

**Mahaanui Kurataiao Ltd**

**ASSESSMENT OF IMPACTS ON  
RANGATIRATANGA AND TREATY  
PRINCIPLES - POSITION  
STATEMENT**

**DEPARTMENT OF CORRECTIONS/ARA  
POUTAMA AOTEAROA - BRISTOL STREET  
CORRECTIONS REHABILITATIVE AND  
REINTEGRATIVE SUPPORT FACILITY**

**14 Bristol Street, St. Albans - Christchurch**

# Introduction and Summary

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This Assessment of Impacts on Rangatiratanga and Treaty Principles - Position Statement records the stance and views of the mana whenua, Te Ngāi Tūāhuriri Rūnanga, in respect of the Department of Corrections/Ara Poutama Aotearoa proposal for establishment of a residential facility to provide rehabilitative and reintegrative support programmes at 14 Bristol Street, St. Albans.

Te Ngāi Tūāhuriri Rūnanga as mana whenua are the authority exercising rangatiratanga over the takiwā containing the proposed facility.

This Position Statement:

- outlines the purpose and status of this document for Council decision makers;
- includes a summary of the relevant legal framework; and states the current position of the Rūnanga in relation to the proposed rehabilitation support facility.

In summary this statement records the non-opposition of Te Ngāi Tūāhuriri Rūnanga to the granting of consents and changes required to establish the programme facility.



## Purpose of this Statement

This Mana Whenua Position Statement records the position and views of Te Ngāi Tūāhuriri Rūnanga in response to the proposed rehabilitation facility. It is a living document and will be updated as required to respond to changing circumstances.

This statement addresses the consistency of the proposal with the principles of Te Tiriti o Waitangi and provides guidance on the actions required to adhere to those principles. It addresses the requirements in the Resource Management Act 1991 (RMA) for persons exercising functions and powers under the RMA to:

- a) recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6(e));
- b) have particular regard to kaitiakitanga (section 7(a));
- c) take into account the principles of the Treaty of Waitangi (section 8).

The position and interests of Te Ngāi Tūāhuriri Rūnanga are informed by Te Tiriti, on the basis that Te Tiriti;

- is the founding constitutional document for Aotearoa New Zealand;
- is the foundation on which the governing systems and structures are based;
- is the primary nexus between tikanga Māori and the laws of England, which today form the laws of New Zealand; and
- guaranteed for Māori tino rangatiratanga, the unqualified exercise of chieftainship, over lands, villages, and all their property and treasures.

This Statement is to be accorded the status of:

- a planning document recognised by an iwi authority under section 61(2A)(a) [RPS], 66(2A)(a) [regional plan], 74(2A) [district plan] of the RMA
- an official position statement of Te Ngāi Tūāhuriri Rūnanga.
- an assessment of impacts on Rangatiratanga, Te Tiriti principles, rights and interests, in lieu of an assessment of impact on 'cultural values' for the purposes of:
  - preparing an Assessment of Environmental Effects in accordance with section 88(2)(b) and Schedule 4 of the RMA
  - a request for further information in order to assess an application under section 92 of the RMA
  - providing information to assist in determining notification status under sections 95 to 95F of the RMA
  - providing information to enable appropriate consideration of the relevant Part 2 matters under section 104 of the RMA
  - consideration of appropriate conditions of resource consent under section 108 of the RMA

This Statement is a standalone document and is not an assessment of impacts on cultural values and interests. Such assessments may not inform a changing description of the proposed activity over time, or accurately reflect the position of Te Ngāi Tūāhuriri Rūnanga.

This Statement is not limited by the requirements of the RMA or any other legislation but should be used to inform the assessment of the proposal at 14 Bristol Street against the principles of Te Tiriti, and other statutory assessments.

## The Proposal

### Summary

The Department of Corrections are looking to establish The Bristol Street residential programme has been developed by the Department of Corrections as a means of providing holistic rehabilitative and reintegrative support for men on home detention or serving community-based rehabilitation sentences. The programme involves short-term accommodation (a maximum of 22 weeks) for up to 16 men, who would then engage in a bicultural therapeutic programme during their stay.

The development of the programme is based upon a rehabilitation residence in Hamilton, referred to as a Tai Aroha. The residential service facilitates a form of rehabilitation and therapy stemming from reconnecting the residents with their sense of cultural identity: their whānau, hapū, and iwi. The bi-cultural premise of the programme is considered an essential component of the programme, and incorporates the Department's Māori Strategic Plan which emphasises that the effectiveness of programmes for Māori offenders can be linked to the inclusion of Māori values, principles and practices.

The Bristol Street programme will primarily focus on those identified as high risk for reoffending and those who have long-standing personal or iwi links to Christchurch. As with Tai Aroha, the integration of Māori values, concepts and customs have been highlighted as a critical component of the programme. Mātauranga Māori such as haka, pepeha, whaikōrero, waiata, toi Māori, and karakia are used to increase cultural interest and capability; while broader tikanga Māori processes like mihi whakatau, and marae and hui tikanga are emphasised as the critical context for this knowledge. In doing so, some of the key underlying values and principles of te ao Māori are reinforced and used as a means of connecting and reconnecting with others.

