked to a code for social conduct based essentially on keeping safe and avoiding risk:

> *Explanations of tapu as primarily religious in nature appeal to those who seek spiritual answers for societal conduct. The more temporal view holds sway where survival and health maintenance are seen as the main challenges for tribal societies. But common to both views is the acceptance of tapu as [a code] for social conduct and adaptation to the environment* (Durie, 2001).

Reinforcing this analysis of tapu as a code for social conduct, Durie cites Te Rangi Hiroa (Peter Buck):

> *He drew a connection between the use of tapu and the prevention of accidents or calamities, implying that a dangerous activity or location would be declared tapu in order to prevent misfortune. More than a divine message from the gods, or the recognition of status, the conferment of tapu was linked to healthy practices* (Durie, 2000, p. 4).

Williams expands on the social function of tapu:

> *Tapu has political purposes in terms of protecting the sanctity of certain persons, ensuring appropriate levels of respect for hapü and iwi leadership and in keeping ceremonial or special aspects of life separate from the ordinary run of the mill* (Williams, 1998).

Mead identifies the following, as common contemporary examples of observance of tapu:

1. *separating personal clothing items from cloths used for cooking or for washing dishes*
2. *not washing the baby or the nappies in the kitchen sink*
3. *collecting the afterbirth from the hospital and burying the whenua of the child at the appropriate place*
4. *observing practices related to the birth of new life, such as a special welcome and karakia, bringing the social unit together, considering who names the child and what name from the families' whakapapa to give the child*
5. *looking after the new person, ensuring that the child is seen by whänau members and is known to them, educating the child and generally preparing them for adulthood*
6. *not burning the hair, and making sure hair is properly collected from the hairdresser or barber and disposed of properly*
7. *protecting the child from harm or accident, and knowing that in traditional times neglect was punishable by muru, a form of ritual plunder or compensation*
8. *menstruating women protecting themselves while in a state of extra tapu and not going into the sea to collect seafood, or to the garden to work, or engage in activities such as horse riding*
9. *observing the tapu of all the phases of the tangihanga ceremony for example by washing one's hands or sprinkling water over oneself after shaking hands with everyone or after leaving the cemetery*
10. *not passing food over one's head, and not stepping over the feet and bodies of persons who are lying down*
11. *observing the tapu of various ceremonies, such as pōhiri and tangihanga, and participating in them*
12. *not putting one's hat or combs or hairbrushes on the kitchen table, and not sitting on any table or bench where food is prepared or eaten* (Mead, 2003).

Rituals of tapu

The following traditional rituals associated with tapu are described in the literature; Whakawāhia, Whakatapu**,** Hikitapu, Whakawatea, Tohi, Tapu Maheuheu, these will be described briefly.

The following descriptions are from Barlow:

> ***Whakawāhia****: This is a ritual to ordain or appoint a person to a sacred office within the priestly order or other chiefly rank.*
>
> ***Whakatapu:*** *This is a ritual to set apart certain things or events which usually serve a religious purpose. For instance, a memorial stone is sanctified in remembrance of loved ones and the grace of God.*
>
> ***Hikitapu****: At times it is possible to suspend or render ineffective the tapu of a place so that a particular piece of work can be carried out as, for example, in the renovation of a carved house, or the cleaning of a cemetery. When the work is completed the tapu is then restored once more.*
>
> ***Whakawatea****: This is the ritual to lift tapu off persons so that they are no longer*

under such restrictions and therefore are able to move freely amongst people. This usually happens, for example, when people are chosen to dig a grave. After the burial the tapu is removed from the grave diggers in an appropriate ceremony. Following this ritual they are free to join the community in their regular activities.

***Tohi**: This is a ritual to set apart an individual for a particular calling or responsibility. When students entered the traditional houses of learning they were set apart for this function; or a warrior was set apart so that he would develop skill and prowess for the battlefield. (Marsden, 1977, distinguished two components to this ritual, the dedication which he refers to as täpae, and the consecration, which was the response of the gods.)*

***Tapu Maheuheu:** This is another type of personal tapu to do with personal hygiene: sweat, bodily hair, scales, mucus, and other bodily fluids and excretions. When, for example, carvers are involved in the carving of a house, the carvings are blessed in order remove the personal tapu of the carver so that it would not contaminate the object. This is a situation involving tapu maheuheu. Likewise, the personal clothing of deceased persons must be washed and treated with respect so that the living are not adversely affected by the tapu maheuheu of that individual. If people are careless in these matters, then they are likely to suffer some kind of affliction* (Barlow, 1993).

In addition, Mead identifies the Kawanga Whare ritual for the carved house, performed to clear away the dangers associated with a high level of tapu both from the created structure and from the builders, carvers and artists who created it. The term Whakanoa is used generally to describe the ritual removal of tapu, and will be investigated further in the section on noa.

Personal tapu

Mead considers personal tapu to be the fundamental attribute of a person, on which all other elements rely:

Tapu is pervasive and touches all other attributes. It is like a personal force field which can be felt and sensed by others. It is the sacred life force which supports the mauri (spark of life), another very important spiritual attribute of the person. It reflects the state of the whole person. In fact life can be viewed as protecting one's personal tapu and in doing so ne is looking after one's physical, social, psychological and spiritual well-being (Mead, 2003, p. 45).

He asserts that rangatira, as with mana, hold greater tapu than others because of their prominent descent lines back to the gods (Mead 2003, p.46).

Marsden observes that (from the purely legal aspect) tapu suggests a contractual relationship has been made between the individual and his deity whereby a person dedicates himself or an object to the service of a deity in return for protection against malevolent forces and the power to manipulate his environment to meet needs and demands (Marsden, 1977).

Barlow considers this aspect of personal tapu, stemming from a personal association with the gods. He describes this as having two components, and makes an observation about this relationship in the modern world:

> *In the first instance, man is tapu because he is created by the gods. Secondly, he becomes tapu in accordance with his desire to remain under the influence and protective powers of the gods. This is the kind of tapu that eludes the understanding of most people. The elders have intimated that it is very difficult for most people of this generation to become tapu, because they lack the commitment to maintain the conditions by which a person becomes tapu. In other words we lack the faith and dedication that is necessary; our thoughts are always distracted* (Barlow, 1993).

Moana Jackson gives us a practical discussion of personal tapu. He speaks about tapu as being an inherent quality that is possessed by everybody. This regulates how people in Mäori society are treated because recognition of the tapu of a person requires others to act in a way that is not adverse to, or in conflict with, that tapu (Jackson, 1988).

Tapu as dynamic

Tapu is often not constant. Personal tapu varies in intensity, for example women are particularly tapu when menstruating, on account of the tapu of blood, and of course, when ill and particularly when near death people become extremely tapu.

Mead makes a distinction about variations to the level of tapu of places according to what activities are taking place. The building and carving of the whare is a time of elevated tapu, when traditionally and in some places today women were not permitted to enter:

> *In some cases the tapu of a place varies in intensity as in the case of a marae. When there is no ceremony on a marae the level of tapu is low and people can be relaxed and are able to move about freely. However when a ceremony begins the level of tapu on the marae increases immediately and restrictions upon human behaviour are imposed. Now there are protocols to observe and a process to follow through to completion* (Mead 2003, p. 46).

The level of tapu also varies with built things or created things. A carved house, for example, is very tapu during its construction. The state of tapu indicates that the construction stage and the artistic activities associated with the building are highly regarded. A reason for the high regard is that the reputation and mana of the builders and artists together with that of the owning hapü group is at stake. The carpenters and artists are accountable for the quality of their work to the commissioning group and there is a ritual aspect to it. This high level of tapu remains in place until the ceremony called the kawanga whare (which is described later in this chapter) is performed to clear away the dangers associated with a high level of tapu both from the created structure and from the builders, carvers and artists who created it. After this the house is safe. The level of tapu would rise again during tangihanga ceremonies or pöwhiri and reduce again afterwards.

Discussing variations in levels of tapu Mead describes a particularly prominent urupä - Opihi-whänaunga-kore, near Whakatane:

> *Opihi-whänaunga-kore meets the criteria that define a wähi tapu. Its antiquity adds to its significance, and its association with death adds to the tapu nature of the site. According to traditions, the site was so tapu that when burials were carried out no women were allowed to cross the Whakatane River with the men. This is quite different from other urupä in the region where no such restrictions occur. Men, women and children attend burials at most cemeteries. Thus while all burial sites are tapu*

> *because of the association with death and köiwi (bones), they may differ in the level of tapu attributed to them* (Mead 2003, p. 67).

Transgressions of tapu

Violation of the laws of tapu has serious consequences in accordance with the level of tapu infringed upon, and the nature of the infringement. Mutu / McCully suggest that even today their violation continues to bring disaster, pain and injury to the transgressors (McCully, 2003). Marsden gives an account of the nature of such consequences:

> *But where contamination occurs through transgression, then a person must not only be cleansed from the pollution but the effects of the mana brought into action by it must be neutralised if the person is not to suffer its ill effects. It is in this contaminating and polluting sense that tapu is classified as accursed or unclean, a state in which the personality becomes wide open to either attack or invasion by demonic and other spiritual forces* (Marsden, 1977).

Buck gave the following graphic description of such an infliction resulting from breach of tapu:

> *The direct cause which precipitated an attack by cacodemons was some infringement against the restrictions of tapu ... The cacodemon took possession of the erring person and afflicted him with malaise, weakness, pain, loss of appetite, fever, and even delirium (kutukutu-ahi). Delirium was regarded as a sure symptom of possession by an evil spirit* (Buck, 1950).

Buck observed a 'contractual' relationship between ätua and individual whänau, familiarising the agent of the tapu:

> *Theoretically, the ätua kahukahu [family god] defended the family honour by punishing those who transgressed against the various tapu restrictions of the family, whether wilfully or through ignorance. The spirits entered the body of the transgressor and produced the suffering and abnormal condition now known as disease. Thus they functioned as malignant disease demons but it must be remembered that the fault lay with the patient* (Buck, 1950).

Illness associated with a breach of tapu is widely termed mate Mäori. Without reference to the invasion or possession described above, Jackson defines mate Mäori aa "the complex illness derived from traditional spirituality or infringement of tapu" (Jackson, 1988).

Again we see the association between tapu and mana, which is also recognised as being held by all things through their association with the gods. This relationship is encapsulated in the following description of tapu by Marsden:

> *So, we may define tapu as the sacred state or condition in which a person, place or thing is set aside by dedication to the gods and thereby removed from profane use. This tapu is secured by the sanction of the gods and reinforced by endowment with mana* (Marsden, 1977).

Tapu and the Christian Church

As discussed elsewhere in the report, the influence of Christianity on contemporary understandings of kaupapa and tikanga Mäori has been far reaching. The use of the term

tapu has been a signal example of this impact. With the translation of the Holy Bible into Mäori, the term tapu became entrenched in everyday use amongst Mäori Christians, with the primary use as a straight translation for 'holy' and 'sacred'.

The suggestion through this usage is that tapu is something that is primarily associated with God, or the gods. This is not so, as tapu is intrinsic in all things – particularly people. What is perhaps lost in translation is the fundamental belief that we are all descendants of ngä ätua – of Rangi and Papa, and of their son, Täne. There is therefore, the whakapapa link directly from them to us, so it is easy to comprehend the transmission of tapu through the generations. This contrasts sharply with the divine position of God in the Bible as an omnipresent being.

These differing understandings, it is argued here, have to some extent confused many people as to what tapu actually is.

Wähi Tapu

There is substantial contemporary debate about what constitutes wähi tapu, and the consensus in the literature seems to be that these are places of significant tapu. This distinction would seem to be obvious given that all things have some degree of tapu.

Wähi tapu have become of particular interest in the RMA/ *Historic Places Act* legal environment. For this reason the differences between historical and contemporary perspectives on wähi tapu are discussed here.

So what are wähi tapu? McCully / Mutu describe them as places that have been set aside as tapu (McCully, 2003). Mead is more specific, saying that associations with important persons, with religious ceremonies, with death, sickness, burial, learning, birth or baptism ceremonies: all may lead to places being classified as wähi tapu (Mead, 2003, p. 67).

The following are defined as wähi tapu in the literature: urupä; tūāhu (altar) where religious ceremonies were performed; places associated with the activities indicated in the preceding paragraph; sites where traditionally bones were scraped as part of the old hahunga ceremony; caves or crevasses along cliff faces in which köiwi were placed; sites of traditional whare wänanga; some named features significant because an important event that occurred there or where an important chief or tohunga did something; and places of 'great cultural significance' (with differing levels of tapu).

Developers and local authorities are continuously asking that Mäori provide a scale ranking wähi tapu according to sacredness or importance, to assist them in administering the RMA, for example to assist with the selection of development sites. While such a categorisation is alien and even repugnant to Mäori, it is recognised that the level of tapu differ, even between sites of the same type.

Mead describes the urupä known as Opihi-whänaunga-kore near Whakatane, which is the resting place for rangatira of particularly high mana. He observes that for this reason and because it is an ancient site the site is particularly tapu. Mead recalls that the site was so tapu that in the old times, women were not allowed to attend the burials there, although no such restriction applies to urupä generally.

Wähi tapu in law

The *Resource Management Act* (1991) has elevated public awareness of wähi tapu, but has

also caused debate over what constitutes wähi tapu, and also what provision should be made for wähi tapu in the face of development.

Section 6(e) RMA 1991 provides that, as a matter of national importance, consent authorities must, in their decisions on resource consents, recognize and provide for the relationship of Mäori and their culture and traditions with their ancestral lands, water, sites, wähi tapu, and other taonga as a matter of national importance.

Wähi tapu is not defined in the RMA, but the *Historic Places Act* (1993) defines it as a place sacred to Mäori in the traditional, spiritual, religious, ritual, or mythological sense. While the *Historic Places Act* remains the primary legislation for the protection of wähi tapu, it is the application of the RMA that has more prominently brought wähi tapu into the public arena.

Ironically, active protection of wähi tapu is regularly withheld by local authority hearings committees on the basis that this is unnecessary on the basis that the provisions of the Historic Places Act automatically apply where wähi tapu are encountered in the course of a development.

Iwi environmental advocates are sceptical about the efficacy of the *Historic Places Act* as a protection mechanism for wähi tapu. Authority for developers to modify or destroy sites is considered by tangata whenua to be little more than a formality, and registration of sites of significance is a long and uncertain process. This is evidenced by the number of Environment Court / High Court appeals against permissions granted by the HPT, which have all been declined by the High Court. (e.g. *Ngätiwai Trust Board v NZ Historic Places Trust* (Pouhere Taonga) and *Green, EM Uruamo & Others v Carter Holt Harvey Ltd & Pouhere Taonga/The New Zealand Historic Places Trust, Ngätiwai Trust Board v New Zealand Historic Places Trust* (Pouhere Taonga) *& Green & Attorney-General, Minhinnick v Watercare Services Ltd, Taipari & Others v Pouhere Taonga (New Zealand Historic Places Trust) and Kruithof*.) (Bennion, 2001).

These observations are reinforced by a report written for the Office of the Parliamentary Commissioner for the Environment (PCE) in 1996, entitled *Historic and Cultural Heritage Management in New Zealand* (Parliamentary Commissioner for the Environmen, 1997). That report noted that, at that time, 50% of all pā sites in the Auckland metropolitan area have been modified or destroyed since city development began, with 6% of known archaeological sites in the Auckland region being destroyed between 1979-94. Only 13 places had been registered as wähi tapu under the *Historic Places Act* (HPA). There were 1012 archaeological sites on the HPA register at the time, but no assessment of their importance to Mäori has been undertaken. Nor at that time had there been any assessment of the 49,000 sites on the NZ Archaeological Association files. The team found the HPA deficient in its treatment of Mäori values - containing no reference to the Treaty - and the Mäori Heritage Council lacked sufficient authority to act in decisions affecting Mäori.

Some documents created under the RMA have made attempts to define wähi tapu; the *Waikato Regional Policy Statement* for example refers to wähi tapu as typically including burial grounds and sites of historical importance to the tribe, but adds that such historical importance should be defined locally by the hapü and iwi which are the kaitiaki for the wähi tapu.

Without an RMA definition, consistent treatment of wähi tapu is reliant on the establishment of a specific jurisprudence, however the courts – as with tikanga Mäori generally – have been cautious not to be seen to define Mäori concepts. Despite this, in the few cases that have discussed a definition of wähi tapu a far more narrow definition than that indicated above has been accepted.

Despite the directive in the Waikato Regional Policy Statement that it was for tangata whenua to determine historical significance, the Environment Court in the *Land Air Water Association v Waikato Regional Council* case preferred dictionary definitions and the evidence of consultant Buddy Mikaere to those provided by mana whenua. Mikaere considered that only urupä or burial grounds and ceremonial or spiritual sites could be wähi tapu, and that those other places stated by locals could only be wähi tapu if they were associated with urupä or ceremonial sites, for example a pä site could also be an urupä.

In contrast, tangata whenua had asserted that old pa sites, urupä, ceremonial or spiritual sites, fortifications, locations where Mäori artefacts had been found, cultivation areas, Mäori earthworks and any area discovered that may reveal a meaningful linkage with the past constituted wähi tapu.

The places described here could be consistent with the above definitions within the literature if associated with ancestors of high tapu. For example Mead refers to Te Tahi o Te Rangi, an ancestor of the Mātātua people, who is remembered as a powerful and famous tohunga. He writes that every site associated with him remains tapu to this day (Mead 2003, p.68).

While few legal forums have ventured to define wähi tapu, wähi tapu feature in a large number of consent submissions - and subsequent actions to the Environment and other higher Courts - as tangata whenua seek to protect their significant sites. In these cases, the level of recognition and protection afforded to wähi tapu has varied, but jurisprudence seems to be emerging upon which Mäori can base a defence for their protection.

For example, in *CDL Land New Zealand Ltd v Whangarei District Council* [1997] the Environment Court appeared to have been ready to protect wähi tapu where Mäori links to the lands and sites concerned were clear and other options were available to the applicant**.** The rationale applied there whereby Mäori values would be upheld in so far as such recognition was not detrimental to the developer can be seen repeatedly.

Similarly in *Watercare Services Limited v Minhinnick [1998] NZRMA 113,* dealing with a sewer pipeline crossing wähi tapu, the Mäori dimension was held to be important but not decisive, even if Mäori issues were specifically involved. A "balanced judgment" was required and "a value judgement on behalf of the community as a whole" was required. In this case tangata whenua protests were not upheld and the project was allowed to proceed at the expense of the wähi tapu.

The approach taken by the Environment Court in *Ngäti Hokopu Ki Hokowhitu v Whakatane District Council* was nitially promising:

> *We start with the proposition that the meaning and sense of a Mäori value should primarily be given by Mäori. We can try to ascertain what a concept is (by seeing how it is used by Mäori) and how disputes over its application are resolved according to tikanga Ngäti Awa. Thus in the case of an alleged wähi tapu we can accept a Mäori definition as to what that is (unless Mäori witnesses or records*

disagree amongst themselves). A second set of questions then relates to the application of that value to the physical world (Env. Court C168/2002).

Unusually, there was a Mäori commissioner attendant at this case, which might have had something to do with the receptiveness of the court to Mäori values.

Additionally the court considered the evidence provided on wähi tapu, and voiced the opinion that "all ancestral land is tapu in one (weaker) sense. But as we have pointed out, ... there are degrees of tapu."

This observation seems to conflict with the previously noted statement. Additionally, it is the statement regarding the questions relating to the application of that value to the physical world that has been problematic for Mäori, as indicated earlier in this section. It is obvious that (as required by the Act) generally Mäori spiritual and cultural values are weighed against the concerns and aspirations of the wider community, and there have been wide ranging decisions in this regard.

We see an enlightened observation in *TV Network Services Ltd v. Waikato District Council* where the judge observed that "A rule of reason approach must surely prevail: the question is whether, objectively, the particular kind of activity is intrinsically offensive to an established waahi tapu, or other cultural considerations." The question then becomes whose definition of offensive is to be applied.

One case in both the Environment and High Courts stands out as giving substantial recognition to Mäori concerns regarding wähi tapu in the broader sense of the term. *TV3 Network Services Ltd v. Waikato District Council* was an appeal by TV3 to the High Court against the Environment Court's decision to disallow resource consent for a television translator to be constructed on a hill known as Horea on the Raglan Harbour.

The Environment Court found that, even though damage to land was minimal and the land was not known to have any archaeological remains, because of a long history of occupation by ancestors of tangata whenua, any disturbance of the ground would be regarded by tangata whenua as a desecration.

The High Court subsequently disallowed the appeal and found that although the proposed translator would represent a use of resources in a way which would enable people to watch television and to provide for their social and cultural well-being, it would fail to enable the people who are the tangata whenua of the area to provide for their social and cultural well-being.

This is an important decision, representing a substantive decision in terms of the definition of sights of significance, and is in line with the wider definitions of wähi tapu explored earlier in this section.

It should be noted that all the above cases were prior to 2003. Mäori can take some comfort in the *Resource Management Amendment Act* (2003) which now provides that decision makers must recognise the need to protect historic heritage from inappropriate development, which includes "sites of significance to Mäori, including wähi tapu." (ss2(l) & 6(f)). As was always intended in the RMA, sites of significance as well as wähi tapu are recognised, however the qualification of "inappropriate development" has previously proven to be detrimental to Mäori and environmentalists, with many local authorities having an apparently extremely narrow definition of what is inappropriate.

Noa

Noa is the ‘opposite’ or alternate state to tapu. A place, person, or thing is either tapu or noa – to varying degrees, but cannot be both at the same time.

Williams Dictionary Definitions for Noa include:

1. *Free from tapu*
2. *Of no moment, ordinary*
3. *Indefinite*
4. *Within ones power*

Noa is often referred to in the context of tapu, tapu being sacred and noa being profane or rendered non sacred. Mead extends this comparison of the relationship between tapu and noa, discussing this in terms of a state of balance. The example he provides is when a person is sick, whereby achieving the state of noa indicates that a balance has been reached, a crisis is over, health is restored and life is normal again.

He also makes the point that noa is not the opposite, nor necessarily the absence of tapu, evidenced by the above example where the person who has passed the tapu increasing condition of sickness has achieved a state of noa, yet still has personal tapu (Mead, 2003, pp. 31-32)

Durie describes this relationship in terms of social function:

> *[Tapu was] a type of public health regulation, basically concerned with the avoidance of risk and the promotion of good health. In contrast noa was a term used to denote safety; harm was less likely to befall anyone who entered a noa location, ate food rendered noa by cooking, or touched a noa object* (Durie, 2000, p. 3).

