

# Second generation plans: Embracing an era of partnership in treaty relations



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## Abstract

Beca Planning, Kaipara District Council and Maori have embraced an era of partnership in treaty relations in the development of the second generation District Plan for Kaipara, notified in October 2009.

Kaipara District Council has strong relationships with Maori of the District, who generally belong to two iwi or tribal runanga, Te Uri o Hau and Te Roroa. Both of these groups recently reached Treaty Settlements with the Crown.

The Deeds of Settlement provide agreed accounts of the cultural association of Te Uri o Hau and Te Roroa with the Kaipara District and resulted in the return of land from the Crown, as a form of redress.

This presents a new type of Maori land within the District. Redress land is different in land tenure to traditional Maori land. The Proposed Kaipara District Plan acknowledges this, through two Maori Purposes zones, reflecting the unique land tenure associated with traditional "Maori Land" and the new Maori land known as "Treaty Settlement Land". The Plan also uses the Deeds of Settlement to map Areas of Significance to Maori, where land has not been returned to Maori but is recognised by the Crown as having significance to Maori.

This paper has been prepared in partnership with Kaipara District Council, Te Uri o Hau and Te Roroa to highlight key steps taken in building a relationship of partnership and acknowledging the Deeds of Settlement in the District Plan.

This paper examines the benefits of this approach and its relevance in development of second generation plans.

## Introduction

Part II of the Resource Management Act (RMA), in particular Sections 6, 7 and 8, provide clear guidance to local authorities of the importance in taking into account Maori perspectives in planning and decision making processes and in the development of District Plans. Section 6(e) of the RMA requires the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga to be taken into account. Sections 6(f) and 6(g) are also relevant, relating to protection of historic heritage and customary activities. Section 7 of the RMA requires Council to have regard to specified 'other matters' when exercising its functions and powers under the Act, including regard for kaitiakitanga (in accordance with Section 7(a)). Section 8 of the RMA requires all persons acting under the RMA (including applicants, Councils and tangata whenua) take into account the principles of the Treaty of Waitangi.

Kaipara District Council and tangata whenua have a good working relationship and have a history of working in partnership. This is illustrated by the existing co-management agreement for the management of the Taharoa Domain (Kai Iwi Lakes), which involves shared governance of the Taharoa Domain with Te Roroa, Te Kuihi and the Kaipara District Council. In this arrangement, the goal is for the management of the Domain and the lakes, which are acknowledged as taonga for both tangata whenua and the wider community, to achieve a vision for the domain, including environmental sustainability.

Building on this relationship and the goals of the co-management agreement, Kaipara District Council sought to ensure that tangata whenua were part of the Plan making process, and recognised in the District Plan Provisions. This approach was seen as the best mechanism to ensure the Proposed Kaipara

District Plan fully captured the requirements of Part II of the RMA.

In order to reflect the principle of partnership between tangata whenua and Kaipara District Council in the development of the Proposed Kaipara District Plan, it was important to gain an understanding of what the recent Treaty Settlements meant for the management of resources in the Kaipara District. In particular, Kaipara District Council sought to identify which RMA tools could be used to incorporate the relevant aspects of recent Treaty Settlements into the District Plan.

### **The approach to the Plan development included:**

Early involvement by Kaipara District Council in hui with local tangata whenua to identify and scope the resource management issues of importance to them. In response to the feedback received, Kaipara District Council invited Te Roroa and Te Uri o Hau to develop draft objectives, policies and methods for the Plan to reflect their issues. Te Roroa and Te Uri o Hau jointly commissioned consultants to assist in this work. As an outcome of this work, a number of Issues, Objectives and Policies for the use of Maori land were clearly identified. In doing this work, Te Uri o Hau and Te Roroa also highlighted issues and objectives specific to the new type of Maori land that have come about as a result of the Treaty Settlements. The main concern to Iwi was that the Treaty Settlement process was not well understood by many in the District. This meant the resource management response may have been misguided. For example, there was concern that restrictions already imposed on the land by the Deeds of Settlement could present problems for the effective management of their land if not adequately accounted for in drafting of a new District Plan.

These issues and a draft of the Maori Purposes Chapter were presented to the Kaipara District Council and Beca at a hui in May 2009. This was a critical point in the process as Kaipara District Council were working towards a notification date of October 2009 and the Maori Purposes Chapter still had a lot of work to be completed to recognise the unique land tenure of Maori Land in the District. It was important to develop a chapter that was consistent with the new effects based approach the Plan was taking. The hui was a valuable turning point in the process as it clarified why Maori Land was different to Treaty Settlement Land (and that both were different from other land in the District). On this

basis, there was a common agreement that the District Plan provisions explicitly provide for this land and seek to enable the effective use and development of this land for Maori.