The application states that as Māori values, concepts and customs are to be integrated throughout the programme - an inclusive and safe environment regardless of cultural affiliations is to be provided.



Map – Bristol Street, vicinity of Little Hagley Park Reserve

## Information provided

- Proposed Ōtautahi Tai Aroha programme expansion description summary.
- Client hui and emailed correspondence.

# The Legal Framework

The legal framework from which this Statement is informed includes a number of different sources of statute and common law. A brief summary of this framework, relevant to the rehabilitation support facility proposal is set out below.

## Principles of Te Tiriti o Waitangi

The principles of Te Tiriti have evolved over time and will continue to evolve. Te Tiriti is a living document and must be interpreted in a contemporary setting. The relevant principles will vary depending on the context and issues and are significant for determining the appropriateness of the proposal at 14 Bristol Street, and the process followed.

In the context of the proposal, the following principles are relevant to territorial local authority (as agents of the crown) decision-making (procedurally and substantively).<sup>1</sup>

- The acquisition of sovereignty in exchange for the protection of rangatiratanga.
- Partnership: each party to the Treaty is required to work together and owes the other a duty to act reasonably and in good faith.
- Freedom of the Crown to govern: The Crown has the authority to make laws for good order and security of the country, subject to any duty imposed on the Crown by its responsibilities and obligations to Māori preserved under Te Tiriti.
- Duty of active protection: The Crown has a duty to actively protect Māori interests in the use of their lands and waters.
- Duty to remedy past breaches: The Crown has a duty to grant some form of redress where the Waitangi Tribunal finds merit in a claim.
- Retention of rangatiratanga: the right of Māori to exercise full iwi authority and control over their lands, resources and taonga.
- Duty to consult: the responsibility to act in good faith and reasonably puts the onus on the Crown to make an informed decision, generally requiring consultation.

## Ngāi Tahu Claims Settlement Act 1998

The Ngāi Tahu Claims Settlement Act 1998 enshrined in law the agreements recorded in the Ngāi Tahu Deed of Settlement. Of relevance to the proposal at 14 Bristol Street:

- The Crown apology acknowledged that injustices WERE suffered by Ngāi Tahu, recording:
  - the Settlement does not “*diminish or in any way affect the Treaty of Waitangi or any of its Articles or the ongoing relationship between the Crown and Ngāi Tahu ... or undermine any rights under the Treaty*”
  - the Settlement marks “*a new age of co-operation with Ngāi Tahu*”.
- Ngāi Tahu is recognised as tāngata whenua of, and holding rangatiratanga within, the Ngāi Tahu takiwā.
- Rights and interests afforded to Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998 must not be eroded by the proposal at 14 Bristol Street.

## Te Rūnanga o Ngāi Tahu Act 1996

The Te Rūnanga o Ngāi Tahu Act 1996 establishes Te Rūnanga o Ngāi Tahu as the representative of Ngāi Tahu Whānui. The Crown and every person whose rights are affected by any provision of the Act, including body politics and corporates, are bound by the Act. Te Ngāi Tūāhuriri Rūnanga (the modern assembly of Ngāi Tūāhuriri, a primary hapū of the iwi Ngāi tahu) is one of the 18 Papatipu Rūnanga that collectively make up Te Rūnanga o Ngāi Tahu.

## Te Rūnanga o Ngāi Tahu (Declaration of Membership) Order 2001

This order is supplementary to the above act and superseded schedule one of said act. The Papatipu Rūnanga and their respective takiwā are set out in this order. Te Ngāi Tūāhuriri Rūnanga is thus established as Papatipu Rūnanga of Ngāi Tahu.

## Relationship of Te Tiriti o Waitangi with:

### **The Resource Management Act 1991**

The requirement in section 8 of the RMA to have regard to Te Tiriti has both procedural and substantive implications for RMA decision-making.<sup>7</sup> The duties in the RMA in respect of the relationship of Māori, kaitiakitanga, and the principles of the Treaty, are strong directions to be addressed at every stage of the planning process.

## The Local Government Act 2002

Section 4 of the Local Government Act 2002 states:

*“In order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.”*

These principles and requirements are intended to facilitate participation by Māori in local authority decision-making processes in order to give effect to the Crown's obligations under Te Tiriti. The Local Government and Environment Select Committee in its report to Parliament on the Act clarified that:<sup>14</sup>

*“The ... clause makes clear that Treaty responsibilities lie with the Crown, which is the Treaty partner. **When powers are delegated to local authorities, requirements need to be put in place to ensure that the Treaty is observed.** The clause 12 principles and a set of mechanisms in Part 2 and Part 5 have been included in the bill in order to give effect to the Crown's obligations.”* [emphasis added]

This approach accords with the principle that the Crown cannot evade its obligations under the Treaty by conferring authority on some other body that is inconsistent with the Crown's Treaty obligations.