It is regularly necessary to remove the tapu from people or places, and to thus render them noa, this process being called whakanoa – to make noa. Barlow describes the need to remove the tapu of creation from the gods from new born babies, similarly the nullification of the tapu wharenui which stems from täne from whom the materials were obtained to build the house. In the latter the tohunga uses a twig of the kawakawa tree and as he performs his incantations he will sprinkle sacred water onto the floor, walls and posts of the house (Barlow, 1993).

Marsden gives us an additional perspective regarding the whakanoa of a new wharenui. This discussion is interesting in that the ritual of walking through the house to remove tapu (which is also applied to a personal kainga) is often described in the literature, however the rationale in terms of the gods is not explained elsewhere in the sources referred to here:

> *Before the building could be put to common, secular and profane use it had to be freed from the mana and tapu of the gods. The ruahine or tapairu of the tribe (the senior woman by descent of the senior family) accompanied by the tohunga and other members of the tribe, entered to 'takahi' (trample underfoot) the tapu of the gods under whose mana the building had been placed during construction* (Marsden,1977).

This does not, however, represent the removal of tapu from the house. Barlow says that the ritual represents both a system of sanctification and of nullification, where some of the tapu of the gods is dissipated and the tapu of other gods is established. He observes that nothing can ever be totally free of all tapu (Barlow, 1993).

Describing the methods used in the whakanoa ritual, Marsden writes that where the intention was to cleanse from the contamination of tapu, the sacramental element used was normally water, while for neutralising tapu or for the propitiation of the gods, the sacramental means was cooked food.

An example of the latter was performed when a person was overcome by the malevolent and debilitating effects of the mana of a god against who a transgression had occurred:

> *Different types of food, ferns and other herbs were cooked in the 'umu pure' and after it became cold, the food was placed upon the person's head, the most sacred part of the body, and exorcism prayers recited over him. Popular belief held that by cooking, the mauri of the plant was released and thereby made common (noa) or neutralised, a state of things abhorrent to the gods, thus ensuring their departure. As tapu could be transmitted by contact, so could its opposite profane state be transmitted by contact with objects made noa (neutral, common, profane, sterile)* (Marsden, 1977)

An almost identical description of 'pure' rites (purification rites) is included by both Marsden and Barlow (Barlow, 1993), but conspicuously absent in the other texts referred to in this review. The similarity of Barlow's explanation to that of Marsden indicates that Barlow sources his definition from Marsden. Although no reference is cited, Marsden's work is included in Barlow's bibliography.

Variations on the *pure* right identified by Marsden are the *pure räkau* was used to propitiate Tane, god of the forest, before a tree was felled for canoe-making or house-building, *pure tupapaku* (funeral rites), *pure hahu* (exhumation or disinterment rites), and the *pure köiwi* (interment of human bones) (Marsden, 1977).

The absence of any discussion by other commentators regarding '*pure* rights' raises the question of whether this is a contemporary term, whakanoa being the traditional description of the process of removal of tapu.

Commonplace contemporary examples of *whakanoa* include washing oneself after a funeral or when leaving the urupä, and the trampling of the *kainga* after the recent death or severe illness of a family member, and particularly after the removal of the deceased. Also, thes plashing with or immersion in water of a person who is ill, particularly mate Mäori. For additional examples of whakanoa rituals see those described by Barlow in the Tapu section.

Summary

Mana and tapu (and with tapu, noa) are the most fundamental of concepts. They reflect and explain the power, esteem and sacredness associated with life – passed down through the ages from ätua , on to tupuna, and then to the living.

4

MAURI, WAIRUA AND HAU

These three concepts are discussed together in this section. They concern the unseen attributes of people and all things – the spirit, and life-force, the energy that encompasses all things. The term paranormal – beyond normal scientific explanation - could also be used for these concepts but probably also applies to most of the concepts covered in this paper.

As with each of the sections, the concepts tend to overlap and intersect and vary from area to area, tribe to tribe, in interpretation and meaning.

Mauri

The mauri is generally defined as the life force of all things.

Williams Dictionary definitions include:

1. *Life principle, thymos of man*
2. *Source of emotions*
3. *Talisman, a material symbol of the hidden principle protecting vitality*

Marsden refers to mauri as the life force, essence, life principle, and suggests that it was originally regarded as elemental energy derived from the realm of Te Korekore, out of which the stuff of the universe was created. He observes that all created order partook of mauri, but makes a distinction with that of mankind, referring to this as mauri ora (Marsden,1977).

Mead calls mauri the spark of life. He also makes a distinction with the mauri of mankind, referring to this within the phrase 'Tīhei mauri ora' literally meaning the sneeze of life, the reference is to the new independence of the child, breathing independent of the womb and its supporting life lines. The sneeze also is a manifestation of the mauri existing as an essential and inseparable part of that particular person.

Walker discusses the function of mauri within a person, attributing the entire functioning of the body, both physical and emotional, to this:

> *The mauri is the life force that is bound to an individual and represents the active force of life which enables the heart to beat, the blood to flow, food to be eaten and digested, energy to be expended, the limbs to move, the mind to think and have some control over body systems, and the personality of the person to be vibrant, expressive and impressive. When the mauri leaves the body the activating force of life comes to a dead stop* (Walker, 1987).

Barlow cites the following whakatauäkï, which describes the part the mauri plays in life and death:

> *He manawa ka whitikitia, he mauri ka mau te hono. Ko te hunga mate kua wehe*

koutou i te hono, kōkiri wairua ki te tihi o mauri aituā. Ka tareparepa mai te mauri ora ki te ao; ka tareparepa atu te mauri mate ki tua o te ärai.

The heart provides the breath of life, but the mauri has the power to bind or join. Those who die have been released from this bond and the spirit ascends the pinnacle of death. The mauri enters and leaves at the veil which separates the human world from the spirit realm (Barlow, 1993).

The waxing and waning of Mauri

Describing influences of a person‘s peers on the condition of their mauri, Rangimarie Rose Pere makes the following observation:

*If a person feels that she is respected and accepted for what she herself represents and believes in, particularly by people who relate to her or interact with her, then her mauri waxes; but should she feel that people are not accepting her in her totality, so that she is unable to make a contribution from her own makeup as a person, then her mauri wanes (*Pere, 1984).

This understanding also overlaps with discussions on mana and tapu above.

Rose Pere also recognises that the group as an entity has a mauri. Identifying the effect of the behaviours of group members on the mauri of the group, she describes this dynamic in terms of gender relationships:

Men and women are expected to complement and support each other. Neither one is expected to transgress or infringe on the other. In this way the 'mauri' of the group remains intact (Pere, 1982).

Mead elaborates on mauri, describing its various states:

When the body dies the mauri ceases to exist. It vanishes completely. When the person is physically and socially well, the mauri is in a state of balance, described as mauri tau (the mauri is at peace). When a person receives shocking news, or is surprised, or jolted by an electric current, the mauri is startled, and is described as mauri oho. Traditionally it was thought not good for the mauri to be startled this way as it might leave the body and this is dangerous. When the mauri is startled to this degree it is described as mauri rere, literally flying mauri (Mead, 2003).

The literature consistently attributes mauri, and also depletion or enhancement of mauri, to the gods. When mauri is thought to be depleted (through the agency of the gods or spirits) there were acknowledges rituals for strengthening or reinforcing mauri, called tohi mauri. As Walker observes:

Bodily well-being was dependent on support and protection of the mauri by the gods. Any transgression of the laws of tapu led to withdrawal of divine protection. The mauri was then exposed to the influence of malevolent spirits. Illness with no observable physical cause was attributed to an attack on the mauri by those spirits (Walker, 1987).

Mead however discusses tohi mauri in relation to the building up of mauri for a specific purpose, rather than the replenishment of a depleted mauri:

> *In the case of initiation, the tohi mauri was designed to give a novice learning the arts of tohunga extra mauri, since the work he would take up would require inner strength in the battle against alien spiritual power and for the task of bearing his people's burdens. For this role he needed a double function of vital life force (mauri ora) for his physical and psychic health* (Mead, 2003)

According to tikanga, it is customary whereby a son or younger sibling should not mihi on the marae if his father or other senior male relative is present. John Rangihau says that it is because if you speak when your father is alive that would draw the mauri from him ‘he would end up 'an empty hulk’ (Rangihau, 1977).

As per the Williams dictionary’s third definition, ‘Talisman, a material symbol of the hidden principle protecting vitality’, there are various descriptions of human mauri residing in inanimate objects. Best recorded such a phenomenon for human mauri:

> *Best reported that Tuta Nihoniho of Ngäti Porou said that a stone or piece of wood was used to represent the mauri of a person. The stone or piece of wood (presumably carved) became a talisman and a tohunga was called to fortify it with karakia and to call spirits to protect it from witchcraft. This notion of abstracting the mauri and representing it in a talisman was a device to protect the real mauri from harm* (Best, 1982).

The Waitangi Tribunal recalled a similar observation in the Muriwhenua Fishing claim, referring to *pö* or markers placed to demarcate property boundaries, and sometimes thought to carry the mauri of the owners. (Waitangi Tribunal, 1988). Similarly it is still a common practice to place a mauri – often in the form of a rock, under the foundations of a new whare.

Mead also recounts a practice of investing an inanimate object with the mauri of a person, this time with the intention of protecting the owner’s mauri:

> *Another custom was for a person going on a dangerous mission, a long journey or undertaking an enterprise that was critical to the iwi to give a taonga to a tohunga and have him perform karakia over it to fortify it. This became an extra mauri which the person carried to give additional protection. Or they wore it as an ornament, a neck pendant for example. The taonga acted as a substitute for the real mauri and was a physical representation of it. The taonga thus acted as a constant reminder to the individuals to look after themselves. This custom is still practised by the Ringatū church and possibly by others.*

The mauri of things

As stated by Marsden above, the whole of created order has mauri. Barlow tell us that everything has a mauri, including people, fish, animals, birds, forests, land, seas, and rivers; and that the mauri is that power which permits these living things to exist within their own realm and sphere (Barlow, 1993).

In the same manner that Rose Pere recognised the mauri of the group as distinct from those of its members; the Waitangi Tribunal observed that a forest has a mauri as do its trees. It has been argued by at least one Mäori ‘expert’ that the mauri of inanimate objects such as bodies of water are always vested in an object such as a rock. Buddy Mikaere included the following statement at the Tairua marina hearing at Tairua in 2003:

> *For every other case [other than people], the hau - the vitality of that entity, understood as being equivalent to a person's breath -was strengthened and protected from enemies by being ritually located within an object such as a stone also known as a mauri. At the same time an ätua , god, sometimes more than one, was located in the mauri as well. In this way the mauri brought together the vitality* of the entity and a guardian spirit. If the mauri were protected and kept safe, all would be well with the people, the land or the resource with which it was identified. For this reason mauri were often hidden with accompanying karakia and ceremonial. The main protection however came from the ätua that had been located in the mauri. The mana of the ätua protected the mana of the entity the mauri represented (Mikaere, 2003).

While references to mauri other than that of humans residing in such objects are not unusual, for example the Waitangi Tribunal recorded that in the case of the Rangataiki River the mauri is said to reside in a particular rock called (Tokokawau). We encountered no other suggestion that this is always the case.

The Tribunal described the responsibility (in terms of mauri) placed upon mankind as kaitiaki of the natural world:

> *Conversely, if the mauri of a river or a forest, for example, were not respected, or if people assumed to assert some dominance over it, it would lose its vitality and force, and its kindred people, those who depend on it, would ultimately suffer. Again, it was to be respected as though it were one's close kin* (Waitangi Tribunal,1999).

McCully / Mutu also discuss the obligation on tangata whenua to protect the mauri of the lands and taonga within their guardianship:

> *Te Whänau Moana must try to restore the hau kainga that has been unnecessarily interfered with and prevent it from being further altered. A taonga whose life force becomes severely depleted, as is the case, for example, with the Manukau Harbour, presents a major task for the kaitiaki. In order to uphold their mana, the tangata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength.*

The later section on kaitiakitanga will discuss these issues further.

In addition to the mauri of the natural world described by Barlow above Mäori also recognise that objects of the built world also have mauri. Prized taonga such as whare tipuna, waka, mere or hei tiki might have their own mauri. In such instances it is recognised that the object is invested with mauri subsequent to its creation. Barlow gives the following account:

> *While a person cannot control their own mauri, it is possible for someone to establish a mauri for some creation, such as a house. When a house is built, the mauri is established as the sacred heart of the building. This mauri is the power obtained through a covenant with the gods to take care of the house and to fulfil the wishes, desires and hopes of the people who will use it for noble purposes* (Barlow, 1993).

Discussing the process of weaving, Erenora Puketapu-Hetet describes her perception of mauri. Her description seems to vary from that above regarding the mauri of a new house in that the mauri is not seen as established / created, but rather transferred and perhaps

transformed from the raw harakeke to the woven taonga:

> *It is important to me as a weaver that I respect the mauri (life force) of what I am working with. Once I have taken it from where it belongs, I must give another dimension to its life force so that it is still a thing of beauty. I am talking about a whole way of living in harmony with natural things - nature itself, natural lines, natural movements, and being at one with these things* (Puketapu-Hetet, 1986 p. 40).

Mauri in Law

Given the above observations from the Waitangi Tribunal and McCully / Mutu regarding the consequences of failure to protect mauri it is not surprising that Mäori regularly and strenuously fight to protect mauri in response to environmental threats. As indicated previously in relation to wähi tapu, the courts have resisted defining mauri. Mauri has, in recent years, most regularly been defended in the RMA arena, primarily at the consent hearing stage, and also in the Environment Court and beyond. One Planning Tribunal hearing (preceding the Environment Court) which took a sympathetic stance toward the protection of Mäori values and mauri in particular was *Te Rünanga O Taumarere & Others v Northland Regional Council & Far North District Council* (1995). Here the council had sought to discharge treated effluent into a local bay:

> *Rünanga witnesses said however that no matter how well treated physically any discharge of effluent, it would be perceived by local Mäori as altering the mauri (spiritual quality) of the bay and they would view the shellfish there as contaminated and cease to gather from the bay. The tribunal found as a fact that this was the Mäori belief and that they would regard any effluent discharge as an affront to their standing as tangata whenua and as kaitiaki.*

The Planning Tribunal recognised that the provisions in the RMA relating to protection of Mäori values required more than just lip service, and directed the council to investigate disposal to land. Only if that option proved unfeasible might the urgent public health needs of the community prevail even over the important Mäori values involved.

Such rejection of the prevailing western belief that once treated effluent can be returned to environmental waters is consistent with the stance of Ngäti Kahungunu, who made the following statement in their tribal newspaper regarding discharges from a mill into the sea within their rohe. "*It maybe okay for them to have 229 faecal coliforms in their kaimoana, but it's certainly not for Mäori*" 1993).

However, variations to predominant absolute positions do occur. For example, Shane Solomon, as legal advisor for the Tainui Mäori Trust Board, stated that while the *Tainui Management Plan* considered financial penalties a sufficient deterrent against contaminated discharges, they were satisfied that this would result in discharges with contamination "well below the minimum requirements of the RMA" (1997)

Perhaps the most significant legal investigation was heard in relation to the *Hazardous Substances and New Organisms Act* (1996) in July 2000. Section 6(d) of that act (the relationship of Mäori with their culture and taonga) uses the same wording as the RMA 1991.

In an application by AgResearch to the Environmental Risk Management Authority concerning genetically modified cattle, Waikato hapü Ngäti Wairere expressed concerns regarding three gene applications on the basis that genetic modification is contrary to their spiritual guardianship of the mauri or life force of all living species. Their concerns were

strongest in relation to the application to insert a human gene construct into cattle. There primary argument was that genetic modification involving different species was contrary to their tikanga, because it interfered with the whakapapa as well as the mauri of both species.

They also argued that subsequent disposal of material represented pollution and desecration of Papatüänuku, and the contamination of ground water with genetic waste, was a direct violation of the mauri and wairua of those physical taonga, which were to be actively protected.

ERMA (the Environmental Risk Management Authority) refused to accept that Mäori spiritual values could be offended by genetic modification, "given that those beliefs would have been developed well before human-kind had any appreciation of the evolution of species by genetic mutation and selection, or of the role, function and separability of genes, and the proteins they code for, or of the scientific possibility of transposing gene sequences between species".

The authority did however make the concession that "Matters of belief of course, can only be determined by the people who hold them."

The majority of members of the committee also had difficulty accepting that interference with the whakapapa or mauri of the cattle to be produced, lead to the claimed adverse consequences to Ngäti Wairere (i.e., illness and death).

Their disbelief of course is contrary to and firmly accepted tikanga, as indicated above. For example Mead (2003), Walker (1987), Waitangi Tribunal (1999), and McCully (2003) all discuss the direct negative consequences in terms if ill health, death, or other misfortune of breaches of tapu or other tikanga such as failing to protect the various mauri they are kaitiaki over.

It is evident that, while declaring a reluctance to define mauri, the courts have acted in accordance with their own understandings of the concept, and that such understandings have on occasion been substantially in conflict with those of Mäori.

Wairua

Wairua is very similar to mauri. It comes from the two words, wai and rua.

Williams Dictionary definitions:

1. *Spirit*
2. *Unsubstantial image, shadow*
3. *Some marine foodstuff*
4. *A particular moss – funaria hygrometrica*
5. *An insect – butterfly (wairua ätua)*

Wairua is most often translated as 'spirit' or sometimes 'soul' (Barlow, 1993; Mead 2003; Williams 1998).

As with mauri, Mäori believe that all things have a wairua. Wairua is (mistakenly) often used as synonymous with mauri. Barlow provides a description of the relationship between wairua and spirit:

> *The Mäori believe that all things have a spirit as well as a physical body; even the earth has a spirit, and so do the animals, birds, and fish; mankind also has a spirit. Before man was fashioned from the elements of the earth, he existed as a spirit and*

> *dwelt in the company of the gods. The spiritual and physical bodies were joined together as one by the mauri; the manawa ora (or life-giving essence which is imbued at birth) gives warmth and energy to the body so that it is able to grow and develop to maturity* (Barlow, 1993).

Thus the mauri is seen as the element that binds the wairua and tinana (spirit and physical body) together. [Note that in Barlow 1993 the text in Mäori refers to wairua, and is translated to spirit in the English text]

Like mauri, the wairua is susceptible to external hostile forces, as Mead explains:

> *The wairua of a person was subject to damage through the bad deeds of other people such as abuse, neglect, violence and the wizardry of sorcerers, who used mākutu (sorcery). Though mākutu is less of a worry nowadays, modern life provides its own hazards: robbery, violence by strangers, drugs, domestic violence, rape and being made redundant are examples. Illness and injury can also damage the wairua of a person and weaken it* (Mead, 2003).

However there are other differences between the mauri and wairua behave. Mead describes one such distinction between mauri and wairua:

> *Unlike the mauri, which never leaves the human life it is part of, the wairua can detach but never strays too far away. It is believed that during dreams the wairua leaves the body and then returns before the person awakens. Apart from this power to detach when the person is dreaming, the wairua is bound to one specific human being for life* (Mead, 2003).

When a person is near death a ceremony is conducted - tuku wairua (releasing the spirit or allowing it to leave). Mead recalls that this is done by a minister of a church or by a tohunga reciting appropriate prayers and incantations to release the wairua from the body. Mead gives the following detailed account of the events following death:

> *After the tuku wairua ceremony the wairua is believed to leave the body and begin its vigil of hovering above it for several days. The wairua also begins to undergo a transformation of refinement when it 'shakes off its grosser qualities' and becomes a purified, refined, and invisible spirit. It flies through space and while the body is lying in state during the tangihanga ceremony it flies round and round (ka rere āmiomio) in the sky above the marae. It observes what is happening and what people are doing. It is believed that if the ceremony is not properly carried out the spirit will become angry and will not leave the locality or the immediate family and it will do all it can to punish the family. On the other hand, if the ceremonies are done properly the wairua will leave willingly and will not harm the living relatives of the deceased. Many iwi believe that wairua fly to Te Rerenga Wairua in the far north and from there take an underwater journey to Hawaiki, the resting place of peaceful wairua* (Mead, 2003).

It is worth noting that this description is taken almost entirely from Best (Best, 1941).

By contrast, Barlow tells us that after death the wairua travels back to the gods where it remains forever. He contrasts this with Christian theology, as there appears to be no evidence in Mäori philosophy of the idea of a resurrection when the body and spirit are united at some future time after death. However, as Mead points out, not all wairua make it

directly to that destination:

> *A consequence of immortality is that the universe is inhabited by wairua. They roam in space, in forests, on mountains, and are believed to be human souls. They are all around us but we cannot see them. The wairua that live around mountains and forests are known as tūrehu (fairy folk) and those who fly in space are called tiramākā (companies of shy but active souls)* (Mead, 2003).

Hau

Hau is a less commonly used term, but comes from a context similar to mauri and wairua.

There are ten listed groups of definitions of hau in Williams:

(i) 1. Wind, air
2. Breath
3. Dew, moisture
(iv) 1. Vitality of man, vital essence of land etc. which was particularly susceptible to the attacks of witchcraft.
2. referring to evils arising from misappropriation of property
(v) 1. Food used in the ceremonies of pure, or removal of tapu – sometimes eaten by tohunga and at others left for the ätua.

We are primarily concerned here with the metaphysical understanding of hau, often translated as vitality, vital principle, or vital essence (Best, 1922; Waitangi Tribunal, 1988; Williams, 1997). It is noteworthy that there are substantially fewer references to hau in the literature than to mauri or wairua.

Best, in the book *Mäori Religion and Mythology,* gives the following comprehensive analysis of hau:

- *It is a quality that pervades the whole body.*
- *It is not located in any particular part of the human body.*
- *It embraces the aura of the person.*
- *It also includes the notion of personality.*
- *Person leaves behind a part of their hau at places where they have sat or walked. The warmth of the body that remains after a person has left a chair is part of their hau.*
- *Tohunga skilled in black magic are able to scoop up the aura left behind by a person and use that portion as a means of attacking the whole person.*
- *The aura of a footprint is called a manea. The soil touched by the bare foot is capable of being scooped up and used for witchcraft.*
- *A portion of hau can be gathered from a lock of hair, a piece of clothing, spit, or anything else that is close to the person. When used this way the portion is called ohonga.*
- *A lock of hair taken from a victim of warfare represents the hair of victory and may be brought back as proof. This lock of hair is called ma we.*
- *The aura may be described as āhua and what is taken from a person is called the āhua of the hau: namely the material form of the invisible hau* (Best, 1976).

While being concerned with the metaphysical aspect of hau, Mead initially refers to the definition of hau as wind. However he goes on to identify the incorporation of hau in words such as hauora, meaning ‘spirit of life, health, vigour’, or ‘healthy, fresh, well’, and thereby concludes that the word is associated with well-being and being in a healthy

state

Considering the Williams dictionary definition of 'vitality of man or land' as too brief, Mead likens hau to the Webster dictionary definition of aura, being: 'a subtle influence or quality emanating from or surrounding a person or object' (Mead, 2003).