Beca was then left with the task of gaining a more detailed understanding of how the Maori Purposes Chapter could be incorporated into the Plan.

### **Key research undertaken**

The following provides a summary of the work undertaken by Beca on behalf of Kaipara District Council, with Te Uri o Hau and Te Roroa in drafting the Maori Purposes Zone: Maori Land and Treaty Settlement Land Chapters in the Proposed District Plan.

### **Review of the Deeds of Settlement**

Copies of the Deeds of Settlement were downloaded from the Office of Treaty Settlements Website: [www.ots.govt.nz](http://www.ots.govt.nz)

The Deeds of Settlement are a useful tool for District Plan development, particularly in recognising Part II of the RMA. These documents provide a range of information relevant to District Plan processes including:

- an agreed historical account of Iwis' association with the area;
- identification (including legal descriptions) of areas of significance to Maori (areas used for food gathering, pa sites, burial grounds);

The Treaty Settlement land was extensively surveyed to ensure that all areas of conservation value were covenanted and protected before the land was returned. Details of all of this information are contained within the Deeds of Settlements and recorded in the Titles of the properties as covenants.

### **Review of what other Councils were doing to incorporate Treaty Settlements into District Plans.**

Beca undertook an online review of other District Plans where Treaty Settlements had recently been granted to see how other Councils had incorporated Treaty Settlement land in their District Plans. Some examples were found in the South Island where Ngai Tahu were granted settlements with the Crown – provision had been made for recognition of Nohoanga areas through District Plan rules.

However, on the basis of this review no examples were found that comprehensively incorporated Treaty Settlements into a District Plan. This is likely in part to be a factor of the timing of District Plan Reviews with the Treaty Settlement process.

Not long after the hui in May 2009, there was a RMLA Seminar held on the incorporation of RMA instruments in Treaty Settlements presented by Katie Mayes, Environment Waikato, Bronwyn Arthur, RMA Specialist involved on behalf of Crown Law Office on the Waikato River Settlements, and Paul Majurey, Senior Law Advisor to the Ministerial Technical Advisory Group on the RMA.

The team working on the Kaipara District Plan Review attended this seminar to see what other Councils and agencies might have been doing to help find some useful tools for the Proposed Kaipara District Plan. The key outcomes of this presentation were that while there are a number of agencies and groups very keen to develop RMA instruments as a result of Treaty Settlements, it was still very difficult to achieve. Reasons cited at the session included the following:

- 1 That there are usually a number of iwi / hapu associated with a particular area and they each have different cultural values associated with those areas;
- 2 There are many iwi at differing stages in the Treaty Settlement process; and
- 3 The need for strong relationships between tangata whenua groups and Council prior to embarking on the process.

As a result of this seminar it became clear that Kaipara District Council was in quite a unique situation, with their two main iwi groups having reached Treaty Settlements and already working together to develop the District Plan in partnership with Council.

### **RMA Tools for Incorporating Deeds of Settlement into the District Plan**

Kaipara District Council being a predominantly rural district with a small ratepayer base of approximately 19,000 has limited resources available to implement their District Plan. Therefore it was important in developing the District Plan to make it as user friendly as possible and to provide as much information within the Plan as possible.

In addition to the draft chapter Issues, Objectives and Policies that had already been developed by Iwi for the Plan, a number of other tools were identified by Beca that would assist both Iwi and Kaipara District Council in their implementation of the District Plan and to provide clear guidance to those wishing to develop land within the Kaipara District as to where they would need to involve Iwi and why.

### **Development of a Tangata Whenua Strategy and specific provisions relating to Part II matters in the District Plan**

#### **Development of a Tangata Whenua Strategy for the District Plan.**

A Tangata Whenua Strategy was written in Chapter 5 to provide an overview of how Part II of the RMA and Sections 6, 7 and 8 had been given effect to. In particular, the chapter provides an overview of the District Wide Issues for the tangata whenua of Kaipara. This Chapter provides Objectives and Policies to respond to tangata whenua resource management issues in the District. While this Chapter contains methods, it does not contain 'rules'. The Outcomes sought in this Chapter are therefore achieved through land use and subdivision rules and performance standards in other Sections of the Plan. In particular, this includes the Maori Land and Treaty Settlement Land Zone Chapters, (Part B of the District Plan) but also the Heritage Chapter.