In addition to descriptions regarding the nature of personal hau or the hau of other entities in the natural world, two distinct areas of discussion are identified in the literature; the first being the susceptibility of hau (particularly that left behind) to dangerous influences, the second relates to the first where *hau* accompanies a *koha* and hence has implications in terms of utu. The definitions above provided by Best are concerned with the first.

Both one's mauri and wairua are potentially vulnerable to external influences; however Mead observes that the hau appears to be the most vulnerable part of a person in that one does not always have control over places where one has been. He refers here to the manner described above by Best in which traces of the hau can be left behind. He recommends some 'customary practices' which can help avoid potential danger, and speaks of these in terms of awareness of hau providing value lessons regarding staying healthy and personal hygiene:

> *During pregnancy the mother's hair is not cut. After a haircut, the hair should be gathered up and disposed of in such a way that others will not find it. The practice of leaving one's hair at the barbers or with the hairdresser is an example of neglect in protecting one's personal tapu. The hair should be gathered up and given to the owner to take home. As for spitting, the simple remedy is not to spit in public places* (Mead, 2003).

Several writers discuss the belief that the hau of the presenter accompanies a koha, and is instrumental in the maintenance of utu by virtue of the sanctions that it might bring to bear should reciprocity not occur (Waitangi Tribunal 1988; Patterson 1992; Wharepouri, 1994). Mina Wharepouri provides the following observations:

> *Utu and tika (etiquette) are important concepts underlying koha exchanges. Features of koha are; an obligation to give, an obligation to receive, and an obligation to repay. The concept of hau, which holds that possessions contain part of the essence of a person, underlies the obligation to repay. Although possession may be ceded, hau means that a portion of ownership of the good is retained, maintaining the ongoing requirement for reciprocity* (Wharepouri, 1994).

Wharepouri discusses hau in the context of an analysis of Mäori understandings of early land transactions. The knowledge of residual hau in property given precluded a full and permanent extinguishment of all rights in the manner intended by the newly arrived Europeans. On the same basis Wharepouri asserts that the *Treaty of Waitangi* can be considered as a special contract, with Mäori transferring the hau of their lands, but not the mana.

The Waitangi Tribunal in the *Muriwhenua Fishing Claim* report describes the hau of koha, but associate this with the *kāwai tīpuna* rather than the individual or group who gave the koha:

> *There was also the fear of witchcraft, an influential tool in the early Mäori world. The supernatural punishment for those who did not honour their obligations was said to be accomplished through the medium of the hau or vital essence of the gods. A*

> *fear of punishment was said to accompany the hau of gifts, a supernatural sanction for debt enforcement* (Waitangi Tribunal, 1988).

In relation to the social obligation for reciprocation, Paterson identifies the term kaihau as referring to failure to reciprocate:

> *If the recipient of a gift fails in due course to make a counter-gift, this is known as kaihau, literally to eat (kai) the breath or life (hau) of the gift, and can be seen as a serious matter, calling for utu (repayment). There has been a debate as to what is involved in the idea of kaihau: Marcel Mauss (1954) argued that recipients feel obliged to make a return gift because they believe there is a spirit (hau) dwelling in the gift which harms the receiver who does not make a suitable return* (Patterson, 1992).

In the 1997 *Muriwhenua Land Report*, the Tribunal referred to examples of personal hau, in relation to breaches of tikanga by early missionaries. A missionary had an agreement with a northern rangatira, Panakareao, to establish a mission, then left part way through the project:

> *Panakareao argued that for the missionary to be replaced part way through the project he had committed to was a breach of tikanga as the hau (the inner breath or life-force of a person) is invested in a project through the expenditure of labour, it is made tapu to the individual concerned. No one could complete the work of another but was bound to start again out of respect for the hau of the initiator.*

The Tribunal observed that this tikanga survives today, referring to the same concerns being raised following the death of Inia te Wiata in 1971 with unfinished carvings in New Zealand House, London (Waitangi Tribunal, 1997).

We could find no court cases where hau was discussed.

Summary

As discussed in this section, ‘mauri’, ‘wairua’, and ‘hau’ are similar properties, and are sometimes used interchangeably. Yet these are not the same thing. To use commonly cited translations: ‘mauri’ is described as life-force; ‘wairua’ as spirit; and ‘hau’ as vital essence. There are some writings included here on the differences between these concepts.

All three properties are widely described as being critical elements of health and life in humans and all other components of the natural world. As such they must be actively protected, in order to ensure well-bein. This protection is, therefore, an important function of kaitiakitanga.

The courts, and particularly the Environment court, have focused on ‘mauri’ as being the property requiring consideration and protection. Whether this is a result of tangata whenua singling out ‘mauri’ within consent submissions and evidence, is not clear, but this is likely. To date, there is little concern with either ‘wairua’ or ‘hau’ in the courts, and this is surprising considering that these – particularly wairua – are widely observed. Additionally, ‘mauri’ in environmental cases has been defended mainly in relation to water – streams and harbours - although effects on ‘mauri’ have also been argued more widely in relation to genetic modification applications.

5

5

IHI AND WEHI

Ihi

Williams Dictionary definitions: There are five definition groups for ‘ihi’ recorded.

1. *split/divide, separate, strip bark from tree, dawn, ray of sun, plume of feathers, tendril of a plant;*
2. *Power, authority, rank, essential force. (likened to mana), spell/charm, dedicate or set apart with a spell, betroth;*
3. *Shudder or quiver, coward, fear/dread/shudder, plummed rods to front of waka*
4. *Make a hissing or rushing noise;*
5. *Front of a house, entrance of a cave.*

The literature we consider relates essentially to the second definition: *power, authority, rank, essential force (likened to mana), spell/charm, dedicate or set apart with a spell, betroth.*

In contrast with the preceding concepts in earlier sections, with which ihi and wehi are sometimes associated, there is little discussion in the literature of them. ‘Ihi’ is variously defined below as; vitality, and quality of excellence, the vitality or total personality of a person, life-force, awesomeness, and the exaltation derived from the respect of a greater power.

In the *Waitangi Tribunal Waiheke Island Report* ‘ihi’ is translated as life-force, (Waitangi Tribunal, 1987). In the *Te Ika Whenua Report* ‘ihi’ is described as “awesomeness” (Waitangi Tribunal, 1998). During the Whanganui River Waitangi Tribunal hearings, kaumätua Hikaia Amohia gave the following account, which describes ‘ihi’ from his peopl’‘s perspective:

> *For our People, ihi, tapu and mana go together. Each one is dependant upon the others. An interference or breach of one affects the rest. Any interference with nature, including the river, breaks the law of tapu; breaks the ihi or Sacred Affinity of our Mäori People with the River; and, reduces the mana and Soul of the Whanganui River, to what it is becoming regarded of today, to being nothing more than a Product for Commercialisation or, a product for purely aesthetic appreciation* (Waitangi Tribunal, 1999).

The Hauraki Mäori Trust Board similarly recognised a relationship between these principles, but like Amohia do not elaborate as to the nature of the relationship:

> *The essence of mauri (life energy principle) is strongly linked to the ideology of wehi (awesome respect for a greater power), ihi (the exaltation derived from the respect of a greater power) and mana (authority, prestige, dignity) which interrelate and depend upon each other for existence and validation. These conceptual approaches illustrate the interconnectedness of all things in the universe and the belief that when all aspects of a person, a resource or a place are balanced, there is harmony* (Hauraki Mäori Trust Board, 1999).

The definitions vary somewhat, as the above references clearly associates ihi with the divine, linking it to qualities such as ‘mana’, ‘mauri’ and ‘tapu’, and as per the observation that it represents a ‘sacred’ affinity of the Whanganui people with their river.

In contrast, the understandings explained by Barlow and Marsden below distinguish ‘ihi’ from divine inheritance. Of course, ultimately all qualities stem from the gods, and Barlow suggests that devotion to the gods enhances ihi, but later he distinguishes ihi with mauri on the basis that mauri is given by the gods. Translating ‘ihi’ as vitality, and quality of excellence, he provides the most comprehensive analysis of ihi found in the sources used: Ihi refers to the vitality or total personality of a person, which increases through devotion to the gods and the development of one's skills and talents. Ihi encompasses every part of one's being, and includes one's physical, spiritual, and psychological attributes. The ihi of one person is different from that of another, although individual ihi can be manifested and combined with that of others in a group.

Everything, including animals and plants, has a special power or unique quality known as ihi; there is the ihi of trees, of birds, and of fish. Food also has ihi. For example, a kumara of excellent quality would have a strong ihi, but an inferior kumara has little ihi.

We previously encountered hau being defined as vitality or vital essence, as ihi is here by Barlow. While there is no specific relationship investigated between hau and ihi in the literature, Barlow investigates the distinction between mauri and ihi:

> *Ihi is different from the mauri or essential life-force of a person or thing. The mauri is the unique power given by the gods to all living things on the earth; ihi is the power of living things to develop and grow to their full maturity and state of excellence. Therefore, each living thing has a unique degree of ihi and develops within the bounds of its species. There is an often-quoted expression: 'Bring forth the ihi of the warriors, the power of the warriors, the excellence of the warriors.' It implies that the warriors have developed themselves to the peak of form and skill in readiness to do battle, and that they have expended all their thought, time, and energy in achieving a state of readiness, courage and prowess* (Barlow, 1993).

So we see the distinction made between mauri as a divine inheritance, and ihi as personally developed. Marsden clearly makes such a distinction, referring to ihi as: “…*a psychic rather than spiritual force, an intrinsic quality in human beings, a personal essence which can be developed more highly in some than in others. He contrasts this with mana being as a gift endued by the gods.”*

He also describes ihi as “vital force or personal magnetism which, radiating from a person, elicits in the beholder a response of awe and respect,” finding the closest English equivalent to be “personal or animal magnetism.”

Extending beyond the military example provided by Barlow above, Marsden emphasises a link between ihi and the notion of war, comparing it with the Greek word Arête (from Aries the god of war) denoting the spirit of strife. He notes that it (Arête) came to mean manliness or vigour in battle, and later excellence in battle, and developed to include the idea of excellence or virtue blended with the impression of force. Marsden quotes as an example the following whakatauäkï, “Haere ake ana te ihi me te mana o nga toa - A sense of vital force and power preceded the advance of the warriors” (Marsden, 1977).

We found no legal proceedings (other than the Waitangi Tribunal reports cited above) where ihi was recorded as having been discussed or defined.

Wehi

Williams Dictionary definitions:

1. *Be afraid*
2. *Terrible*
3. *Safeguard, protection (noun)*

Translations / definitions for wehi found in the literature include; fear, awe, respect, awesome respect for a greater power, power to instil fear. (Waitangi Tribunal 1998), (Hauraki Mäori Trust Board 1999), (Barlow 1993), (Marsden 1977)

While there is even less discussion on wehi than ihi in the literature, there is also near complete agreement as to its definition. Wehi is also (almost) always discussed with ihi.

Barlow translates wehi as 'fear, awe, respect.' He considers it to be an emotion or experience:

> *Wehi is the effect that one person's power and influence has on another. One person recognizes the superior power and influence of another in comparison with his or her own. When one's personal power is equal to or greater than that of another person, there is no fear or awe. Sometimes an individual can experience wehi within himself or herself. On such occasions one is surprised and startled by the powers and thoughts generated within oneself. The main point to remember is that a person experiences wehi when the power of another is greater than his own, for example, the power of the gods. There is a parallel idea recorded in the Holy Bible in the following scripture: 'The fear of the Lord is the beginning of wisdom* (Barlow, 1993).

Marsden gives a similar description, emphasising the effect one person might have on a 'lesser' person because of their divine qualities:

> *Wehi may be translated simply as awe or fear in the presence of the ihi of a person, or of the mana and tapu of the gods. It is the emotion of fear generated by anxiety or apprehension in case one gives offence to the gods, or a response of awe at a manifestation of divine power (mana)* (Marsden, 1977).

Marsden states that (where the power relationship is between people) the response is specifically to the ihi of the more powerful. Barlow however identifies the response as being to the "person's power and influence." Perhaps a reference to ihi is implicit, as in his discourse on ihi Barlow does discuss ihi in terms of power, specifically the power to excel.

As with 'ihi', we could find no legal proceedings where 'wehi' is discussed in the literature.

6.

UTU AND MURU

Utu

Williams Dictionary definitions:

> *1. Return for anything, satisfaction, ransom, reward, price, reply*
> *2. Make response, by way of payment, blow, or answer*

Examples of the translations of utu in the literature are; compensation, revenge, reciprocity, the principle of equivalence, balance, recompense and payment.

While utu has popularly become identified as revenge, Ballara rejects this definition, stating that there were words in Mäori for revenge, these being 'utu' meaning 'revenge' or 'the object of revenge' and 'ngaki' meaning 'to avenge' (Ballara 2003).

As a starting point in an analysis of the function of utu the Waitangi Tribunal in the Muriwhenua Land Report provides a useful description:

> Utu concerned the maintenance of harmony and balance, and of mana. For everything given or taken a return of some kind was required, whether that given or taken was love, an act of kindness, property, or a life (Waitangi Tribunal 1997).

The maintenance of balance is the critical element in utu. There is general agreement that the maintenance of balance was a primary function of utu (Mead, 2003; Metge, 2001; Patterson, 1992; Ballara 2003; Waitangi Tribunal, 1999). Jo Williams alone, of the sources referenced, denoted 'utu' at the huyman level as reciprocity between individuals and descent groups, but also between the living and the departed. However, we could not find any discussion on this them (Williams, 1998).

Utu serves to restore balance in response to both positive and negative events, as reported by the Tribunal above. As Metge indicates:

> *'Utu' refers to the return of whatever is received: the return of 'good' gifts (taonga and services) for good gifts, and the return of 'bad' gifts (insults, injuries, wrongs) for bad gifts* (Metge, 2001).

This section will explore the underlying rationale behind utu, consider how the institution functions, and why.

Having established that utu functions to maintain balance, what does that mean? The Waitangi Tribunal reported the balance being in terms of mana:

> *Thus those who give gain mana above the recipient. Those who receive must restore the balance, by responding generously over time. It is not a case of trusting in the recipient's goodwill, for no Mäori could risk losing mana by failing to make a good response. The giver cannot leave it at that, however. If the balance (utu) is not in fact restored, then utu (or compensation) must be taken. Utu may be deferred but is not forgotten* (Waitangi Tribunal, 1997).

In the Whanganui River report the Tribunal puts forward a pragmatic explanation for the need to maintain relationships, describing the reciprocal obligations as functioning as an insurance arrangement:

> *We add that mana was also at the heart of traditional giving. It required that things, even land, should be given freely and generously, and that recipients should*

> *respond likewise in time. This fitted notions of honour and prestige, and of maintaining one's own mana while acknowledging that of others. The point of mana in this context is that, in a society where food preservation was limited and crops could fail, survival might depend upon the obligations owed by others* (Waitangi Tribunal, 1999).

Mead considers utu to be a component in a three stage process, which he describes as 'take', 'utu', 'ea':

> *Utu is a response to a take and once the take is admitted the aim is to reach a state of ea, which might be translated as restoring balance and thereby maintaining whanaungatanga* (Mead, 2003).

Within this model, utu is the response that seeks to restore balance, rather than balance itself, In contrast the Waitangi Tribunal in the Muriwhenua Land Report referenced above use utu to describe both the act to restore the balance, and the resulting balance.

Thus we see that utu is about ongoing obligations and thereby relationships. Maintenance and enhancement of ones mana was (and is) of paramount concern in Mäori society. As Paterson observes:

> *When outsiders injure a member of a tribe, or present a valuable gift, this changes the mana of each party involved. The injured party loses mana, the other party gains; the party which makes the gift gains mana, the recipient loses. So from the point of view of the party whose mana has been reduced, something has to be done. Whatever is done to restore that mana is the utu. In this respect, seeking utu is regarded as a virtue. Of course not all acts which defend or extend a tribe's prosperity or freedom or rights would count as utu, but where these are to be restored rather than simply increased, and restored in response to some previous hostile or friendly act, there we do have utu* (Paterson, 1992, p. 118).

So while mana is enhanced by giving a greater koha than that received, the ultimate objective is the maintenance of the relationship, and enhancement of mana can not be such that this primary objective is jeopardised. The New Zealand Law Commission, informed by Joan Metge and David Williams, give this explanation:

> *Following the principle of utu, each gift was expected to result in an appropriate return in due course (for example, offspring from the union, produce from the land, loyal support in war, comparable taonga); and that it was intended to establish or reinforce an on-going relationship Notions of honour and prestige, or mana, dictated that giving should be free and generous, whether of goods or access to resources of the land. Receivers were obliged to respond in like manner. If crops failed or the seasonwere bad, survival might depend on the credit that one held through the obligations owed by others* (New Zealand Law Commission, 2001).

Thus the relationships being maintained are described as establishing obligations that can be called on in times of need. The "in due course" mentioned above was a fluid measure. There would be an appropriate time and place for utu. The utu could be deferred, sometimes for a few generations, but it was not forgotten. The party applying utu was required to restore the balance by responding over time.

Ballara for example records the battle at Te Tumu near Tauranga between Arawa/ Ngäti Raukawa and Ngäi Te Rangi of 1836, which was utu for an attack 6 weeks earlier. One of the Ngäi Te Rangi chiefs present – Hikareia - was captured as he tried to escape after their

pa was taken. Ballara describes how he was killed and his eyes and heart eaten by Tarakawa, this being an act of utu for a murder two generations prior of Tarakawa's ancestor Te Rangi-i-tahia by Ngäti Awa (Ballara, 2003).

The following extract reveals the sophistication of the process in terms of the importance of retaining knowledge of 'current' utu transactions. It is reminiscent of modern bookkeeping:

> *Gifts at marriage and funeral ceremonies also had to be reciprocated. For instance on somebody's death their relatives would come to kawe ngä mate and give the kirimate taonga such as garments or greenstone. This process was then reversed and the taonga returned when someone belonging to the donor group died. Hence during a period of generations, taonga passed many times between related people. Further, their whereabouts, the circumstances of their transference, and the obligations still outstanding from them were kept in mind by the kaumätua of the tribe and the information passed down from generation to generation* (Ministry of Justice, 2001).

A further factor which reinforced the obligation to reciprocate and thereby maintain relationships is the hau inherent in material koha given, as discussed at some length in the preceding section on hau.

Metge makes a distinction to the balance argument, describing the essence of utu as being the maintenance of relationships by way of an appropriate imbalance of contribution; "To return an exact equivalent was to stop the exchange dead: therefore the return was usually larger than the gift received or different in kind" Metge, 2001).

That utu was a process that served to ensure ongoing relationships is also evident in the fact that pre-colonisation Mäori did not have a word meaning full and permanent extinguishment of all rights, as is the case in commercial transactions (Wharepouri, 1994).

This idea of an appropriate imbalance of contribution is consistent with the desire to enhance mana, as mana will be neither enhanced nor diminished with the return of a koha of identical 'value'. Similarly it might be imagined that having lost mana through defeat or loss, an act of greater magnitude would be required to ensure that the mana of the sufferer restored or enhanced. Paterson identifies the potential for this process to escalate:

> *And just as acts of violence and insults can lead to a terrible cycle of reprisal and counter-reprisal, acts of kindness, especially of hospitality, can lead to a crippling cycle of feast and counter-feast* (Patterson, 1992, p. 62).

The destructive consequences of the latter development can be seen in the early colonial period, when Mäori society was newly adapting to a money economy. There are numerous records of rangatira and their tribes suffering serious debt and subsequent loss of land when competing with each other to host increasingly extravagant häkari.

The preceding description of either positive or negative utu cycling out of control was by no means the normal situation. All sorts of practicalities acted (and continue to act) as controls on the institution. Even the preceding example of early colonial hākari can be seen as resulting from the distortions that occurred to Mäori society during the adjustment to a money economy.

Whanaungatanga and the associated inherent and inalienable responsibilities to ones kin preclude impoverishing them by escalating koha beyond what they can reasonably repay. Metge makes this observation, that giving in excess placed the relationship in jeopardy, since it made it difficult for the receiver to make a worthy return.

Additionally, as reported in the paper Mäori Custom and Values in New Zealand Law, a key accompanying value to the principle of reciprocity inherent in the term utu is aroha, which was a strong motivating principle in pre-European Mäori society. Accordingly, Paterson observes that there were mechanisms which enabled an offended party to regain and even enhance mana without allowing utu to escalate into violence:

> *But utu does not have to involve bloodshed. Real or even imagined insults will serve, and if the crime is appreciated as such by those who perform it, the resulting shame may serve: 'Waiho ma te Whakamä e patu. Waiho hai körero i a tatau kia atawhai ki te iwi - Let shame be their punishment. Let the talk of the people make us appear of a kindly disposition' (Käretu 1987: 64). First uttered, and hence aptly repeatable, on an occasion when revenge would have been in order, this proverb advocates mercy, even if for thoroughly selfish reasons. And in cases where one has received a kindness from others one's duty to respond is as compelling as in the case of revenge* (Paterson, 1992, p. 62).

Metge describes how aroha, and other responses served to moderate and even negate negative utu, transmuting it into positive:

> *First, there was the exercise of generosity (aroha) on the part of a victorious rangatira in arranging a marriage exchange with a defeated enemy. Secondly, a group who had been defeated or acknowledged they had done wrong, could offer the other group a woman of status as a bride or a taonga presented in a way that indicated it was not to be reciprocated. Thirdly, there was the institution of muru, operative between allied hapü who wanted to avoid all-out war, whereby the group which considered itself to have received a bad gift (wrongdoing against one or more of its members) swooped on the offender's group and took what they considered appropriate compensation in the form of goods* (Metge, 2001).

'Muru' is discussed further in the next section.

Additional examples of aroha exercised by a victor are: 'Ngäti'

- *the giving of the chief's son or daughter to a vanquished enemy in order to make them strong again and restore their mana;*
- *the transfer of extensive areas of land to a beaten enemy in order to ensure the survival of that tribe;*
- *the engaging in massive displays of generosity through häkari or traditional feasting and hui or traditional gatherings in order to create obligations of reciprocity and confirm relationships.* (New Zealand Law Commission 2001).

The institution of utu continues today. Williams identifies several contemporary examples, most notably the Kingitanga circuit of pökai, which annually re-affirm the relationships between the King movement and hapü of Waikato, Ngäti Maniapoto, Ngäti Raukawa, Hauraki tribes and some hapü from the Bay of Plenty and Manawatu (Williams, 1998).

There are no records of utu being discussed nor defined in court, other than the Waitangi Tribunal. There are also references to utu within some Deeds of Settlements for Waitangi

claims, for example the Waikato settlement included the following acknowledgement:

> *The Crown appreciates that this sense of grievance, the justice of which under the Treaty of Waitangi has remained unrecognised, has given rise to Waikato s two principles 'i riro whenua atu, me hoki whenua mai' (as land was taken, land should be returned) and 'ko to moni hei utu mo to hara' (the money is the acknowledgement by the Crown of their crime). In order to provide redress the Crown has agreed to return as much land as is possible that the Crown has in its possession to Waikato* (Bennion, 2001).

No discussion was found regarding the principle of utu operating between people and the gods (acknowledging the reference above between the living and the departed), nor by extension between Mäori and the natural world. Yet utu is believed to operate on these levels by some tribes. This principle will be explored further in the section on rähui.

Muru

Williams Dictionary definitions:

1. *Wipe, rub, rub off.*
2. *Smear.*
3. *Pluck off (leaves).*
4. *Pluck up.*
5. *Plunder.*
6. *Wipe out, forgive.*

We are concerned here with the last two definitions.

Muru is variously described in the literature as; raiding, confiscation, plunder. It was a means for seeking justice through compensation and retribution where individuals, whänau or hapü were offended. The form of compensation usually involved the offended party taking property belonging to the offender or kin group of the offender.

Important factors widely recognised in the literature in relation to muru include:

- that the community accepted responsibility for its members
- muru serves to restore balance in society by way of reciprocity
- once a muru was performed that was the end of the matter
- muru was a formalised process subject to an elaborate set of rules
- the party subject to the muru accept responsibility (see Ward below)
- muru (like utu generally) could be taken where the offense was accidental and not intentional.

'Muru' is derived from the concept of utu, it is a form of utu, in that its social purpose is to achieve balance and restore mana. It seeks to redress a transgression with the outcome of returning the affected party back to their original position in an active manner. However, utu is focused on the process of reciprocity; a muru is primarily concerned with the punishment and denouncement of the transgressor. In this sense muru is not a complicated or ambiguous concept. Muru was an effective form of social control, governing the relationships between kin and groups (Ministry of Justice, 2001).

Plunder is frequently used as a definition for muru. However, 'plunder' implies theft or robbing a person of their goods. The notion of plunder contrasts sharply to the traditional statement of muru in that the offender and the whänau of the offender acknowledged that a

wrong was committed and accepted that they were to be subjected to muru (Ministry of Justice, 2001).

Muru then can be seen as serving as a legal sanction and deterrent. It regulated the actions of individuals in the interest of the wider community. David Williams explores this aspect of muru:

> *It was not just an individual wrong doer who would suffer this sanction. His or her whänau would be levied. In spectacular examples, muru would be levied on a hapü basis. Nor would the aggrieved party act alone. The individual's whänau, and in some cases, entire hapü, would claim the right to muru the relevant community. Thus, a certain degree of individual flair was encouraged, but the rugged individualism often valued by the pioneer settler culture was frowned upon in traditional Mäori culture. This is encapsulated in the pejorative term 'whakahïhï' (arrogant) which would be applied to those individuals who stepped out of line* (Williams, 1998).

There is general agreement that 'muru' is based on the notion of collective responsibility (Buck, 1950; Ward, 1973; Mead, 2003).

While it is true that the community accepted responsibility for its members and would accept a muru on this basis, muru also served as an internal mechanism for redress by the community against one of its members. The Waitangi Tribunal found for example, that muru was the usual penalty for all who did not freely contribute to the local community or adhere to its rules, or who amassed wealth for themselves when it ought properly to be distributed to the people (Waitangi Tribunal, 1997).

Muru was also one penalty available to a community for transgressions by a member related to conservation. In the *Ngäi Tahu Land Report* James Russell is quoted as saying:

> *Wilful pollution or destruction of a waterway or a food resource would probably have an immediate and significantly detrimental effect on the community as a whole. Consequently, an elaborate set of rules, restrictions and guidelines were enforced, often by means of quasi-religious concepts such as "tapu", "rähui", "utu", and "muru" to ensure that such resources were indeed maintained as appropriate for community needs, resource management, or "rakatirataka" or "kaitiakitaka"* (Waitangi Tribunal, 1991).

Muru was justifiable even when the incident being responded to was not a deliberate act. Buck gave an example where such muru might occur in relation to a death:

> *the custom of muru (raiding) was sometimes employed by visitors if the death was due to an accident. The relatives were judged guilty of negligence in allowing the accident to take place* (Buck, 1950).

Another factor of muru is that the recipients of the muru not only accept the punishment, they are actually accorded recognition as being worthy of the act. Were relations between the two parties not good then outright utu might be the response rather than muru. Muru rehabilitated not only the avengers (through their response to the affront) but also its victims.

Buck quoted a rangatira he had witnessed having been subjected to muru as saying: 'The clouds of heaven settle only on the peaks of the lofty mountains and the clouds of trouble

settle only on the heads of high chiefs.' Accordingly, if a taua visited the transgressor's family they would suffer the muru in the knowledge that the 'clouds settle only on the peaks of the mountains' and recognising that their mana would be enhanced by the magnificence of the gifts offered in recompense (Buck, 1950, p. 421). Hanson supports the observation that both parties mana might be enhanced by muru:

> *Traditionally, the transgressor considered it an honour to be subject to muru by a large taua, as this was an acknowledgement of the mana and place in society that the transgressor held* (Hanson, 1983).

This said, muru was recognised as a punishment. In He *Hinätore ki te Ao Mäori*, Whakamä is recognised as a pivotal concept in muru. Whakamä finds common usage to mean embarrassed, or shy – although is, interestingly, not listed in the Williams Dictionary. The Whakamä aspect of a muru had a direct effect on the whänau of the offender in that the whänau had to watch and observe their goods being taken in compensation for the offence of their relation (Ministry of Justice, 2001).

Mead makes an important observation in terms of the tikanga of muru, that being that overarching standards of behaviour such as manaakitanga must still be observed. Mead notes:

> *These people [the raiding party] are given a meal and are allowed to leave in peace. The practice of muru is carefully managed because the values placed on whanaungatanga and manaakitanga must be maintained* (Mead, 2003).

Tikanga is actually paramount regarding the institution of muru. Buck recalled an example of this he had witnessed:

> *Our leaders made fiery speeches accusing the local tribe of guilt in sexual matters, punctuating their remarks with libidinous songs. The village chiefs admitted their fault and then proceeded to lay various articles before us in payment, such as jade ornaments, bolts of print cloth and money in pound notes. Each individual, as he or she advanced to the pile, called out the nature of their contribution. Some gave horses and cattle… We then rubbed noses with our hosts, engaged in amicable conversation, partook of a feast provided for us, and returned [home]* (Buck, 1950).

Also, in accordance with muru, there can be set process required to be followed in resolving a dispute, similar to a court trial. This process is known as the whakawā. As Ward describes:

> *This was usually a formalised process where the leaders of both parties would discuss the matter in great detail. The whakawā – accusation, investigation and decision or judgement-were quite often formal and structured. Tikanga might be cited, but the complexities of inter/intra whänau /hapü relationships were take into account. This type of litigation had a high sense of equity, but it was equity according to the mores of the society at the time* (Ward, 1973).

A muru has a set protocol and process. Before a muru was actually engaged, the matter of what would be taken and the quantity of the produce was discussed in great detail. This körero process was known as the whakawā. The dialogue was often quite formal and structured. It included dialogue of accusation and investigation from which there would be a decision or judgement. (Ministry of Justice, 2001)

While agreeing with the consensus that the community took collective responsibility for the transgressions of its members, Ward identifies an element not discussed by the other commentators reviewed; this being that the party subjected to the muru might contest the validity of scale of the muru:

> *If the offender was clearly guilty then thetheir kin may readily offer compensation, but if the claim was contested or seen as excessive then this would be resisted or might result in a counter claim. Like all forms of mediation muru could only be effective if both parties were willing to avoid conflict. Although marriage or descent ties between contesting parties may have limited excesses, if there was serious conflict of interests, or where there was an extreme imbalance between the parties, might may prevail. This could result in the defeated party in nursing their resentment, trying to build strength and await a chance to secure utu* (Ward, 1973).

Conclusion

The maintenance of ‘utu’ is a central requirement in Maori environmental management, as indeed it is in Māori society as a whole. Utu is referred to by some writers as both balance, and actions required to restore balance (Waitangi Tribunal, 1997), but elsewhere utu is specifically the response required to restore balance (Mead, 2003). Consistent with the latter understanding ‘muru’ is sometimes described as a specific form of utu, and in this sence muru is similar to ‘rähui’, in that both are mechanisms intended to restore a balance, muru often to restore an imbalance in mana and rähui a response to a ‘tapu’ or to a reduction in a resource such as ‘kaimoana’.

Given the significance of utu it is surprising that it has received little attention in the courts other than the Waitangi Tribunal. This is particularly the case in the environment court – the maintenance of utu being a primary responsibility of ‘kaitiaki’.

Neither did we find references to contemporary operation of muru, given the operation of modern western law providing remedies that previously have been served by muru.

7

WHAKAPAPA AND WHANAUNGATANGA

‘Whakapapa’ and ‘whanaungatanga’ are closely linked terms. ‘Whanaungatanga’ stressed the primacy of kinship bonds in determining action and the importance of whakapapa in establishing rights and status. ‘Whakapapa’ was the basis for hapü allegiance, for establishing that all Mäori are related, and for demonstrating the connection of Mäori to elements of the universe (Waitangi Tribunal, 1997).

Whakapapa

Whakapapa is a fundamental concept that helps provide links between gods, ancestors, people, places, and ideas. The genealogy of all things is provided in whakapapa. Williams Dictionary definitions include:

1. *Lie flat*
2. *Go slyly or stealthily*
3. *Lay low, strike down*
4. *Place in layers, lay one upon another*
5. *Recite in proper order genealogies, legends etc*
6. *Genealogical table*
7. *Bush felled for burning*

The base word is ‘papa’. (Its meaning was discussed in some depth in Section 2 above.) Therefore, to whakapapa is to make something in layers – the most common instance being generations of people.

Therefore, we are most concerned here with definitions five and six, although the associations with the lower numbered definitions can be seen. Joe Williams provides an appropriately universal description of the institution of whakapapa; “The glue that holds the Mäori world together is whakapapa or genealogy identifying the nature of relationships between all things” (Williams, 1998).

Encompassing all things as per this definition, Barlow describes whakapapa in terms of four categories of genealogy:

1. *Cosmic genealogy which concerns the processes of creation of the universe.*
2. *Genealogy of the gods which discusses the creation of the gods of man and all organic life on the earth.*
3. *Genealogy of the precursors of man or the primal genealogy, which began with Tanenuiārangi and Hineahuone.*
4. *Genealogy of the canoes which came here from Hawaiki* (Barlow, 1993).

Barlow expands on each of these categories substantially, detailing the origin and creation

traditions from Te Kore, Te Po, Io, Ranginui and Papatüänuku, to their ‒main offspring‖ . He explains that through the act of separating their parents these children became tutelary gods of the divisions of nature and the environment, their mortalisation to become ira tangata, the creation of mankind, and the generations that followed down to the famous ancestor. Finally, he describes Kupe and the migration traditions (although he refers still to the generally discredited great fleet theory).

Much has been said relating to whakapapa in the earlier sections on mana and tapu, particularly regarding descent from the gods of chiefly lines. Describing a critical social function of whakapapa Barlow gives the following account:

> *It is through genealogy that kinship and economic ties are cemented and that the mana or power of a chief is inherited. Whakapapa is one of the most prized forms of knowledge and great efforts are made to preserve it. All the people in a community are expected to know who their immediate ancestors are, and to pass this information on to their children so that they too may develop pride and a sense of belonging through understanding the roots of their heritage* (Barlow, 1993).

Mäori identity within a tribal structure is based on whakapapa, as Mead indicates whakapapa is a fundamental attribute and gift of birth. He identifies that whether an individual has whakapapa on one or both parents, each whakapapa is sufficient to define a place within the hapü of that one parent. Mead continues to identify that whakapapa is also affected by the ahi-kā principle - one has to be located in the right place and be seen often in order to enjoy the full benefits of whakapapa (Mead, 2003, p. 42).

Seniority / Whänau order

Mead makes the following observations regarding the relevance of the order of birth:

> The m*ātā*mua is accorded more mana than others. It is also affected by the tuakana/taina principle which s also the order of birth. The older sibling has priority over the younger and this principle works its way down to the last born, known as the p*ō*tiki. This person is often treated the same as a m*ātā*mua (Mead 2003 p.42).

While tuakana and teina are widely used to denote birth order amongst siblings, Api Mahuika defines tuakana generally as ‘The elder brother or male cousin of a male, or the elder sister or female cousin of a female’, and taina as ‘the younger brother or male cousin of a male, or the younger sister or female cousin of a female.’

Mahuika also indicates that the term a brother uses to describe his female siblings is ‘tuahine’ which simply means ‘sister’, and which applies to all the sisters regardless of order of birth. Similarly, all male issue are simply ‘tungäne’ or ‘brothers’ from the perspective of a sister (Mahuika, 1992). However, Mahuika elsewhere finds that Ngati Porou use the terms tuakana and taina regardless of gender, to refer to all siblings either older or younger than oneself (Mahuika, 1992).

Birth order does not only dictate priority, it carries social expectations as the following whakatauäkï indicates:

> *Ma te tuakana ka tōtika te taina, ma te taina ka tōtika te tuakana - It is through the older sibling that the younger one learns the right way to do things and it is through the younger sibling that the older one learns to be tolerant* (Karetu, 1987).

Similarly, the Maui stories provide examples of how a younger brother or teina can indeed take precedence over his older siblings, through his deeds and actions. As alluded to by Mead above, there are famous precedents that teach that younger siblings can transcend their place in the family order. The tradition of Maui Potiki is the perhaps most famous although there are numerous instances of leaders emerging without the privilege of tuakana status. Paterson considers this principle in terms of the value lessons.

> *A fundamental principle is that your whakapapa makes you what you are, and a senior branch in a whakapapa automatically outranks a junior one. But as is so often the case in a Mäori world, there can be balancing considerations. One's mana can be inherited or acquired. It is primarily the senior branch that inherits the ancestral mana, but the junior branch of a whakapapa can acquire mana by means of feats such as those of Māui-pōtiki* (Patterson, 1992).

Whakapapa to the rest of nature

Like many other indigenous peoples, whakapapa links Mäori to all parts of the natural world, this is an important principle underlying Mäori environmental management. Mäori do not make a distinction between whakapapa in terms of people and the rest of the physical and metaphysical world – indeed, such a distinction is in conflict with the very notion that we are all linked by whakapapa. They see humans as descendants of Papatüänuku – the Earth Mother, and Ranginui, the Sky Father by way of their son, Täne, along with all other living things. The siblings of Täne have a wide range of progeny: Tangaroa - the creatures that inhabit the sea; Tawhirimātea – the winds; Haumiatiketike – the fernroot; and many others make up the diversity of the natural world.

However, for the purposes of reinforcing this interconnectedness with the wider world the structure of this review does just that. This element of whakapapa is particularly important to an understanding of a Mäori environmental world view.

Barlow writes that whakapapa is the genealogical descent of all living things from the gods to the present time, "Everything has a whakapapa: birds, fish, animals, trees, and every other living thing; soil and rocks and mountains also have a whakapapa" (Barlow, 1993).

An acceptance that all aspects of the created world stem from the gods has apparent parallels with the Christian creation story. Paterson however rejects such a comparison. Observing that Mäori and nature are related genealogically, he observes that while the Christian tradition says that although both man and nature are created by the same being, they are not kin (Patterson, 1992).

Walker identifies the common descent and discusses traditional precedent in whakapapa which established the dominant position of humans within the natural order:

> *As the personification of the fierce and warlike nature of man he won an exalted place in the cosmogony as the god of war. The revenge of Tu-mata-uenga on his brothers for their desertion during Tāwhiri-mātea's attack justifies man's super ordinate position in nature. Tu-mata-uenga debased his brothers by turning them into food for common use* (Walker, 1978).

There are numerous entrenched reminders in Mäori society of our whakapapa links to nature, which serve to prescribe human behaviour in relation to the natural world. For example, the centre growth of harakeke is metaphorically likened to a human being. When

being instructed in how to cultivate harakeke pupils are taught to take only five leaves from the parent plant. These are described as the child, the two parents on either side, and two grandparents outside of those. As renowned weaver Erenora Puketapu-Hetet wrote regarding harvesting harakeke; "The rito and those [leaves] either side are never cut. Logically, this will ensure the life cycle of the flax plant, but in terms of Mäori philosophy it is also acknowledged as a link between the plant and the people" (Puketapu-Hetet, 1989).

Both people and the forests are descendants of Täne, suggesting an even heightened sense of responsibility. Karetu similarly describes the social prescriptions that regulate human behaviour in relation to the resources of the forest, referred to as 'Te wao tapu nui a Täne- The great sacred forest of Täne'. He cites a reprimand that might be used should tikanga relating to use of forest resources not be observed; 'Kei te raweke koe i to tupuna i a Täne - You are interfering with your ancestor Täne.' The message being that Tane is the ancestor of both the trees and people, therefore as our relatives the trees must be used appropriately (Karetu, 1987).

Patterson makes another observation, identifying that whakapapa links are recognised between mankind and abstract concepts such as evil. Evil here is represented by Whiro, one of the sons of Rangi and Papa. Whiro tried to prevent Tane from ascending to the heavens to acquire the baskets of knowledge. Although he failed to thwart Tane, being driven off by the winds, children of Täne's brother Tawhirimatea, he continues to attack the children of Tane when he can. Paterson identifies a value lesson here, positing that an understanding of the whakapapa or ancestry of Whiro is important, within Mäori traditions, if we are to know how to deal with the evils in the world around us (Patterson, 1992).

As discussed earlier in this review, tikanga Mäori is dynamic, and has had to evolve and adapt to a changing environment. An example of this, which has implications in terms of whakapapa, is the development of the ability to save lives using blood or other organ transplants. This issue is discussed in the te Puni Kokiri report *Hauora O Te Tinana Me Öna Tikanga*. While recognizing that Mäori sometimes prefer whänau members to be their donors, the writers of this report acknowledged that appropriate observance of tikanga is required surrounding any proposed transplant:

> *Removal of body parts and organ donation or transplantation is a sensitive and complex area for some Mäori as it crosses cultural boundaries and tikanga Mäori such as the interference with whakapapa. Having the organ blessed (by karakia) prior to the transplantation would promote the patient's health and provide protection. Health providers should offer recipients an appropriate opportunity to accept the donated body part. Discussions with the recipient should define how this could be carried out (if required) in an appropriate manner* (Te Puni Kökiri, 1999).

Whakapapa in Law

The Native Land Court, and the contemporary Mäori Land Court has amassed a huge amount of whakapapa over the last one hundred and sixty years, which is has generally been given to substantiate claims to particular places.

Since 1991 with the passing of the RMA the quasi judicial consent hearing, and from there the Environment Court have also increasingly heard whakapapa, particularly from groups competing to establish mana whenua in relation to land use consent applications. There has been little recent discussion in the courts of what whakapapa means for Mäori, the following being the exception.

Given that the Mäori Land Court continues to have jurisdiction over many matters Mäori, it is perhaps surprising that the only reference to whakapapa in the *Te Ture Whenua Ac*t is an administrative directive:

> *Section 40 (Power of Judge to refer matter to Registrar—)(1) Subject to the rules of Court, a Judge may refer to a Registrar for inquiry; and,*
> *(a) Any proceedings that require the preparation of any whakapapa;*

Unfortunately, no definition or guidance relating to whakapapa is provided.

This following definition for whakapapa is in the government working paper (writers unidentified) called *Mäori and Oceans Policy*:

> *Whakapapa – (genealogy) transcends the Mäori world and evidences the relatedness (the whanaungatanga) of all things. For Mäori, whakapapa demonstrates the linkages between the transcendental realm of Te Kore, Te Po (the world of the night) where ätua and ancestors dwell and the material-physical world of Te Ao Marama (the world of light or the natural world)* (Oceans Policy Secretariat, 2003).

There are some references to whakapapa in recent case law. For example, in the Mäori Land Court case *Re Nuhaka 2E3C8A2B, 92 Wairoa MB 214, 22* August 1994 Judge Isaac, investigating the ‒preferred class of alienee‖ criteria which determines who land held in Mäori tile may be transferred to, made the following observation:

> *According to Tikanga Mäori, right to land is validated by Whakapapa. The earlier the ancestor, the stronger the right to that land. Land was claimed by Whakapapa because in accordance with Tikanga Mäori all things were derived from the ancestors and were passed on to future generations. If a person can Whakapapa to an original owner or occupier of the land that person has a right to the land. The Whakapapa presented to the Court does not lose strength because it traces back for generations. In terms of Tikanga Mäori it gains strength* (Bennion, 1994).

This observation in the Mäori Land Court clearly moves from assessing evidence placed before the court into making a substantial judgment call – that whakapapa to land is strengthened by links recognised to earlier ‘owners’ than to more recent ones.

Note the discussion regarding the Mäori Land Court and tikanga within the earlier section on Tikanga in Law. Interesting that this decision is arrived at without reference to additional experts in tikanga, yet this is clearly an interpretation of tikanga.

Under Sections 27(1) of *Te Ture Whenua Act* (The Governor-General may, by Order in Council, confer upon the Court jurisdiction to determine any claim, dispute, issue, question, or other matter affecting the rights of Mäori in any real or personal property, or any other matter that, in the opinion of the Governor-General, properly falls within the field of the special expertise of the Court.) and Section 29 (1) (The Minister, the Chief Executive, or the Chief Judge may at any time refer to the Court for inquiry and report any matter as to which, in the opinion of the Minister, the Chief Executive, or the Chief Judge, it may be necessary or expedient that any such inquiry should be made.) the court has the option to appoint two additional members with particular expertise relevant to the hearing. However, where matters of tikanga are to be investigated under these two sections the Court must appoint additional members with particular knowledge of tikanga.

The requirement for such expert knowledge having been recognised, it appears inconsistent that judges are able to make substantial judgments in matters of tikanga where cases are not brought under these two sections, but where matters of tikanga are to be considered.

Finally, there has been specific acknowledgement by the High Court in *Bleakley v Environmental Risk Management Authority* (2001) that the law writers had intended that concepts such as whakapapa, referred to as an intangible taonga, could be taken into account under acts such as the RMA (1991) and the *Hazardous Substances and New Organisms Act* (1996):

> *I think it is highly unlikely that Parliament deliberately would direct the Authority to ignore relationships with intangible taonga. Not only would the distinction have no rational basis, but it would be inconsistent with the Treaty. A suggestion in debate that the Authority should take account of how Mäori felt about a particular hill, but should ignore central concepts such as whakapapa would have caused a debating riot. The greater likelihood is that Parliament simply adopted the otherwise identical provisions contained in s6(e) of the Resource Management Act, adding "valued flora and fauna" for certainty, without appreciating the semantic argument opened up.*

This case is referred to further in the Mauri in Law section below. Whakapapa has also been raised in relation to proposed legislation relating to adoption.