#### **Maori Purpose Chapters (Chapter 15A – Maori Land and Chapter 15B – Treaty Settlement Land).**

The issues, objectives and policies prepared by Iwi were used as the starting point for these chapters. Where relevant, other Rural Issues, Objectives and Policies were also brought across to ensure a consistent approach to development of Rural Land within the District. The additional issues, objectives and policies identified by Iwi provide additional guidance on the additional restrictions and values associated with the land.

Generally the rules for the Maori Purposes chapters are the same as the Rural Zone, however specific provision is made for Papakainga housing and other traditional land uses, such as Marae, within the rules. In all other cases, the development rights are the same as for Rural Land. However, in addition the objectives and policies provide an alternative framework for assessing resource consent

applications and give specific recognition to issues e.g. Objectives and Policies which give specific recognition to the settlement and use of Maori Land in accordance with matauranga maori and tikanga. While the Treaty Settlement Land retained many of the subdivision and development principles of the general Rural Zone, this was not the case for the Maori Land Zone, which does not include provisions for subdivision as this is administered under the Te Ture Whenua Maori Land Act. This approach was considered an appropriate balance, demonstrating consistency in approach for Maori and other land, but also providing specific recognition to the particular and unique resource management issues for this land.

## Heritage Chapter

Kaitiakitanga is recognised throughout the District Plan and is provided for through 'Areas of Significance to Maori', which includes areas of Nohoanga, Te Tarehu or Kirihipi, Statutory Acknowledgements, Special Protocols between government agencies and iwi, or Deeds of Recognition that have been registered on the titles of Crown owned land as a result of the Treaty Settlement process.

Consultation with Maori and recognition of their role as Kaitiaki in the resource consent process where "Areas of Significance to Maori" are affected is important and has been translated into the Rules of the Plan.

## District Plan Maps

It was important that Part II matters could easily be identified in the Plan. As the Deeds of Settlement provide legal descriptions of land and state its particular importance, it was very easy to map this. Key mapping was undertaken:

- **Maori Land was mapped as its own zone** – this was a roll over from the Operative District Plan which already provided for Maori Land as separate to Rural Land in recognition of the unique land tenure associated with Maori Land as it is administered under the Te Ture Whenua Maori Land Act.
- **Treaty Settlement Land was mapped as its own zone** – this was all land returned to Maori through the Treaty Settlement Process. This includes all Cultural and Commercial Redress

land. This land is different to traditional Maori Land as it is administered under the NZ Land Title System and has the potential to be sold. The legal description of all land returned to Iwi through the Treaty Settlement Process is documented in the Deeds of Settlement and was easy to map.

- **Areas of Significance to Maori were mapped.** Sites, Features and Units Maps identified all other land in the Deeds of Settlements identified as being significant to Maori but still owned by the Crown. These areas require consideration of Kaitiakitanga for activities on, or adjacent to this land.
- **Tangata whenua input** was sought on the the naming of places on the District Plan Maps.

## What are the benefits of incorporating Treaty Settlements into District Plans?

The benefits of this approach are that Council meets its RMA requirements, tangata whenua have worked in partnership with Council to develop their chapters, and their involvement in the RMA process is clearly defined in the Tangata Whenua Strategy and objectives, policies and methods of the Plan.

Practitioners and the public also have a clear understanding of why certain areas are important to Maori and understand when they need to involve tangata whenua in the process.

This reduces any risk to Council of appeals on the Plan chapters, gives tangata whenua recognition in the Plan in accordance with the agreed account between them and the Crown detailed in their Deeds of Settlement. Practitioners and the public have a clear understanding of how to meet their requirements under Section 6, 7, and 8 (Part II of the RMA).

It should be noted that Te Uri o Hau and Te Roroa are the two major hapu and iwi groups within the Kaipara District who have reached Treaty Settlements with the Crown. There are other groups within Kaipara that may reach settlements over time and there is provision for these settlements to be incorporated into the District Plan through future Plan changes.

## Where are we at in the Process?

The Proposed Kaipara District Plan was notified on 21 October 2009, and submissions closed on 18 December 2009. These have now been summarised into a Summary of Submissions Report and at the time of writing the Further Submissions were underway.

As a result of submissions a few issues have arisen that are being worked on further. In general the chapters received positive submissions in support of the approach taken by Kaipara District Council in developing the chapters. Council is now progressing work to resolve the subdivision provisions for the Treaty Settlement Zone. In particular, investigation is underway on how the Environmental Benefit provisions can be applied to Treaty Settlement land, recognising that features of environmental value have already been mapped, covenanted and separately titled during the Treaty Settlement process. We are looking at further options, including consideration of whether Transferable Development Rights could work more effectively.