Whanaungatanga

Williams Dictionary definition, ‘whanaungatanga’ is not listed, but whänau is defined as:

> *1. Be born*
> *2. Be in childbed*
> *3. Offspring, family group*
> *4. Family (modern)*
> *Whänaunga is defined as; a relative or blood relation*

McCully considers ‘whanaungatanga’ (the manner in which everyone is related genealogically) to be one of the most fundamental values that holds any Mäori community together. They posit that:

> *Knowledge of how one is related to everyone else within a particular community and to neighbouring hapü is fundamental to the understanding of an individual's identity within Mäori society. It also determines how an individual relates to and behaves towards other individuals of that community* (McCully, 2003).

Describing the roles, obligations and responsibilities, and functions of the whänau, Durie listed the following (Durie, 1994):

- *manaakitanga* – the roles of protection and nurturing
- *tohatohatia* – the capacity of the whänau and the family to share resources
- *pupuri taonga* – the role of guardianship in relation to family/whänau physical and human resources and knowledge
- *whakamana* – the ability of the family/whänau to enable members
- *whakatakato tikanga* – the ability of whänau to plan for future necessities.

Such relationships encompassed by whanaungatanga are not constrained to blood kin. Joan

Metge posits that whanaungatanga covers blood relatives, spouses (i.e. marriage partners) and affines (i.e. relatives by marriage). Mead goes further to include relationships to non-kin persons who became like kin through shared experiences and to the ancestral house at the marae (Mead, 2003, p. 28), and whanaungatanga is also seen to extend to others to whom one develops a close familial, friendship or reciprocal relationship (Ministry of Justice, 2001). 'Whanaungatanga' meant that 'Whangai' (adopted children) were not given to strangers, going rather to close kin. Mead observes that blood parents do not severe the 'kinship cors' with the child, who consequently has two sets of parents. He observes that if the whanaungatanga principle is followed, no 'cultural violence' is done to the child. He identifies also an important aspect of Mäori society in contrast to the European understanding of family, this being that the within whänau all aunties were classified as mothers, and all uncles as fathers, and that traditionally these were all part of the family support system (Mead, 1997).

Like McCully / Mutu, Paterson similarly describes whanaungatanga as the principle in which the members of a whänau or family are responsible for supporting each other. They refer to the creation narrative where Tu-mata-uenga, holds his brothers collectively responsible for not defending him against the attacks of their brother Tāwhiri-matea as providing the precedent for what he calls 'value-relationships' (Patterson, 1992).

In addition to the traditions, lessons regarding these value relationships permeate Mäori society in waiata, pepeha, and whakatauäkï. Karetu cites the following whakatauäkï, which encapsulate whänaunga values; "Whāngai i to tāua tuahine, hei tangi i a tāua - Let us look after our sister, she will mourn us."

The point being made is that a wife will have loyalty to her kin as well as to her husband, while a sister's first loyalty is to her kin, her brothers in particular (Karetu, 1987).

This notion of whanaungatanga involving the principle of support is commonly recognised in the literature (Mead, 2003; McCully, 2003; Williams, 1998). Mead (2003), calls this a 'fundamental principle' and observes that 'whanaungatanga' is a two-way process based on relationships, where individuals expect to be supported by their relatives near and distant, but the collective group also expects the support and help of its individuals.

The individual identity was defined through that individual's relationships with others. It follows that tikanga Mäori emphasised the responsibility owed by the individual to the collective. No rights ensued if the mutuality and reciprocity of responsibilities were not understood and fulfilled (Williams, 1998).

Whanaungatanga can be seen to operate on different levels, for example may be called upon when distant groups come together, in order establish common links. It is articulated in the speeches delivered during a powhiri. The tangata whenua and manuhiri relate to each other and establish their whanaungatanga through the linking of whakapapa (Ministry of Justice, 2001).

Joseph Williams extends the definition of whanaungatanga beyond the whänau, or even hapü, to encompass recognition of our links to the ätua and beyond:

> *Of all of the values of tikanga Mäori, whanaungatanga is the most pervasive. It denotes the fact that in traditional Mäori thinking relationships are everything between people; between people and the physical world; and between people and the ätua (spiritual entities)* (Williams, 1998)

Similarly, the authors of *Mäori Custom and Values in New Zealand Law* concluded that a consequence of whanaungatanga is that neat lines cannot be drawn between groups or between kin groups or between humans and the physical world. The whakapapa links between Mäori, the land, the sea and other physical features has traditionally been celebrated by Mäori people and remains celebrated today (New Zealand Law Commission 2001). This aspect of whanaungatanga relates therefore to, and is explored further in the section above on whakapapa.

Whanaungatanga in Law

There are no substantive references to whanaungatanga in case law.

8

RANGATIRATANGA, KAITIAKITANGA, AND RĀHUI

Rangatiratanga

We do not embark on a substantial review of the literature on ‘rangatiratanga’, which is massive. Rather, we provide a brief discussion of the concept as it relates to Mäori environmentalism - and keeping in mind the purpose of this review as providing the foundation for an investigation into Mäori environmental outcomes and indicators. Discussion surrounding Rangatiratanga has been politicised with the starting point often being the reference to ‘rangatiratanga’ in Article 2 of the *Treaty of Waitangi*. We will start here with a discussion on (pre-colonial) rangatira, and then move into a review of literature on the institution of rangatiratanga.

Ownership

The Tribunal in both the *Report on the Muriwhenua Fishing Claim* and the *Ngai Tahu Sea Fisheries Report* rejected Crown and fishing industry suggestions that rangatiratanga denotes something less than ownership for stewardship -- or ‘kaitiakitanga’ as it is now called (Waitangi Tribunal, 1999). The *Muriwhenua* and *Ngai Tahu* reports both referred to three elements in the Treaty guarantee of rangatiratanga:

The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically, and spiritually. The second is that the exercise of authority must recognise the spiritual source o taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly, the exercise of authority was not only over property, but of persons within the kinship group and their access to tribal resources (Waitangi Tribunal, 1999).

Kaitiakitanga

Williams Dictionary definitions: no definition for ‘Kaitiaki’ is given; definition for ‘Tiaki’ is:

1. *Guard, keep*

2. Watch for, wait for Kai
5. Prefix to transitive verbs to form nouns denoting an agent

Interpreting the Williams definitions provided above, McCully had this to say:

> *The word kaitiaki is derived from tiaki, which Williams (1997) translates insufficiently as 'guard, keep, watch for, wait for'. The prefix kai- denotes the doer of the action and, according to Williams, should be translated as 'guardian, keeper, someone who watches for or waits for'. Kaitiakitanga is the noun derived from kaitiaki and therefore should be translated as 'guardianship' or something similar* (McCully, 2003).

This section will first consider the literature on non human kaitiaki, then the application of this to people as guardians, and finally the term kaitiakitanga. Marsden (1977) gives a description of kaitiaki and their divine purpose:

> *In the latter case, the gods placed guardian spirits over places or things to watch over the property dedicated to them. These guardian spirits (kaitiaki) manifested themselves by appearing in the form (aria) of animals, birds or other natural objects as a warning against transgression, or to effect punishment for breach of tapu. The Pakeha idea of haunting is similar to the idea of this role played by guardians.*

Marsden observes that kaitiaki are guardians of particular places or things for the gods. This is a common theme in the literature (Marsden, 1977; Waitangi Tribunal, 1999; McCully 2003). Other writers believe that kaitiaki are left behind by dead ancestors to watch over their descendants and lands (McCully, 2003; Barlow, 1993).

The Ministry of Justice publication *He Hinätore ki te Ao Mäori: A Glimpse into the Mäori World - Mäori Perspectives on Justice* describes Hine nui te pö as the kaitiaki of her uri, that come to Rarohenga as their final resting-place (Ministry of Justice, 2001).

While this reference is not attributed to anyone, this publication was a collaborative work which involved several distinguished Mäori theorists, including Professor Wharehuia Milroy and Wiremu Kaa.

McCully and Mutu (2003) recognise both the above origins, positing that: "Traditionally, kaitiaki are the many spiritual assistants of the gods, including the spirits of deceased ancestors, who were the spiritual minders of the elements of the natural world." They continue to say that all the natural, physical elements of the world are related to one another, and each is controlled and directed by the numerous spiritual assistants of the gods. Roberts (1995) discusses this further the part kaitiaki play regarding the parts of the natural world:

> *Kaitiaki are spiritual guardians which act through the medium of tohunga or animal entities, to mediate the complex network of relationships that exist in the natural world – of which humans are but one part.*

Most of the writers on kaitiaki acknowledge that these (often) adopt physical form, and that each hapü have their own kaitiaki. As Barlow writes: "Probably every tribe, sub-tribe, and family have their kaitiaki, and each of them will have their special stories about them and the signs by which they can be recognized."

Much is written about the relationships of tangata whenua with their kaitiaki, and relationships are such that these become an aspect of identity. In all cases kaitiaki are

recognised as guardians, and accorded the appropriate respect due to the agents of ones tipuna and gods. The following extracts demonstrate this point:

> *Mäoridom is very careful to preserve the many forms of mana it holds, and in particular is very careful to ensure that the mana of kaitiaki is preserved. In this respect Mäori become one and the sameas kaitiaki (who are, after all, their relations), becoming the minders for their relations, that is, the other physical elements of the world* (McCully, 2003).

> *The philosophy of the Whanganui people, which was often put to us, was that, if you respect the river and treat it well, it will in turn look after you. Time and again they said that they had no fear of the river, and neither did their children or mokopuna, because they treated it with respect. Ngatangi Huch was always told by her elders that Titipa, their local kaitiaki, or awa tupuna to use her expression, would protect them if they were respectful. Indeed, she added, she could not recall any accidents or drownings. The river had always felt warm, and she had always felt safe (Waitangi Tribunal, 1999). The Kaitiaki is very, very important for us because he is our connection to our rights to go to the river. You see it's not just going to the water, you have to talk to these things first. You sit, and you pray, and you ask for their help, their assistance and their guidance and they give it to you and then you go. Not the other way around. You don't go half way across the river and start asking. He might say no. Those are ultimately important for us because we know that we have many Kaitiaki and we can inter-relate with them . . . as we go up the river* (Waitangi Tribunal, 1999).

As indicated in the extract from Marsden earlier, kaitiaki are of course empowered to effect punishment should transgressions occur. Barlow describes that the Ngati Koata tribe of Te Wai Pounamu (the South Island) have the porpoise as their kaitiaki. If there is something amiss when members of the tribe go fishing, the porpoise appears to warn them of possible danger, and unless the warning is heeded, calamity is sure to strike.

Giving a more specific description, Kevin Amohia, during the Whanganui River hearings likewise stressed the importance of showing deference to the river's taniwha or kaitiaki. He recalled how some canoeists on the annual hïkoi down the river, may not have observed proper protocols, and when; "They came down on the Victory Bridge ….the old fulla flipped them up in the air" (Waitangi Tribunal, 1999).

Barlow observes that Kaitiaki are also messengers and a means of communication between the spirit realm and the human world (Barlow, 1993). But we found no other such understanding reported in the literature reviewed.

There are several references to the role of kaitiaki in terms of protecting Mäori spiritual values described in other sections. For example McCully/Mutu state that as minders, kaitiaki must ensure that the mauri or life force of their taonga is healthy and strong (McCully, 2003). Roberts (1995) says that the role of kaitiaki is central in maintaining the utu and hence Mauri of all life.

The Waitangi Tribunal describes a popular contemporary understanding, that tangata whenua hold kaitiaki responsibility:

> *It [kaitiakitanga] denotes the obligation of stewardship and protection. These days it is most often applied to the obligation of whänau, hapü and iwi to protect the spiritual wellbeing of the natural resources within their mana* (Waitangi Tribunal, 1999).

As indicated by the recent evidence to the Tribunal cited earlier in this section, this is not a universal or exclusive understanding, and kaitiakitanga by both tangata whenua and traditional kaitiaki is not described as being unusual. As McCully/Mutu are cited as saying above "Mäori become one and the same as kaitiaki (who are, after all, their relations), becoming the minders for their relations, that is, the other physical elements of the world" (McCully, 2003).

The consequences for failure by tangata whenua to fulfil kaitiaki obligations are also described in the literature, as McCully/Mutu write:

> *Should they fail to carry out their kaitiakitanga duties adequately, not only will mana be removed, but harm will come to the members of the whänau and hapü.*

Thus a whänau or a hapü who still hold mana in a particular area take their kaitiaki responsibilities very seriously. The penalties for not doing so can be particularly harsh. Apart from depriving the whänau or hapü of the life-sustaining capacities of the land and sea, failure to carry out kaitiakitanga roles adequately also frequently involves the untimely death of members of the whänau or hapü, a punishment Ngäti Kahu has had to weather on more than one occasion in the recent past (McCully, 2003).

The literature on kaitiakitanga relates primarily to contemporary environmental management, and is therefore concerned entirely with the role of tangata whenua as kaitiaki. Roberts describes the role of kaitiaki as the overriding Mäori environmental ethic (Roberts, 1995).

As noted earlier, McCully/Mutu found that Kaitiakitanga is the noun derived from kaitiaki and therefore should be translated as 'guardianship' or something similar (McCully, 2003, p. 166). As such this section describes the application of the functions of kaitiaki described previously, should be read in conjunction with that section, and will therefore not be particularly comprehensive.

Te Warena Taua, the Chief Executive Officer of Te Kawerau a Maki Trust gave the following description of Kaitiakitanga "Kaitiakitanga involves a broad set of practices based on a world and regional environmental view". He said that it included the principles of Guardianship, tribal custodianships, care, wise management, and resource indicators, where resources themselves indicate the state of their own mauri (Taua, 2003).

The *Resource Management Act* (1991) Section 2, (as per 1997 amendment) defines 'Kaitiakitanga' as "the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Mäori in relation to natural and physical resources; and includes the ethic of stewardship." Because the RMA is the primary piece of environmental legislation in Aotearoa, the operation of kaitiakitanga is perhaps most visible in relation to the functioning of that Act.

While kaitiakitanga is (as generally described in the preceding section) popularly considered to be the responsibility of specific tribal kaitiaki, Joe Williams observed that we all have kaitiaki responsibilities. In relation to the marine environment he describes tikanga relating to mätaitai as being examples of kaitiakitanga:

> *Kaitiakitanga also requires the observance of conduct respectful of the resources in question. Thus each hapü or iwi had and has clear prescriptions as to the manner in which fishing activity may be undertaken. It is common for example that the first*

fish is returned. It is also common that no gutting of fish or shelling of shell fish is allowed to occur below high water mark. The reason is that the dumping of fish or shell fish remains into the sea would provide both a spiritual and physical pollution of the sea and hence a detraction from its tapu (New Zealand Law Commission, 2001).

McCully/Mutu similarly describe kaitiakitanga as being the collective responsibility Tangata whenua, in this case describing the requirement to safeguard the health of the lands and taonga in their rohe:

In order to uphold their mana, the tangata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength. In specific terms, each whänau or hapü is kaitiaki for the area over which they hold mana whenua, that is, their ancestral lands and seas (McCully, 2003).

Toko Renata describes kaitiakitanga from a Hauraki perspective, in relation to our tribal moana. He speaks in terms of the fundamental value, inherent in the Mäori world view and described further in the section Mäori World View, of our obligations to the generations to yet to come. The conservation ethic is inherent in the obligation to future generations, by the prescription that the resource must not be depleted by the current generation:

The key is that our relationship with Tikapa Moana is about a balance between rights and obligations. We consider that our obligations as kaitiaki extend, perhaps most importantly, to future generations. This is about passing down our traditions and tikanga with regard to Tikapa, in particular how Tikapa Moana should be treated, and how we can ensure that the generous gifts of Tikapa Moana will continue to be available for those future generations (Waitangi Tribuna,l 2001).

Thus Renata emphasis both rights and obligations, in line with the importance placed on reciprocity and balance within Te Ao Mäori (which is described in the section on utu). Whanaungatanga can be seen as an underlying value on which our kaitiaki obligations are based. The importance of the maintenance of balance as an underlying environmental control is discussed by the Waitangi Tribunal:

To meet their responsibilities for these taonga, an effective form of control operated. It ensured that both supply and demand were kept in proper balance, and conserved resources for future needs. Mäori extended their deep sense of spirituality to the whole of creation. In their myths and legends they acknowledged gods and other beings who bequeathed all of nature's resources to them. There was a system of tapu rules, which combined with the Mäori belief in departmental gods as having an overall responsibility for nature's resources served effectively to protect those resources from improper exploitation and the avarice of man. To disregard or to disobey any of the rules of tapu was to court calamity and disaster. To the pre-European Mäori, creation was one total entity – land, sea and sky were all part of their united environment, all having a spiritual source. It was by divine favour that the fruits from these resources became theirs to use. The first fruits taken were invariably offered back to the gods (Waitangi Tribunal, 1999).

Thus, in this account utu can be seen as operating between tangata whenua as guardians and users of a resource, and the ätua from whom a particular resource derives. This idea is briefly touched on in the section on utu.

The theme of kaitiakitanga functioning to maintain whänaunga relationships with the wider natural world is described further by Hayes, who refers to one of the most common areas

of concern to kaitiaki under the RMA – the protection of our waterways from contamination:

> *Discharge of sewage into the sea, no matter how well treated, is highly offensive to Mäori. Although in physical terms the discharge may not pollute the sea, it would harm the spiritual relationship Mäori have with the sea, and the obligation of the kaitiaki would not be fulfilled* (Hayes, 1998).

The preservation and maintenance of the mauri, wairua, tapu and such life sustaining qualities of the natural order, as described by Williams and McCully above, are essential functions of kaitiakitanga. As Williams further explains:

> *It is difficult to divorce kaitiakitanga either from mana, which provides the authority for the exercise of the stewardship or protection obligation; or tapu, which acknowledges the special or sacred character of all things and hence the need to protect the spiritual wellbeing of those resources subject to tribal mana; or mauri, which recognises that all thing have a life-force and personality of their own* (Williams,1998).

While the writers here speak in terms of the attributes of the resources, such as mauri and wairua, Mäori are recognising the intrinsic value of all elements of the natural world, that is, that they have mana and value independent of that placed on them by people. This has been shown in the preceding chapters to be a fundamental aspect of a Mäori worldview, but it has only recently been recognised in law.

Kaitiakitanga in Law

The *Resource Management Act* (1991) has numerous references to the requirement to consider, take into account, or provide for Mäori values, the most important in terms of kaitiakitanga are:

> *Section 6. Matters of national importance: In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*
> *(e) The relationship of Mäori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
>
> *Section 7. Other matters—*
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*
> *(a) Kaitiakitanga:*
>
> *Section 8. Treaty of Waitangi—*
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*
>
> *Section 33.*
> *(1). A local authority that has functions, powers, or duties under this Act may transfer any one or more of those functions, powers, or duties to another public authority in accordance with this section, except that it may not transfer any of the*

following:
(2) For the purposes of this section, 'public authority' includes any local authority, iwi authority, Government department, statutory authority, and joint committee set up for the purposes of section 80.

Protection of resources on the basis of their intrinsic value is provided for in several sections of the RMA, for example Sections189 and 199.

With regard to the marine environment, the *Fisheries Act* (1996) defines kaitiakitanga as "the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Mäori."

Section 12 (3) d. with regard to consultation requires that before altering quota levels the Minister must "have particular regard to Kaitiakitanga."

Note that (as discussed in the earlier section Tikanga in Law) in both the RMA and *Fisheries Act* kaitiakitanga is to be given "particular regard", this being a greater onus than to "take into account", but a lesser obligation than "recognise and provide for."

While wähi tapu are not referred to here, the section on wähi tapu in law equally represents the operation of kaitiakitanga, with the protection of our significant sites being one of the most important functions of contemporary kaitiaki.

Legal treatment of kaitiakitanga (mainly in the Environment Court) has focused, as with tikanga generally, on whether kaitiakitanga has been considered by authorities administering the *Resource Management Act*. As part of such investigation there has been some discussion about what kaitiakitanga means. Some cases will be considered next, which are considered legally important in terms of kaitiakitanga.

The 1994 case *Haddon v Auckland Regional Authority* (1994) the Planning Tribunal (predecessor to the current Environment Court) found in relation to consents granted to extract sand, that Ngäti Wai should be able to exercise kaitiakitanga over their local sand resource and to give guidance on how, and to what extent, it should be developed. Ngäti Wai had sought additional modifications to the permits, and argued that they continued to have mana over and ownership of the sand, and that they had a claim to the sand before the Waitangi Tribunal.

While the decision was then groundbreaking in terms of recognition of kaitiakitanga, the Tribunal stated that the ownership issue could not be dealt with under the RMA, and would not defer the decision until the Waitangi Tribunal report was complete. They noted the Section 8 requirement to take the Treaty into account, as falling short of a requirement to give effect to the Treaty. Despite the apparent sympathetic response of the tribunal the modifications sought by Ngäti Wai were not granted. Bennion observes that the case highlights limitations in the Act in terms of giving affect to kaitiakitanga:

> *Once again the limits of the RMA to address deeper issues is made clear. As was apparent from the objections raised, the role of kaitiaki of the resource implies control and responsibilities to the immediate group and the wider community e.g. "they would also want to explain to sand extractors the history and spirituality of the sand to the tangata whenua as part of their inheritance and way of life". A consultative role, no matter how intense, will always fall short of these sort of aspirations* (Bennion, 1994).

However, a preoccupation with the obligation (or otherwise) to consult, rather than consideration as to whether kaitiakitanga is being facilitated is obvious from the large amount of case law focusing specifically on consultation (see for example *Case Law on Tangata Whenua Consultation* (Ministry for the Environment, 1999), compared with the small number with substantive discussion on kaitiakitanga.

As Kawharu posits, Rangatiratanga (customary authority) is the necessary overarching framework within which kaitiakitanga operates (Kawharu, 2001). The question then rises as to whether rangatiratanga or kaitiakitanga, both recognised within the RMA, are given any credible effect. The Waitangi Tribunal in the Whanganui River case pondered this question regarding whether kaitiakitanga as encapsulated in environmental legislation actually distracts tangata whenua from issues of ownership:

> *Kaitiakitanga rights do not amount to ownership for example. If Ätihaunui are entitled to ownership of the river, the concept of kaitiakitanga is not enough. That concept and other principles of environmental law cannot be used to deny them their just entitlements.*

Additionally, the Judge in *Haddon v Auckland Regional Authority* identified that a potential opportunity for Ngäti Wai to fulfil their kaitiaki role would be for the Regional Council to transfer responsibility for monitoring the extraction under Section 33 of the RMA.

As recorded above, the RMA Section 33 makes provision for transfers of powers and functions to Mäori, which has been identified as providing the potential to empower tangata whenua in their kaitiaki role. Rennie, et al. (2000) in their report *Factors Facilitating and Inhibiting Section 33 Transfers To Iwi* investigated whether any such transfers had been made in the 9 years since the Act was passed, and found that none had. Three years later, Alexa Bach confirmed that still no transfers had been made to iwi (Bach, 2003). Explaining this, Rennie, et al. (2000) made the following observation:

> *For local authorities, section 33 is generally viewed passively as permissive legislation; that is, it permits them to transfer functions, powers, and duties to various public authorities, including iwi authorities. Transfers are permitted, but entirely at their behest. For iwi and the law-makers, section 33 is active enabling legislation, potentially enabling councils and iwi to give effect to iwi rangatiratanga and kaitiakitanga roles*.

The following alternatives, which provide some degree of enabling of kaitiakitanga, were identified in the report, but the authors surmised that in each case the power remains more explicitly under council control (Rennie 2000):

- *reclassifying land and establishing joint management under different legislation;*
- *collaborative or co-management;*
- *two house management;*
- *zoning for site planning documents (e.g. Pa Zones);*
- *delegation to special individuals or subcommittees; and*
- *contracting services of Mäori hapü/iwi agencies.*

In the same year as *Haddon v Auckland Regional Authority* the same tribunal (a different judge) in *Rural Management Ltd v Banks Peninsula District Council* (1994) overruled an objection by tangata whenua opposed to a proposed sewage outfall to the sea from a new

subdivision, preferring a land-based alternative. In this instance the court limited its interpretation of kaitiakitanga to the statutory definition in the Act and the physical evidence.

Contrary to *Haddon v Auckland Regional Authority* the spiritual relationship was given little recognition. In addition, the court made a determination as to the definition of kaitiakitanga, stating it to be applicable not only to Mäori, but also to consent authorities and applicants. On this basis the regional council had assumed the role of kaitiaki, and was satisfied that it had fulfilled that responsibility.

Kaitiakitanga was similarly found by the court in *Whakarewarewa Village Charitable Trust v Rotorua District Council* (1994) to be function that council could exercise. While Judge Kenderdine in this case did observe that kaitiakitanga most properly requires the control to be vested in an iwi authority (in itself a questionable observation), she continued that there was no clear iwi authority relating to the Trust, and that consequently the Rotorua District Council was required to assume the role of kaitiaki. As Hayes observed, this denotes a serious divergence away from kaitiakitanga in the Mäori understanding (Hayes 1998).

We should note that this was not inconsistent with the Act prior to the 1997 amendment, which didn‘t specify that only tangata whenua could be kaitiaki.

This judgment also contrasts with the *Te Rünanga O Taumarere & Others v Northland Regional Council & Far North District Council* (1995) ruling the following year, cited in the Mauri in Law section, where the tribunal found that where feasible alternatives were available these should be used rather than waste disposable solutions that are inconsistent with Mäori spiritual values.

As noted earlier, this section should be considered in conjunction with the other sections relating to Mäori values in law. The cases here have been chosen as being particularly relevant because of specific reference to kaitiakitanga.

Rāhui

Williams Dictionary definitions:

1. *A mark to warn people against trespassing; used in the case of tapu, or for temporary protection of fruit, birds, or fish, etc. Pou rähui is used in some districts for boundary post.*
2. *Protect by a rähui.*

Within the literature, ‘rähui’ is often used to refer either to a restriction, closure, or prohibition (Mead, 2003; Williams, 1998; Barlow, 1993; Firth, 1959; Waitangi Tribunal, 1988; Best, 1954), or, sometimes, as per the dictionary definition, to the post or other marker of such a prohibition (Metge, 1976; Ballara, 2003; Mead, 1997). Note that all of the writers here speak of the posts or signs associated with rähui; the distinction being made is whether these were actually referred to as the rähui.

Mead (2003) provides the following discussion, which serves well as an introduction to the institution of rähui:

> *Basically, the rähui is a means of prohibiting a specific human activity from occurring or from continuing. It might be directed at a group of people or it might be focused upon a single individual; there might be a visible signal, such as a post, to let people know that a rähui has been stood up (whakatū - to cause to stand).*

> *There may be a special ceremony to introduce it or it may be simply announced or proclaimed. Similarly its conclusion might be marked by ritually pulling down something – the post, or the leaves or cloth tied around it - or by an appropriate announcement, or by everyone noting that the time of restriction agreed upon at the commencement had expired.*

This description indicates that rähui is a fluid institution, adaptable according to local tikanga and circumstances.

Rähui is closely associated with tapu. Barlow says that rähui is a form of tapu, restricting the use of land, sea, rivers, forests, gardens and other food resources (Barlow, 1993, p. 105). Metge (1976, p. 12) writes that "a chief often reserved a particular resource by placing a tapu on it, setting up a rähui as a symbol." Hayes (1998) makes an additional distinction regarding tapu and rähui, positing that both are forms of regulation, but that tapu implies an absolute prohibition, while rähui is a temporary form of prohibition.

Mead (2003) explains rähui functionally as being an appropriate response to a particular take, in line with his take – utu - ea model described in the Utu section.

There are commonly cited reasons in the literature for rähui, examples of these are considered below. The preceding quotation from Mead (1997) reveals that rähui are not of a uniform duration, the length being determined by those instituting it.

According to Barlow (1993), a rähui would be put on a place by the mana of a person, tribe, hapü, or family and stayed in place until it was lifted. Williams (1998) suggests that rähui were also sometimes applied simply as a device to affirm the mana of the iwi or hapü over the resources in question.

The implementation of a rähui is described by several writers as being activated with some ritual. Hiko Hohepa (1998), a Te Arawa Kaumatua, says, referring to the present day, that there is an intense ceremony to go through before a rähui could be placed, which he calls the ceremony whakatapu – the placing of tapu. Mead (1997) calls this opening ceremony whakatü – to stand up. He distinguishes conservation rähui, which he writes are opened with karakia whakaoho – incantations to awaken.

The following section on pou rähui has a substantial account by Best of the ritual associated with setting a pou or physical symbol of the rähui.

The conservation rähui

There is general agreement in the literature regarding the rationale underlying conservation rähui, this being to protect, conserve or recover natural resources that are threatened by inappropriate harvesting.

However, Barlow (1993) mdescribes some rähui as intended to preserve resources for specific tribal purposes, rather than primarily for the wellbeing of the resource:

> *Access may be restricted to fishing grounds, pigeon reserves, wild berries, or eels to conserve them for special occasions of the tribe. At times in the past when there was an important hui in our village, one of our elders would go and catch eels for the hui, and he was the only one allowed to catch those eels.*

The eels reference here seems to suggest that these particular eels are permanently reserved

for this purpose. Barlow also identifies the practice of leaving certain cultivated land fallow for a time, as being a form of rähui.

Like Mead (2003) above ('directed at a group of people or it might be focused upon a single individual'), Barlow (1993) says that if a place is under ritual restriction, access to it is forbidden to unauthorized people, confirming that authorized people might continue to use the resource.

Rähui, as described by both Firth and the Waitangi Tribunal, refer to seasonal closure of some fishing grounds to ensure timely harvesting of fish species (Firth, 1959). The Tribunal noted the imposition of tapu and rähui to protect sensitive breeding areas or threatened species. They wrote that tapu and makutu also protected fish resources by restraining the manner of use and extent of user, but they did not elaborate as to how these were applied (Waitangi Tribunal, 1988).

Mead (1997) refers to conservation rähui as being intended to restore to the land and water their vitality and essence, by a ceremony involving taking the kapu of the pou and the mauri of the land periodically to a sacred fire where invocations are recited to restore the vitality of the resource.

The rähui following a death

According to Mead's most recent work the most common types of rähui are the ‒drowning rähui‖ and the 'conservation rähui‖ (Mead 2003, p. 193). In an earlier work, Mead (1997, p. 169) referred to the 'pollution or tapu rähui 'and 'conservation rähui.' Previously identifying the pollution (from death) as affecting land, water, or both in 1997, Mead's
2003 discussion is briefer and specific to drowning.

Giving us an insight into the prohibition underlying rähui, Moke Couch during the Motunui-Waitara hearings gave this description of their tikanga relating to drowning rähui: "If we eat food that has particles of mortuary waste of possibly people we know - we are presenting a kind of insult." The Tribunal observed that so strong is this feeling that others considered the eating of fish following the placing of a rähui was in some cases tantamount to cannibalism (Waitangi Tribunal, 1989).

Williams (1998) indicated that Rähui were traditionally invoked to prohibit entry into areas affected by the tapu of death, he does not limit this to drownings and bodies of water. Barlow (1993) also records rähui placed after a fatal accident at sea or in the bush. He explains this as being both out of respect for the dead, and to prevent the taking of food from the area for a specified period of time. In the example provided he recalls that the body was not discovered for a few days, and that the rähui remained in place for a few more days after removal until after the tangi.

In relation to the Rangitaiki River the Waitangi Tribunal heard that rähui were imposed after drownings for a period of nine days, the time it took for a body to rise to the river surface (Waitangi Tribunal, 1998).

Mead (1997) refers to rähui in the past, where rangatira have died, as having lasted for a decade or more, in accordance with the great tapu and mana of the person who died. In one example from 1900 a group of school children drowned. Mead recalls that Te Whänau a Apanui placed a rähui, where the outer regions of the rähui were closed for one year, while the most tapu inner area was closed for four years.

Giving us an understanding of how tapu determines the nature of rähui Mead describes also the death of Tūwharetoa paramount chief Te Heuheu Tukino and his people, buried in a landslide at Mount Kakaramea on the shores of Lake Taupo in May 1846. He says the land and water in the immediate vicinity were made out of bounds and no food resources of any sort could be taken. The rähui lasted for five years, this being the length of time thought necessary for the 'radioactive' nature of the tapu of death to dissipate into the atmosphere and become harmless.

Mead (2003) also identifies a ritual associated with the lifting of the rähui, as soon as the rähui was lifted the first fish caught in Lake Taupo were taken to the high priest Te Takinga, cooked and eaten ritually by him alone.

Other types of rähui

Without specifying a term for this type of rähui Barlow (1993) writes that a particular area may be set aside for a special purpose or function. As examples he states that certain trees may be set aside for the purpose of carving, or flax bushes for the weaving of a cloak for a chief.

Aukati is described in the literature as a no trespass rähui (Mead, 1997), it is a boundary beyond which no one (of a specified group) is supposed to go. Significant historic examples of these are those imposed by the Kingitanga, and later by Pai Märire, both representing the physical demarcation of Mäori and Pakeha.

Mead suggests that aukati had many applications, but that its frequent use might have become necessary in the early colonial period. He says that an individual might declare an aukati over land under his/her mana, but that more regularly the hapü or iwi would meet to discuss the issue and a course of action agreed upon. Then with appropriate ritual and declaration the aukati would be established. A tohanga would add the tapu element.

Mead (1997) reports that aukati were a political mechanism, "used to punish or thwart for political reasons. "He gives examples; a woman of high mana placing a rähui over the Mokau river to prevent a priest from travelling on the river in response to an insult to her. No one would break the aukati and carry him on the river. He recalls the efforts by Ngäti Pikiao of Te Arawa, who places an aukati to prevent fighters crossing their rohe to assist Rewi Maniapoto (Mead 1997).

Mead (1997) also describes the 'rähui with teeth' as being distinct from the forms considered above. Features of this type described include; it is endowed with magical / spiritual powers, the associated pou has at 'whatu' that contains the 'life-destroying magic power', which is called from tangaroa or the ätua required. The material symbols of the rähui's power are concealed away from the pou. Mead offers no explanation of the purpose of this rähui form, not particularly what distinguishes it from the other forms he identifies.

This account has some similarity to that of Best recorded below. However, Best describes the rähui in his account as being instituted over land, water, path, or products, resources associated with the conservation rähui.

Pou Rähui

Durie (1994) described the objects used as indicators of rähui being; stones posts (pou whenua), trees, marks and natural features. He observes that use areas were also proclaimed 'radially' from a tree or object, or from a pou rähui, or other marker placed

not at the edge, but at the centre of the resource.

Other types of rähui indicator described in the literature include:

- *A sprig of rimu on a floating log indicating a rähui on kaimoana for conservation or after a drowning - Motunui / Waitara area (Waitangi Tribunal, 1989).*
- *Manuka posts placed in the river with a personal item such as a garment attached, indicating that this place was reserved for a particular person or whänau to fish (Waitangi Tribunal, 1998).*
- *A carved stick or post placed in the ground. Natural features — trees, rocks, mountains, rivers, pathways, leaves — can indicate the boundaries of the area under restriction (Barlow, 1993).*

Several writers describe the ceremony, which establishes the rähui and empowers the physical symbol representing it, what Mead calls 'whakatü – to cause to stand up.' Best provides a graphic description of the pou rähui and ceremony surrounding this:

> *When a rähui (embargo) was instituted over land, water, path, or products in days of old, a post was often set up as a token of the prohibition. A frond of fern would be tied to this post to serve as what is termed a maro, and this, together with a stone, were then taken away and carefully concealed. With them was taken and hidden the kapu of the pou rähui. or prohibitory post. This is the aria of the post, and it does not consist of anything material.*
>
> *The hand of the expert clutches at the top of the post as though plucking at something, but brings away nothing material. This imaginary symbol, or aria, the maro and stone, all represent the post and what that post stands for. The object of this singular performance was to prevent any ill-disposed person destroying the efficacy of the rähui (embargo or prohibition). Those articles and the immaterial aria represented or contained the mana, the power and virtue, of the rähui. They occupied the same place, and served the same purpose, as does a material mauri. Another stone, one possessing no power or virtue, was left at the base of the post, as a blind, in order to deceive any person who wished to destroy the powers of the rähui by means of magic.*
>
> *Such a person would wander about seeking the kapu, repeating as he did so certain charms in order to make the kapu disclose its whereabouts. When the expert was erecting the rähui post he recited charms to render it effective in protecting the land or products, and also another to empower it to destroy any person who interfered with it. In doing this he made a pass with his hand as though marking a line on the earth. This was the waro rähui (the rähui chasm, the abyss of death) to which the offender was to be consigned for his nefarious act. The expert then recited another charm in order to sharpen the teeth of the rähui, as the Mäori expresses it. These final words consign a meddler to black death, for behind all these performances lies the dread power of the gods.*
>
> *Should the expert learn, in after-days, of any act of kairamua, or infringement of the rähui, he would know that the rähui had "gone to sleep" ; hence he would proceed to turuki it - that is, to supplement it, to awaken it and make it exercise its powers, to re-enforce it* (Best, 1954).

While Best (1954) obviously observed and inquired about rähui he seldom refers to his sources. Nor does he indicate what people or place his discussion refers to, speaking instead as though he describes a universal Mäori position. Additionally, we are well aware of the Eurocentric bias of perceived superiority that Best and his fellow ethnologists attributed to Western cultures over 'barbaric races' such as 'Mäori folk.'

The reader therefore needs to keep these limitations in mind. Mead, as do many other contemporary commentators, quotes from Best considerably. This is the case regarding rähui and associated ritual, where Best seems to substantially inform his understanding of the institution.

Breaches of rähui

As prohibitions sanctioned by the mana of local rangatira, breaches to rähui inevitably brought retribution. Mead (1997) (citing Best, 1954) calls the act of breaching rähui 'kairämua' meaning eating before the right time. Discussing various retribution that might befall the offender, such as 'witchcraft' he notes that "Typically, it is expected that some members of the offender's family will die, and it is not until the third death has occurred that full utu is believed to have been made.".

Williams (1998, p. 14) wrote that breach of the rähui would result in the offender's whänau being subjected to muru and, in some cases in the past, the offender being killed or injured by natural or supernatural means. Ballara (2003) suggests that even where such a transgression was inadvertent, the offended party was obliged to take action against the offended in order to restore their own tapu and mana.

For example, relating to the rähui for the children described above, Mead describes how a neighbouring chief unknowingly took a drink from the river under rähui. He was subjected to muru which cost him an estimated £50.

Barlow (1993) recounts that in order to avoid restrictions those targeted by a rähui would often look for the special talisman marking the rähui and use counter-measures through incantation and magic to nullify its effect.

Contemporary application of Rähui

Rähui continue to be used for the same purposes they always have, they have also been adapted to deal with contemporary pressures. Barlow observes that even in modern times the custom of rähui is still used, but that more effective measures now exist in the form of laws instituted by the government relating to (and restricting) the use of traditional Mäori food resources. Barlow is referring here to statutory prohibitions, which in this sense are western equivalents to rähui.

Examples of these Barlow cites are the listing of kererü and toheroa as endangered and protected species, thus prohibiting Mäori and non-Mäori alike from harvesting them. He also refers to catch limits that have been set for kaimoana. Barlow expresses concern at legal impositions as usurping Mäori rights:

> *While this may have been done by the Päkehä for reasons of conservation and economy, to the Mäori, who desire very much to have their traditional foods, it seems like yet another denial of their customary rights* (Barlow, 1993).

However, contemporary rähui are still placed, but there are reports of these failing in their goal of resource protection when not respected by groups other than the group that imposed the rähui. As a result some rähui, through negotiation with the Ministry of Fisheries, now receive backing by legislation in the form of a temporary closure made under s186A of the *Fisheries Act* (1996).

Some recent examples of conservation rähui

In July 2002 a rähui was placed to allow the depleted green-lipped mussel beds near Mt Maunganui, for a period of two years under s186A of the *Fisheries Act* (Ministry of Fisheries, 2002). In December 2003, Ohiwa Harbour, near Opotiki, was similarly closed to the taking of green-lipped mussels for 2 years to allow small shellfish to grow to full size. A rähui had already been in place since late 2001, but this was not been observed by some people and the resource was still diminishing.

Confirming the relationship of the legal ban with the rähui, a spokesperson for the Ministry of Fisheries stated that the intention is to improve the number or size of fish or shellfish that is available to Mäori in their exercise of customary rights (Brown, 2002).

Four other legally supported conservation rähui already existed in the North Island prior to the two reported above, these prohibited all shellfish gathering at Karekare, Eastern and Cheltenham beaches in Auckland, and prevented cockles and pipi from being harvested on 20 km of the Coromandel coastline between Wilson and Ngä Rimu Bay (Brown, 2002).

As an indication of the 'teeth' of these rähui, two fines of $1200 were reported as being imposed on people for taking pipi from the Thames Coast rähui area, the maximum penalty available under the section is $5000 (Macredie 2001).

All the above examples apply to kaimoana, and currently there are no statutory mechanisms supporting equivalent rähui over land based resources (Ngä Whenua Rähui discussion below does not constitute rähui in the traditional sense). However, while not referred to as rähui, there is statutory provision for conservation of some wildlife, while allowing Mäori customary access. For example, the *Wildlife Act* (1953), administered by the Department of Conservation, allows for some native species to be hunted or killed.

Protected species may be taken for authorised purposes, including traditional and cultural uses. The harvesting of some bird species (such as ti ti) on offshore islands is permitted, for example, by descendants of the tangata whenua of the islands (Bennion, 1994). The *Ti ti (Mutton-bird) Island Regulations* (1978) provided that only Rakiura Mäori and their spouses could undertake mutton birding activities on the islands.

Contemporary "Pollution" rähui

There are many contemporary examples of rähui being placed to close off areas after deaths. Whanganui River Mäori placed a rähui over a four kilometre section of the river in January 2000, which stopped all water activities until the body was found. While the rähui was not actively supported in law, it was widely observed, Wanganui police senior sergeant Ged Byers acknowledged that local iwi had placed the rähui on the river, halting fishing, swimming, and the Wanganui paddle steamer (2000).

In North Taranaki the same month kaumätua lifted a drowning rähui almost three weeks after two young children were swept out to sea. Although one child had not been found, the family had agreed to lift the tapu (Warrander, 2000). September the same year,

Hauraki iwi imposed a rähui over much of their sacred maunga Moehau after an Arawa man died when on a pilgrimage to visit the resting place of Tamatekapua. The mountain was entirely closed for one week.

And in January 2002, Hauraki iwi Ngati Tamatera placed a week long rähui over a six kilometre section of the Thames coastline after four members of a family drowned there while collecting kaimoana. While this rähui did not seek or receive official government backing, Ministry of Fisheries district compliance manager Brendon Mikkelsen said the ministry fully supported the rähui and joined with Ngati Tamatera iwi in asking people to respect the temporary closure (2002). These are just a few examples.

The above examples contrast with the observation by Mead (1997) that modern rähui imposed after drownings last about three months.

Other contemporary use of the term "Rähui"

The word ‗rähui‖ has more recently been adopted and adapted by the Crown to describe statutory provisions for land protection or reservation. Ngä Whenua Rähui was established in 1991, under Section 77A of the *Reserves Act* (1977) (as inserted by provision in *Te Ture Whenua Act* in 1993). This mechanism establishes covenants entitled ‗Ngä Whenua Rähui Kawenata'. The rähui here refers only to Mäori land, voluntarily placed under this covenant thereby protecting it from everyday use – for example agricultural - with resources available from the Crown to assist with long term preservation.

In the *Ngäi Tahu Ancillary Claims* report the Waitangi Tribunal opined that Ngä Whenua Rähui provides a new regime which allows Mäori landowners to join with the Crown in a management scheme to preserve and protect:

(i) The natural environment, landscape amenity, wildlife or freshwater life or marine life habitat, or historical value of the land; or
(ii) The spiritual and cultural values which Mäori associate with the land.

The Tribunal reported positively, noting that this new provision provides protection for both Mäori and the public interest (Waitangi Tribunal, 1995).

Mead (1979) discusses a novel application of rähui, in relation to the Springbok rugby tour. He suggested in an example of "old solutions being revisited and adapted to the problems of the present" that a rähui should be used to persuade Mäori to boycott the tour by the South African rugby team that year, in protest to the apartheid practices of that government. His proposal was that the rugby fields themselves would be the subject of the rähui. This rähui never eventuated, but Mead recalls that the suggestion of using rähui in such a manner generated substantial debate.

The same year bishop Manu Bennett, supported by other church leaders, instituted a rähui on taru kino - bad weeds (referring to marijuana). Mead (1997) reports this rähui received widespread support, but does not elaborate as to whether users of the substance observed the rähui. We could find no other references to it.

9

WHENUA, WAI, AND TAONGA

Whenua

Williams Dictionary definitions:

1. *Land, country*
2. *Ground*
3. *Placenta, afterbirth*
4. *ad. Entirely, altogether*

There is commonality between this section and previous ones, particularly those relating to whakapapa and kaitiakitanga. I will endeavour therefore not to repeat those investigations.

There is also little argument relating to Mäori understandings of whenua, and for this reason I will not seek to locate a large number of references. There are, for example, discussions relating to Mäori beliefs surrounding papatüänuku and whenua in several reports, but there is substantial agreement between these, and I will rely therefore on one or two.

Whenua is universally understood by Mäori to mean the land, Papatüänuku the earth mother. As stated by respected Hauraki kaumätua, Tai Turoa "Papatüänuku is a creator, sustainer, healer, nurturer, giver and receiver of life. Her various roles are necessary to safeguard the continued survival of her many offspring, including Mäori." (Hauraki Mäori Trust Board, 1999). Rangimarie Rose Pere (1990) similarly refers to Papatüänuku as the provider of nourishment and sustenance for her myriads of descendants. Pere extends the comparison between Papatüänuku and women:

> *The proverbial saying 'He wähine, he whenua, a ngaro ai te tangata' is often interpreted in English as meaning, 'by women and land men are lost', but in my beliefs it can also be interpreted as meaning that 'women and land both carry the same role'. Both provide sustenance and nourishment and without them the myriads of descendants are lost* (Pere, 1990).

The relationship between Mäori and the land

As discussed earlier in the sections on whakapapa, Mäori recognise the earth as Papatüänuku, their ancestor. This genealogical relationship, and the responsibilities inherent in it are widely discussed in the literature (Waitangi Tribunal, 1997; Pere, 1982; Barlow, 1993), Mankind is genealogically close to Papatüänuku in that we are the direct descendants of her son Tane, and the mother of his children was similarly formed from the earth (Walker, 1978).

Obviously whenua refers to the land, but as indicated by the term tangata whenua – the people of the land - Mäori identify themselves in terms of, belong to, and genetically relate to, the land. The critical relationship between Mäori and the land is revealed in the following whakatauäkï; ‒Te toto o te tangata, he kai; te oranga o te tangata, he whenua - The blood of man (is supplied by) food; the sustenance of man (is supplied by) land‖ (Riley, 1990).

A similar message is inherent in another, '*He kura tangata e kore e rokohanga, he kura whenua ka rokohanga* – The treasured possessions of man are intangible, the treasures of the land are tangible' (Käretu, 1987, p. 57).

Rangimarie Rose Pere (1982, p. 19) describes our relationship with, and identification of, the land as a reminder of the immortality of our tupuna:

> *The personification of Papatüänuku, and the trees and vegetation which clothed her body, were of special significance to the Mäori in that they saw the land as permanent and lasting, while they themselves were doomed to die as mere mortals.*

This sentiment is found within this saying: '*Toitu he whenua, whatungarongaro he tangata* - Land is permanent, man disappears' (Riley, 1990). Our relationship with papatüänuku is further reinforced by the word whenua meaning both the land and the placenta, the Waitangi Tribunal reported the significance of this:

> *Similarly, whenua, or land, meant also the placenta, and the people were the tangata whenua, which term captured their view that they came from the earth's womb* (Waitangi Tribunal, 1997).

As Turoa observes, this cyclic reciprocity between Mäori and Papatüänuku is reflected in the return of our bodies by burial at death, and also by the placement of the placenta into the earth at birth (Hauraki Mäori Trust Board, 1999). While both of these rituals are recognised as maintaining our relationship with Papatüänuku, they are also important in terms of linking us with our specific tribal lands – embodied in the term tangata whenua.

The Waitangi Tribunal provide this description of the special relationship between tangata whenua and their land:

> *Attachment to the land was reinforced by the stories of the land, and by a preoccupation with the accounts of ancestors, whose admonitions and examples provided the basis for law and a fertile field for its development. As demonstrated to us in numerous sayings, tribal pride and landmarks were connected and, as with other tribal societies, tribe and tribal lands were sources of self-esteem* (Waitangi Tribunal, 1997).

The report goes on to describe the relationship of Mäori with their land in terms of tenure; That land descends from ancestors is pivotal to understanding the Mäori land-tenure system.

Such was the association between land and particular kin groups that to prove an interest in land, in Mäori law, people had only to say who they were. While that is not the legal position today, the ethic is still remembered and upheld on marae. The community's right to land, in pure terms, was by descent from the earth of that place, which might be seen to equate with occupation from time immemorial (Waitangi Tribunal, 1997).

Tangata whenua are described as holding (or being) mana whenua over their lands, this is discussed further in the preceding section on Mana. McCully/Mutu write in terms of the mana essentially being a quality of the land: "Mana whenua is the mana that the gods planted within Papa-tua-nuku (Mother Earth) to give her the power to produce the bounties of nature." However, they also refer to people as holding mana whenua, stating:

> *A person or tribe who 'possesses' land is said to hold or be the mana whenua of the area and hence has the power and authority to produce a livelihood for the family and the tribe from this land and its natural resources* (McCully, 2003).

Based on this land tenure system Mäori, within the pre-colonial understanding, had no word for the concept of alienation of land. The institution of tuku whenua existed and enabled land to be gifted, but ongoing obligations between the two parties meant that the association of the tangata whenua to their ancestral lands was not severed. The Tribunal considered the way that traditional land tenure was undermined by early colonisers in an effort to alienate Mäori land:

> *Western land sales were diametrically opposed to the traditional concepts. They severed relationships and terminated obligations, while, for Mäori, continuing obligations and relationships were essential. The evidence is that Mäori still expected those relationships and obligations to carry on. ... whatever Mäori word was used to denote the sense of giving or conveying land, and no matter how neutral that word was, it would still conjure up a giving or conveying on Mäori terms, unless something else was done, within or outside the deed, to make it very clear to Mäori that something extraordinary was happening.*

In the Muriwhenua report the Tribunal noted that during the early colonial period Mäori continued to operate according to accepted rules of land tenure, and expected Pakeha to act accordingly:

> *By custom law, '... no land interest existed independent of the local community and were freely transferable outside of it. Land rights flowed from an abiding relationship with the associated hapü.'... 'People did not buy land so much as buy into the community'. Despite the use of deeds and money, ... the fundamental value system underpinning Mäori law appears to have been unaffected' ... 'It is far more likely the transactions were seen by Mäori as creating personal bonds, and as allocating conditional rights of resource use as part of that arrangement* (Waitangi Tribunal, 1997).

Whenua in Law

I will start this section with a brief investigation of litigation dealing with Mäori property rights as protected under aboriginal title and common law. Mäori property rights to lands, waters, and other taonga have ceaselessly been argued before the courts, in the face of impositions of property regimes that have sought to alienate Mäori property. The current moves by the Crown to legislate against Mäori title to the foreshore and seabed is, of course, a poignant reminder of this dubious history. This section will depart from the stated intention to consider only recent legislation. (Note, the following three cases are referred to in the Law Commission report *Mäori Custom and Values in New Zealand Law* (New Zealand Law Commission, 2001), which examines this issue in more depth).

In 1847 in *R v Symonds* (1847) the Court determined that Native title was entitled to be respected by the courts. In *Re –The Lundon and Whitaker Claims Act 1871*‖ (1872), for example, the Court of Appeal held that the Crown was 'bound, both by the common law of England and by its own solemn engagements, to a full recognition of Native proprietary right.'

More recently in *Te Runanganui o te Ika Whenua Inc Society v Attorney-General* (1994), the Court of Appeal considered the concept of aboriginal title in the context of a proposed transferr of two dams to energy companies. Te Ika Whenua claimed that they had property rights in the rivers and alleged that the transfers would prejudice those rights, based on the doctrine of aboriginal title. The Court of Appeal determined:

> *Aboriginal title is a compendious expression to cover the rights over land and water enjoyed by the indigenous or established inhabitants of a country up to the time of its colonisation. On the acquisition of the territory, whether by settlement, cession or annexation, the colonising power acquires a radical or underlying title which goes with sovereignty. Where the colonising power has been the United Kingdom, that title vests in the Crown. But, at least in the absence of special circumstances displacing the principle, the radical title is subject to the existing native rights . . . It has been authoritatively said that they cannot be extinguished (at least in times of peace) otherwise than by the free consent of the native occupiers, and then only to the Crown and in strict compliance with the provisions of any relevant statutes.*

Regarding extinguishing native titles by fair purchase, the Court went on to observe that:
an extinguishment [of native title] by less than fair conduct or on less than fair terms would be likely to be a breach of the fiduciary duty widely and increasingly recognised as falling on the colonising power.

The primary method by which Mäori resources have been alienated was the individualisation of Mäori land, and the workings of the Native Land Court toward achieving this. As the Law Commission observed:

> *The individualisation of property rights in land and other tribally owned assets has had a profound effect on Mäori social structures and management systems. The focus on individual rights of ownership of land stands in direct contrast to Mäori customary rights in land, which were intertwined with matters of ancestry, kinship groups and kinship relations,147 and processes of Mäori communal decision making* (New Zealand Law Commission, 2001).

While the vast majority of Mäori land has now been alienated or passed into individual title, what remains in 'Mäori Title' is administered by the successor of the Native Land Court, the Mäori Land Court. The legislation under which that court operates is the *Te Ture Whenua Act* (1993), in apparent juxtaposition to the historic functions of the Native Land Court its preamble contains the essential purpose of the Act:

> *Whereas the Treaty of Waitangi established the special relationship between the Mäori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Mäori people and, for that reason, to promote the retention of that land in the hands of its owners, their whänau, and their hapü**[**, and to protect wähi tapu**]**: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whänau, and their hapü : And whereas it is desirable to maintain a Court and to establish mechanisms to assist the Mäori people to achieve the implementation of these principles.*

Legal decisions relating to Mäori land therefore, are made in the Mäori Land Court, although the court does have jurisdiction beyond land still held in Mäori title. Two other primary functions of the court have been to make determinations of mana whenua where there are competing claims to particular land, and – as discussed earlier – as the legal

forum that considers questions of tikanga Mäori. Bennion reported in relation to *Hauraki Mäori Trust Board & Anor v The TOKM & Ors*, that a liberal interpretation of section 61 of *Te Ture Whenua Act* shows it can encompass questions of mana in respect of land and issues of mana and rohe in connection with waterways, including coastal waters and seas (Bennion, 2001).

Bennion also notes that section 132/1993 (*Te Ture Whenua Mäori Act* 1993) requires the court to determine interests in Mäori customary land 'according to tikanga Mäori' rather than according to 'the ancient customs and usages of the Mäori people' - as required by previous legislation (s161 *Mäori Affairs Act*, 1953). He posits that this was an important change, requiring the court to determine the matter from a Mäori perspective looking outwards, rather than from the outside looking in.

In an apparent effort to retain land within the whänau/hapü, in accordance with tikanga (as described by the Tribunal above) there is a restriction in *Te Ture Whenua Act* on who can receive rights to land that is held in Mäori Title:

Preferred classes of alienees", in relation to any alienation (other than an alienation of shares in a Mäori incorporation), comprise the following:
(a) Children and remoter issue of the alienating owner:
(b) Whänaunga of the alienating owner who are associated in accordance with tikanga Mäori with the land:
(c) Other beneficial owners of the land who are members of the hapü associated with the land:
(d) Trustees of persons referred to in any of paragraphs (a) to (c) of this definition:
(e) Descendants of any former owner who is or was a member of the hapü associated with the land:

See the earlier section Tikanga in Law for further discussion on the *Te Ture Whenua Act.*

Two other acts have specific references to whenua, and are of perhaps greater significance when it comes to defending Mäori rights to ancestral lands that are no longer in tribal ownership. The Act contains definitions of both mana whenua; 'means customary authority exercised by an iwi or hapü in an identified area' discussed earlier in the section of that name), and tangata whenua; 'in relation to a particular area, means the iwi, or hapü, that holds mana whenua over that area.' Perhaps the most important provision within the RMA (1991) in terms of Mäori ancestral land is Section 6. Matters of national importance— In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(e) The relationship of Mäori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. This provision has given Mäori an opportunity to defend their whenua where it has previously been alienated. Apparently based on Section 6(e) is Subpart 1, Section 77 (C) of the Local Government Act 2002. While this Act also has various provisions for Mäori, under Section 77. Requirements in relation to decisions –

(1) A local authority must, in the course of the decision-making process,—
(c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Mäori and

their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

While it took some time, a jurisprudence has been established which defines the Section 6 of the RMA (1991) provision for ancestral lands, as applying to all ancestral lands rather than only those remaining in Mäori ownership. Bennion cites the decisions in RFBPS v *Habgood Ltd (1987) 12 NZTPA 76 (HC) and EDS v Mangonui CC [1989] 13 NZTPA 197 (CA),* which held that "ancestral land" is not confined to land currently held in ownership by Mäori, but includes other land that has been owned by ancestors where there is some factor or connection with the culture and traditions of the Mäori and the land in question (Bennion, 2001).

In terms of investigation of 'customary land' under *Te Ture Whenua Act* (1993). Bennion (2001) suggests that the wording of Section 129(2)(a)/1993 defining customary land as being 'held' in accordance with tikanga Mäori, also has a connotation of retention in accordance with tikanga rather than ‗ownership' in a classic sense.

Bennion outlined a case where jurisdictions of both statutes (RMA and *Te Ture Whenua Act*) were considered in relation to Mäori freehold land. In *Hastings District Council v Mäori Land Court & McGuire, Makea* (1999), the High Court considered an interim injunction issued by the Mäori Land Court under s19(1)(a) *Te Ture Whenua Mäori Act* preventing the Hastings District Council from proceeding to designate certain Mäori lands as part of a route for a new highway under the *Resource Management Act* (1991). The Court rejected that decision, but made the following observation:

The RMA 1991 explicitly accommodates Mäori issues and requires that Mäori values be taken into account. Part VIII/1991 which deals with designations is a comprehensive and exhaustive code and must be construed as encompassing and embracing the principles of protection of Mäori land as a taonga tuku iho of special significance to Mäori people and thus in accordance with the principles and object of TTWMA 1993. Consequently, the ‗special relationship' between Mäori and land referred to in TTWMA 1993 is not ‗injured' by lawful actions under Part VIII/1991.

We have not further investigated case law under these sections of the two statutes to determine how the courts have specifically treated the relationship between Mäori and their ancestral lands. However, discussion about cases relating to the RMA is extensively covered in other sections.

Wai

Williams Dictionary definitions:
1. Water

The Waitangi Tribunal provides the following description of the origins of, and deep significance of, water to Mäori:

Water, whether it comes in the form of rain, snow, the mists that fall upon the ground and leave the dew, or the spring that bursts from the earth, comes from the longing and loss in the separation of Rangi-o-te-ra and Papatüänuku in the primal myth. The tears that fall from the sky are the nourishment of the land itself. The

> *life-giving water is founded upon a deep quality of sentiment that, to Mäori, puts it beyond the realm of a mere useable commodity and places it on a spiritual plane* (Waitangi Tribunal, 1999).

Elsdon Best investigated the 'mythic' origins of water, subsequent to the account given above of the tears of Ranginui. He reported being taught that Tane with Hine-tu-pari-maunga, the Mountain Maid, had two children; Para-whenua-mea - the personified form of the waters of earth, and Taumatua, who was, the origin of rock and all forms of stone. He cites an old 'aphorism': "*E kore a Para-whenua-mea e haere ki te kore, a Rakahore*", which Best (1922) translates as "Water will not move abroad unless rock is at hand, otherwise it would sink into the earth."

Best also reports being told that Para-whenua-mea was the wife of Kiwa, that "they produced the waters, and the ocean is the Great Ocean of Kiwa" (*Te Moana nui a Kiwa*) (Best, 1922).

While wai / water is mentioned extensively within the literature, particularly in relation to its use in ritual and its cleansing qualities, there are few who specifically investigate the importance of wai to Mäori at length.

Consequently there is a considerable amount of duplication of a few references. The descriptions of wai provided by Ted Douglas in *Waiora, WaiMäori, Waikino, Waimate, Waitai - Mäori Perceptions of Water and the Environment* appear to be frequently referenced; for example in *Mäori Perspectives On Landscape* (Taua, 2003), and *Coordinated Monitoring of New Zealand Wetlands* (Harmsworth, 2002).

While Taua does not cite Douglas in his presentation, Harmsworth does in his report. Harmsworth also refers to the book *Whaiora - Mäori Health Development* by Mason Durie (Durie, 1994), indicating that work has a substantive discussion about wai. However, while Harmsworth's citations from Durie are included here, at this time the I have not been able to get hold of a copy of this work.

Distinct categories of water in the literature

Waiora

Waiora is considered to be the purest form of water, it contains the source of life and well-being, and coming from Ranginui – the sky father (Douglas, 1984; Waitangi Tribunal, 1998). As Ted Douglas recalls, "It is the spiritual and physical expression of Ranginui the sky father in his longed-for embrace with Papatüänuku, the earth" He notes that the full name for this type of water is "Te Waiora a Tane" (Douglas, 1984). Douglas also elaborates on some of the qualities of waiora:

> *Waiora has the potential to give life, to sustain well-being, and to counteract evil. At particular wähi tapu (sacred sites) the sacredness of the prayers and the purity of the water reinforce each other, but if one is damaged, then so too will the other* (Douglas, 1984).

Best referred to 'wai matua o Tuapapa' as being 'virgin water as it flows from the earth' recording that this was the water used in religious ceremonies as it was the only water free from polluting tendencies His description is consistent with the above discussion of waiora. Best also observed that pure water is that produced by Para-whenuamea (personified form and origin of water), and that it must be used in its natural habitat when

used in rituals rather than collected in containers (Best, 1976).

The Ministry of Justice state that waiora can be either fresh or salt water in its natural state (Ministry of Justice, 2001). The source of this proposition is not specifically referenced, and appears to be contrary to other writers identified. In fact Harmsworth says that the term waitai is used to distinguish salt water from fresh (Harmsworth, 2002).

Wairoa

Ritchie distinguishes '*Wairoa'* as rainwater made pure for human consumption through contact with Papatüänuku (Waitangi Tribunal, 1998). However, Douglas (1984) does not make any such distinction on the basis of contact with Papatüänuku; The rain is waiora; contact with Papatüänuku gives it its purity as water for human consumption. Water can remain pure, as waiora, only if its contact with humans is protected by appropriate ritual prayers.

Wai Mäori

Of the classifications of wai here, Mead (2003), in *Tikanga Mäori: Living by Mäori Values* refers only to wai Mäori by name, this being described as fresh water. Writing that wai Mäori plays an important part in many ceremonies, he recognises that it possesses the power to neutralise the dangerous aspects of tapu (Mead, 2003).

Mead's understanding contrasts with that put forward by Douglas and Harmsworth. Rather, these two suggest that water becomes waimäori [sic] in contrast to waiora, because it is normal, usual or ordinary and no longer has any particularly sacred associations (Harmsworth, 2002). Ritchie describes waimäori simply as "freely running fresh water or water that is clear or lucid" (Waitangi Tribunal, 1998).

It is noteworthy that the descriptions provided by Douglas and Ritchie are worded similarly, for example Douglas also refers to waimäori aa "the term used to describe water that is running freely or unrestrained, or to describe water which is clear or lucid." He also records that waimäori has a mauri (which is generally benevolent) and which can be controlled by ritual (Douglas, 1984).

While recalling the previous observation that they differ regarding Wairoa, their descriptions are elsewhere quite alike, neither Ritchie nor Douglas provide a source for their understandings of these concepts, however they might well be the same.

Waikino

Speaking in a temporal sense Douglas records that Waikino means dangerous water, being: "The term used to describe water which is rushing rapidly through a gorge, or water where there are large boulders or submerged snags which give the water the potential to cause harm to humans." In a spiritual sense he reports that it is "polluted or debased, spoilt or corrupted. In waikino, the mauri has been altered so that the supernatural forces are non- selective and can cause harm to anyone." Ritchie's description is along similar lines.

Harmsworth also states that Waikino "lliterally means bad or impure water (e.g., stagnant pools)." He adds that it is often linked to past events, polluted or contaminated water. As per Douglas's description of the temporal nature of Waikino the Ministry of Justice report He Hinätore ki te Ao Mäori states that "water becomes wai kino when its natural flow is disturbed or modified, either by natural or non-natural means and the life-sustaining wai

ora constitutes danger to humans (as in a waterfall)" Ministry of Justice, 2001).

Wai Mate

Ritchie describes waimate as in the temporal sense being a sluggish backwater and, in the spiritual sense, water that has lost its mauri and become dead (Waitangi Tribunal, 1998). Douglas elaborates, saying that it is dead, damaged or polluted water which has lost its power to rejuvenate either itself or other living things. The following is from the description of Waimate from Douglas:

> *Waimate, like waikino, has the potential to cause ill-fortune, contamination or distress to the mauri of other living or spiritual things, including people, their kaimoana or their agriculture. The subtle differences between waikino and waimate seem to be based on the continued existence of a mauri (albeit damaged) in the former, and its total loss in the latter. The waters of the Manukau have been described as waimate, because of expensive industrial contamination and sewage pollution. Waimate also has a geographical meaning; to denote sluggish water, a backwater to a main stream or tide, but in this sense the waimate retains its mauri* (Douglas, 1984).

From this description we can deduce that waimate can be either 'fresh' or salt water, thereby contrasting with the preceding categories of water. Harmsworth speculates that "waimate may have been used in places of contamination and tapu, historic battles, dead, damaged or polluted water, where water has lost the power to rejuvenate itself or other living things" (Harmsworth, 2002).

Ritchie, appearing before the Environment Court, described further the idea of waimate being dangerous to living things (people in this case):

> *There are three conditions in which wai mate has potential danger to human beings. The first is when water has been processed through human contact, for example, washing water. This is why washing of the human person or clothing should never be done in any receptacle, which may be later used for the preparation of food such as the kitchen sink. Secondly, water which was associated with states of disease or death must be separately disposed of because it was spiritually dangerous. Finally, water, which has been used for ritual purposes such as anointing, massaging or manipulating must be carefully disposed of. This is particularly the case where conditions of illness of a psychological kind, mate Mäori, were concerned* (Ministry of Justice, 2001).

Wai Tai

Waitai is salt water, that which has returned to Tangaroa. Ritchie considers the ultimate return of all water to the oceans in terms of a ‒natural process of generation, degradation, and rejuvenation‖ (Waitangi Tribunal, 1998).

Also noting the process described by Ritchie, Douglas further identifies that waitai describes physical characteristics of the ses "rough, angry or boisterous like the surf, or the surge of the tide" as well as the salt water within it.

In addition to the above classifications, Harmsworth (2002) refers to the following types of water:

Waitohi *– areas of pure water.*
Waitapu *– sacred water used in rituals. Rituals used running water, sometim*

Termed wai matua o Taupapa (virgin water as it flows from the earth). Water was applied using certain plants, not human-made vessels. Elsdon Best, in Mäori Religion and Mythology similarly describes waitapu (Best 1976).
Waipuna *– generally pure spring water that comes from the ground (e.g., hillside or underground springs).*
Waimataitai *– significant estuarine or brackish waters.*
Waiwera *– hot water used for healing purposes, bathing, recreation.*
Wai whakaheketuupapaku *— water burial sites.*

Mead (referring to waimäori) describes the ritual use of water to neutralise tapu:

> *Wai Mäori (fresh water) plays an important part in many ceremonies. It possesses the power to neutralise the dangerous aspects of tapu and so render people and things safe. Sometimes water by itself is sufficient to do this as for example when tools used to dig and cover a grave are washed in a river or are hosed down with clean water. The tools can then be put away for the next time of use. People coming out of a tapu place or after being engaged in a tapu ceremony can sprinkle or flick water over themselves to lessen the level of tapu and clear themselves from any perceived harmful effects of tapu* (Mead, 2003, p. 66).

He continues to make a distinction between Christian ministers who use water in their rituals, and traditional tohunga who would more likely use particular cooked food to neutralise tapu. He also identifies that we can all use water in the manner previously described, and that water has healing properties. See the section on Tapu for further discussion regarding the use of water for ritual removal of tapu.

Mead also explores whether water itself can be tapu, given its properties as an agent for the neutralisation of tapu. Although Mead suggests that the logical answer is that water cannot be tapu, he refers to the 'holy water' of the Christian church as an example where people might disagree with this conclusion. The other example he considers it the tapu associated with a rähui after a drowning. Here Mead posits that it is tapu rather than the water, as the place is declared tapu, but downstream where the water flows too may not be.

The Waitangi Tribunal during the Whanganui River claim considered whether that river is tapu:

> *The river might also be described as tapu, or sacred, though in these proceedings the matter was debated. In evidence before the Mäori affairs select committee in 1980, the elder Titi Tihu considered that the river, or the water in the river, was not strictly tapu, though the river contained tapu sites* (Waitangi Tribunal, 1999).

Degradation of Water

There is general agreement amongst the writers as to how water should, or should not be treated. For example, it is taught that the mauri of different waters should not be mixed unnaturally. Harmsworth, citing Durie, describes the mixing of waters from both an environmental and spiritual perspective. The context of this discussion was a Mäori environmental indicators working party:

> *Traditionally, each body of water was considered to have its own source of life, its own mauri. If the mauri of one body of water came into contact with another, both were placed at risk and the ecosystem equilibrium was disturbed* (Durie, 1994).

The mixing of water or the separation or division of natural systems can markedly affect and decrease the mauri in many places. Rivers or streams flowing into one another, into a lake, into a harbour or estuary, are often assessed with different mauri. That mauri is often assigned either to specific parts of a river, stream, or lake, or applied to the whole ecosystem. Therefore Mäori environmental concepts focus on keeping specific parts of the natural environment pure, unpolluted, and connected. Most Mäori involved in this Phase 2 project believed mauri could not be totally extinguished and that all systems had 'a glimmer of hope' when it came to sustaining life. They recognise some places can be restored or rehabilitated while others cannot. They also recognise that mauri can be enhanced to some extent through the actions of kaitiakitanga and by the actions of other agencies (Harmsworth, 2002).

The writers of the Ministry of Justice report He Hinätore ki te Ao Mäori concluded that the result of such mixing caused water to become waimate:

> *Water becomes wai mate when there is a mixing of the waters by unnatural means, i.e., the mixing of two separate mauri, and the boiling processes that discharge 'dead' or 'cooked water' to living water that supplies seafood. The water is considered to have lost its power or force and become metaphysically dead* (Ministry of Justice, 2001).

Repairing the Mauri of Degraded Water

Kaitiaki, during resource consent applications, regularly push for disposal of contaminated water, such as treated effluent, to land rather than directly into streams or the sea. The theory being that once the mauri of water has been depleted, it can only be reconstituted through the natural cycles of Papatüänuku and Tangaroa. Citing Ritchie, the Waitangi tribunal reported:

> *It [unclean water] cannot be purified without effort; human effort is not enough, the enlistment of aid beyond the secular is required. . . .It is only through the agency of Papa-tu-a-nuku and her offspring Tangaroa, and his mokopuna Tuutewehiwehi that the mauri of desecrated water can be restored. . . .* (Waitangi Tribunal, 1999).

Harmsworth (once again citing Durie) within the Ministry for the Environment Mäori indicators programme suggests that in the first instance the land should be used to filter polluted waters:

> *For Mäori, discussion during this project and evidence from Treaty claims, shows an overwhelming preference for impure water (e.g., mixed water, polluted water, land effluent, treated sewage, industrial waste) to be treated through land first, rather than direct entry into natural water ecosystems. This affirms Papatüänuku as the appropriate filter for impure water (e.g., such as through terrestrial and artificial wetlands), and emphasises the importance of maintaining the integrity of the mauri of each water mass* (Harmsworth, 2002).

Wai in Law

There have been a substantial number of cases before the Environment court where tangata whenua have fought against local and regional authorities intending to discharge (or allow discharge) of material directly into waterways or the ocean. Some of these are referred to

here in order to illustrate the approach being taken by the courts.

As previously reported in the Mauri in Law section, in *Te Rünanga O Taumarere & Others v Northland Regional Council & Far North District Council* (1995), where the council had sought to discharge treated effluent into a local bay the Planning Tribunal directed the council to investigate disposal to land. Only if that option proved unfeasible might the urgent public health needs of the community prevail even over the important Mäori values involved:

> *Rünanga witnesses said however that no matter how well treated physically any discharge of effluent, it would be perceived by local Mäori as altering the mauri (spiritual quality) of the bay and they would view the shellfish there as contaminated and cease to gather from the bay. The tribunal found as a fact that this was the Mäori belief and that they would regard any effluent discharge as an affront to their standing as tangata whenua and as kaitiaki.*

Here we see a conflict between the prevailing western belief that once treated effluent can be returned to environmental waters and the Mäori understanding regarding the mauri of wai.

In *Te Awatapu O Taumarere v. Northland Regional Council* (1998) the Environment Court found in favour of Te Awatapu O Taumarere, who sought to include an additional objective in the regional policy statements requiring cultural purposes, and the gathering of shellfish for human consumption as a purpose for which the quality of water in estuaries, and in areas of inner harbours, which are influenced by major river inflows, to be among the purposes for which water quality is to be maintained or enhanced.

In the report Case Law on Tangata Whenua Consultation it is reported that the Regional Council considered that the management of water for cultural purposes ought not to be mixed with its management for other purposes because there were no measurable standards for managing waters for cultural purposes.

The Environment Court agreed with Te Awatapu that the objectives should be amended to give effect to s6(e) of the RMA, which requires that the relationship of Mäori with the Taumarere waters be recognised and provided for; and on s7(a) which requires that particular regard be had to kaitiakitanga. The Court pointed out that Ngapuhi had long had a cultural and spiritual relationship with the Taumarere waters and maintained kaitiakitanga responsibility in respect of them.

The Court held that Ngapuhi were concerned not only about the quality of the waters for practical reasons, such as shellfish gathering, but also because poor water quality denigrates the mauri or life force of those waters. The Court directed the Council to amend the regional policy statement to provide for cultural purposes in the water quality objective. In relation to the shellfish gathering issue the Court supported Te Awatapu, but adjourned the case to allow the parties time to discuss it further.

The authors of the above report found that the decision represents a positive affirmation of a necessity to provide for Ngapuhi cultural well being by, firstly, recognising the tribe‘s interests in the waters and fisheries of the district and, secondly, by providing for that recognition with a practical measure such as educating pastoral farmers in the value of riparian strips (Ministry for the Environment, 1999).

Taonga

Williams Dictionary definitions:

> *Property, anything highly prized*

As observed in the Whanganui River and Muriwhenua Fishing reports, "All resources were 'taonga' or something of value, derived from gods" (Waitangi Tribunal, 1999).

Given recognition like this within the literature of the all encompassing definition of taonga as being everything that is valued, this section will be brief.

The Waitangi Tribunal in the Whanganui River Report discussed the river as a taonga, finding that its integrity as such relies on a conceptualisation of the whole entity, rather than its constituent parts:

> *From our own knowledge and research on the Mäori comprehension of rivers (see sec 2.6), we see the river, like other taonga, as a manifestation of the Mäori physical and spiritual conception of life and life's forces. It contains economic benefits, but it is also a giver of personal identity, tribal cohesion, social stability, empathy with ancestors, and emotional and spiritual strength.*
>
> *Thus, while previous judicial findings that Atihaunui owned the bed at 1840 are supported by clear fact and law, they are still partial findings, for Atihaunui owned more than a bed and more even than a river. They owned a taonga. It is that which underlines for Atihaunui the incongruity of dissecting it to parts, dividing it along a centre line, or seeing it as an adjunct to riparian land interests – especially since they occupied both sides. In short, it was one whole and indivisible entity* (Waitangi Tribunal, 1999).

The following substantial excerpt from the Muriwhenua Fishing Report gives a graphic description of what taonga means to Mäori, recognizing that taonga (in this case fisheries) incorporates both the physical and intangible components. This is an important observation, because taonga have most often been considered to be tangible resources, or intangible concepts (as indicated in the appeal court citation below), yet this extract reveals that such a distinction is artificial (Waitangi Tribunal, 1988):

> *In the Mäori idiom 'taonga' in relation to fisheries equates to a resource, to a source of food, an occupation, a source of goods for gift-exchange, and is a part of the complex relationship between Mäori and their ancestral lands and waters. The fisheries taonga contains a vision stretching back into the past, and encompasses 1,000 years of history and legend, incorporates the mythological significance of the gods and taniwha, and of the tipuna and kaitiaki. The taonga endures through fluctuations in the occupation of tribal areas and the possession of resources over periods of time, blending into one, the whole of the land, waters, sky, animals, plants and the cosmos itself, a holistic body encompassing living and non-living elements.*
>
> *This taonga requires particular resource, health and fishing practices and a sense of inherited guardianship of resources. When areas of ancestral land and adjacent fisheries are abused through over-exploitation or pollution the tangata whenua and their values are offended. The affront is felt by present-day kaitiaki (guardians) not*

just for themselves but for their tipuna in the past. The Mäori _taonga' in terms of fisheries has a depth and breadth which goes beyond quantitative and material questions of catch volumes and cash incomes. It encompasses a deep sense of conservation and responsibility to the future which colours their thinking, attitude and behaviour towards their fisheries. The fisheries taonga includes connections between the individual and tribe, and fish and fishing grounds in the sense not just of tenure, or _belonging', but also of personal or tribal identity, blood and genealogy, and of spirit.

This means that a _hurt' to the environment or to the fisheries may be felt personally by a Mäori person or tribe, and may hurt not only the physical being, but also the prestige, the emotions and the mana. The fisheries taonga, like other taonga, is a manifestation of a complex Mäori psycho-spiritual conception of life and life's forces. It contains economic benefits, but it is also a giver of personal identity, a symbol of social stability, and a source of emotional and spiritual strength. This vision provided the mauri (life-force) which ensured the continued survival of the iwi Mäori. Mäori fisheries include, but are not limited to a narrow physical view of fisheries, fish, fishing grounds, fishing methods and the sale of those resources, for monetary gain; but they also embrace much deeper dimensions in the Mäori mind, as referred to in evidence by Miraka Szazy in the context of spiritual guardianship.

Thus we see that the concept of taonga is complex. The Tribunal emphasises that taonga includes not only the physical ‒resource‖ itself, but consistent with an holistic world view, the place of that taonga in the natural and spiritual scheme, and the rights and obligations associated with it. As discussed previously regarding whakapapa and kaitiakitanga, Mäori recognise the geological relationship that exists between themselves and the taonga, and this underlies their obligation to protect it.

Taonga in Law

The Treaty of Waitangi provides a guarantee of protection of taonga for Mäori by the Crown. Article two, of the Mäori version read "*Ko te Kuini o Ingarani ka wakarite ka wakaae ki ngä Rangatira ki ngä hapü - ki ngä tängata katoa o Nu Tirani te tino rangatiratanga o ö rätou wenua ö rätou käinga me ö rätou taonga katoa*", which Hugh Kawharu has translated as saying "The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures." Exactly what taonga constitutes has been the subject of considerable legal debate.

However the requirement that the Crown protect Taonga on the basis of the Treaty obligation has been argued (with varying degrees of success) in many forums. In *NZ Mäori Council and Others v Attorney General and Others* the Privy Council accepted that te reo Mäori is a taonga (1993). The Waitangi Tribunal has once again played a leading role in recognising treaty breaches in terms of taonga. For example in the *Te Whanganui-A-Orotu Report* (1995) the Tribunal concluded (in relation Whanganui-a- Orotu lagoon) that for the Crown to deprive Mäori of a taonga by common law presumption was a breach of the Treaty principle to actively protect Mäori in their property rights.

As previously identified in other sections, recognition for taonga is specifically provided for in the RMA 1991. Section 6. (Matters of national importance) states that in achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to

managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance: (e) The relationship of Mäori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. The *Local Government Act* (2002), section 77 (Requirements in relation to decisions) includes exactly the same provision. Similar provisions within HASNO (1996) (*Hazardous Substances and New Organisms Act*) are discussed below.

Note that the requirement in the RMA is the directive for the consenting authority to 'recognise and provide for' the Mäori values, the *Local Government Act* and HASNO include the rather weak requirement to 'ttake into account' the relationships of Mäori with (amongst other things) taonga. This is discussed earlier in the section on Tikanga in Law.

The following cited cases are but a few of the cases where protection of taonga is sought by Mäori. Rather, the selection is intended to indicate the variation in what constitutes taonga that have been considered by the courts.

While environment cases have more often dealt with the more easily defined lands, waters, and such physical taonga, there has been recognition by the courts of intangible taonga, as this appeal court transcript reveals (2001):

> *I think it is highly unlikely that Parliament deliberately would direct the Authority to ignore relationships with intangible taonga. Not only would the distinction have no rational basis, but it would be inconsistent with the Treaty. A suggestion in debate that the Authority should take account of how Mäori felt about a particular hill, but should ignore central concepts such as whakapapa would have caused a debating riot. The greater likelihood is that Parliament simply adopted the otherwise identical provisions contained in s6(e) of the Resource Management Act, adding "valued flora and fauna" for certainty, without appreciating the semantic argument opened up.*

The Special Committee that heard an application by AgResearch to the Environmental Risk Management Authority concerning genetically modified cattle considered this issue of tangible versus intangible taonga, comparing the RMA 1991 with HSNO 1996. Bennett reports they held that while s6(d) (the relationship of Mäori with their culture and taonga) used the same wording as the RMA 1991, cases under the RMA 1991 raised different issues than those under the HSNO Act in that they concerned developments which might affect particular lands of an iwi and were concerned with "tangible or physically distinguishable taonga". The ERMA was required to assess the weight to be given to taonga "which are spiritual beliefs themselves, rather than something physically distinct to which spiritual values attach." The beliefs they referred to are mauri and the other characteristics of Mäori that Ngäti Wairere argued would be placed in jeopardy by the genetic experiments proposed.

In *B v Director-General of Social Welfare* (1997) the definition of taonga changes, to include people themselves. A grandmother appealed against a decision of the Family Court refusing her custody of her granddaughter, partially on the basis that the moko is a taonga, and that the integrity of the whänau was protected (therefore precluding adoption outside the whänau):

> *We also take the view that the familial organisation of one of the peoples a party to the Treaty, must be seen as one of the taonga, the preservation of which is*

> *contemplated. Accordingly we take the view that all Acts dealing with the status, future and control of children, are to be interpreted as coloured by the principles of the Treaty of Waitangi. Family organisation may be said to be included among those things which the Treaty was intended to preserve and protect.*

The *Radio Spectrum Management and Development Interim Report* (Waitangi Tribunal, 1999) found that the radio spectrum is a taonga. This is a variation from the preceding examples of taonga, in that radio waves are (obviously) a recently discovered occurrence.

The Tribunal acknowledged in the *Radio Spectrum Management and Development Final Report* that Mäori had traditional knowledge of and used parts of the electromagnetic spectrum, that it was in these ways their taonga and that they have a Treaty right to the development of that taonga through technology that has subsequently become available.

10

TE AO MÄORI:
A MÄORI WORLD VIEW

This section provides a review of kaupapa / tikanga Mäori with a brief discussion on a Mäori world view. It has been observed that there is no more a single Mäori perspective than there is a Päkehä world view, yet a commonly held perspective is often described within the literature on tikanga Mäori.

However, what must be acknowledged and recognised is that the Mäori world view is – like other indigenous world views – significantly different from the prevailing Western, globalising, world view that dominates everyday life in New Zealand. While many of the concepts presented here have similarities to concepts from other culture, the whole package – based on ngä körero a ngä tüpuna – presents a completely different world view from that of the bulk of our society.

An holistic perspective

It is regularly reported that Mäori have an holistic perspective on their world. This is consistent with many of the concepts previously discussed in this review, such as whakapapa, which emphasise the interconnectedness of all things. It has been argued that this perspective distinguishes a Mäori from a Pakeha world view. Marsden describes holism as seeing the three realms of the Mäori world as an integrated whole (Marsden 1992). He says that these are:

- *Tua-Uri – the real world behind the world of sense perception, or the natural world. This is where the cosmic processes originated and continue to operate.*
- *Te Äro-Nui – that before us, the physical world.*
- *Te Ao Tua-Atea – the world beyond space and time. The realm of Io.*

This holistic perspective is undoubtedly based on the underlying understanding of the links of the natural world by whakapapa. This point is made within the Muriwhenua Report:

> *Religious rites, symbolic acts, (and) attitudes of respect and reverence reflect the Mäori conception of the interdependence and relatedness of all living things, which was a dominant feature of their world view* (Waitangi Tribunal, 1988).

In relation to the Whanganui River the Waitangi Tribunal made the following observation, which gives us a practical insight into the holistic world view:

> *The mauri of the group [as opposed to the individual] may be stronger or preferred, for it is rare that Mäori will examine the component parts of a thing without first*

looking to the ahüa, or the shape and appearance of the whole. We thus noticed that when the claimants spoke of the river, or referred to its mana, wairua (spirit), or mauri, they might in fact have been referring not just to the river proper but to the whole river system, the associated cliffs, hills, river flats, lakes, swamps, tributaries, and all other things that serve to show its character and form. Sometimes this was explicitly stated, as with the people at Tieke, or in the submissions of claimant counsel. Thus, it appeared to us that when Mäori and Pakeha spoke of the 'Whanganui River' they were not necessarily talking of the same thing. For Mäori, it included all things related to the river: the tributaries, the land catchment area, or the silt once deposited on what is now dry land (Waitangi Tribunal, 1999).

In addition to environmentalism, Mäori health is an area where holistic ‒models‖ have been developed. These are approaches to Mäori health and wellbeing that recognise that physical health cannot be addressed without simultaneously considering many other factors. The *Te Puni Kokiri report Hauora O Te Tinana Me Öna Tikanga* (Te Puni Kökiri,
1999) refers to several such models;

Whare Tapa Whä (Durie 1994) Whare Tapa Whä is a well recognised and endorsed health concept for Mäori.18 It is a holistic approach in which health and well-being is described in relation to the four walls of a strong house. A person is considered unwell if any one of these foundations is weak, and healthy if all four walls are strong. If the strength of the whänau, for example, is disrupted by insensitive practices, this affects all of the foundations, especially at a time of grief.

Te Wheke (Pere 1984) Te Wheke supports Whare Tapa Whä. It describes components that need to be in place for waiora or total well-being to exist. For a person or a group of people to have well-being they need all of the eight components shown in Table 1. When an imbalance is caused by practices affecting the wairua then total well-being is not present.

Ngä Pou Mana

The basis for understanding Ngä Pou Mana is that the collective health of a group of people is dependent upon social and economic policies being in place. Policies must recognise the importance of the four main components outlined in the table below. Policies often become inadequate if there is an imbalance caused by various practices.

The following table details the various concepts which are recognised as the essential characteristics of these models.

Table 9.1. WHARE TAPA WHÄ, TE WHEKE, NGÄ POU MANA (Te Puni Kökiri, 1999)

	WHARE TAPA WHÄ	**TE WHEKE**	**NGÄ POU MANA**
Components	Wairua Hinengaro Tinana Whänau	Wairuatanga Hinengaro Tinana Whanaungatanga Whatumanawa Mauri Mana ake te hä a koro mä a kui mä	Whanaungatanga Taonga tuku iho Te Ao türoa Turangawaewae

Features	Spiritual well-being Mental well-being Physical well being Social well-being	Spirituality Mental well-being Physical well-being Extended family Emotions Life force Unique identity Inherited strengths	Extended family Cultural heritage Physical environment Source of identity
Symbolism	A STRONG HOUSE	THE OCTOPUS	SUPPORTING STRUCTURES

11

CONCLUSION

This report covers what we see as the more significant concepts, beliefs, and principles associated with a Mäori world view – particularly as it pertains to the environment. It attempts to highlight the features and aspects of each concept as held in wide agreement in the literature. Furthermore, we have added to what was found in the literature with some analysis of our own. We have used these steps to confirm our understandings and interpretations of each concept as a basis for developing our *Kaupapa Mäori Environmental Outcxomes and Indicators Framework and Methodology* (Jefferies and Kennedy, PUCM Mäori Report 1)

'Kaupapa' and 'take' are seen as the overarching concepts, beliefs and principles that lay the foundation for tikanga. Tikanga and kawa are defined as the practices followed – based on various 'kaupapa' and 'ta'e'. A range of key 'kaupapa' and 'take' are covered in concept clusters:

At this stage, the report uses literature in the public domain. Over the course of the remainder of the *Planning Under Co-operative Mandates* (PUCM) Research Preogramme, this work will be supplemented by fieldwork and interviews with kaumätua (i.e., Mäori elders)..

Of concern to us is the degradation and decline of understanding amongst Mäori themselves of their own culture. This is, in part, reflected in the lack of understanding and shallow knowledge most Mäori have of their language – a fact reaffirmed to us at a personal level when writing this report. It is hoped that this report makes a small contribution towards Mäori reclaiming theirown 'kaupapa' and 'tikanga' and living with, and by, it into the future.

More substantially for us,, this report – likely to remain as a working draft until the end of the PUCM project in 2009 – provides a foundation from which we can move forward in our research with a greater clarity about our own understandings and interpretations of these key concepts. This provides a basis for development of our Kaupapa Mäori environmental indicators and outcomes framework and methodology.

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