### Partnership with local authorities

Parts 2 and 6 of the Local Government Act 2002 are intended to facilitate participation of Māori in local government. Local government has therefore been charged with the responsibility to provide opportunities for Māori to contribute as partners to decision-making processes.

While there are general requirements for consultation contained in the Local Government Act 2002, the requirement to consult with iwi in accordance with the principles of Te Tiriti is relevant to the duty to be informed and the principle of good faith, but is not an end to itself. Partnership requires an equitable relationship, where the partners act reasonably, honourably, and in good faith.

## Scope of Consideration

### Context

The facility will sit within an established residential area and reutilise an existing dwelling. Subsequently, there will be no earthworks, or activities that may adversely affect the receiving environment or disturb wāhi tapu and wāhi taonga.

The programme coordinators are interested in how appropriate tikanga can be utilised in the facility. A collaborative approach forward with mana whenua is desired through the development of the Tai Aroha programme. It is hoped the partnership will assist in the creation of further successful outcomes.

The facility will be located in St. Albans near to Rehua Marae. There is potential for an affiliation or link with the marae to be created.

### Rangatiratanga

Ngāi Tahu is the collective representation of whānau and hapū who share a common ancestry and are mana whenua of Canterbury (and most of the South Island). They hold ancestral and contemporary relationships with the lands, waters, and ecosystems of Canterbury.

Mana whenua are the hapū or whānau who hold customary authority over the resources of an area or takiwā. Mana whenua is determined by whakapapa (ancestral links) to an area and maintained by ahi kā (continuous occupation of the area). Associated with mana whenua status are the rights and duties of rangatiratanga and kaitiakitanga. Therefore, it is those who hold mana whenua status who speak on behalf of and make decisions about their takiwā.

Tau (2017) states that “..Tino rangatiratanga means that the chief and the hapū have full authority over the resource...”, therefore Rangatiratanga can be equated with authority and control. Rangatiratanga was restored to Ngāi Tahu via the Crown’s apology to Ngāi Tahu and is legislated for within the Ngāi Tahu Claims Settlement Act 1998.

Ngāi Tūāhuriri hold Rangatiratanga over the Urupā, Koiwi Tangata, waters, habitats, species and taonga within this takiwā, including the project area. Activities to the detriment of these items constitutes an impact on Rangatiratanga.

## Treaty Principles

The treaty principles listed in the previous section, and the associated impacts are given below:

- The acquisition of sovereignty in exchange for the protection of rangatiratanga - *the rangatiratanga spoken of here relates to the authority and control over ngā taonga Ngāi Tūāhuriri, including: - species, lands, waters, open sky (low artificial light emission due to minimum population settlement densities and passage frequency) and atmospheres.*
- The Treaty established a partnership and imposes on the partners the duty to act reasonably and in good faith - *Mana whenua of Te Ngāi Tūāhuriri Rūnanga and Christchurch City Council have various engagement forums. And the relevant decision-making elements of both parties are required to make decisions in good faith.*
- The freedom of the Crown to govern – *The Crown agent being the Christchurch City Council is able to administer and resource appropriate governance and management structures and procedures. These same structures are to be in partnership with mana whenua who will ensure and assist the crown agent to fulfil its requirements to give effect to treaty principles.*
- The Crown's duty of active protection – *The crown agent is to actively protect, through governance, management and operational procedures, not only the taonga entities themselves but also mana whenua access, engagement, sustainable harvest and traditional use of taonga materials. Decisions made in respect of this proposed project are to protect Ngāi Tūāhuriri authority (incl. species and habitats) and any koiwi and taonga tuturū associated with the project area.*
- Crown duty to remedy past breaches – *When the crown apologised and signed the deed of settlement 1997 and ratified the Ngāi Tahu Claims Settlement Act in 1998. Historic claims comprising Te Kereme were largely settled via financial compensation and cultural redress items.*
- Māori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges and privileges of citizenship – *as previously stated, Rangatiratanga equates to authority and control over taonga. Therefore, the position recorded in this assessment equates to an exercising of Rangatiratanga of Ngāi Tūāhuriri within the context of the decision-making associated with the project proposal considered.*
- Duty to consult – *As previously mentioned partnership structures have been established to address this.*

Ultimately the resulting consent(s) should set conditions that give effect to treaty principles.

## Ancestral associations and additional context

The Māori history associated with the project area, and broader landscape area, is immense. Authoritative accounts of this history can be found in the following titles:

- Tau, R.T.M., Anderson, A.J. (eds.) (2008) *Ngāi Tahu: a migration history - the Carrington text*. Bridget Williams Books, Wellington; Te Rūnanga o Ngai Tāhu, Christchurch.
- Anderson, A.J. (1998) *The Welcome of Strangers: An ethnohistory of southern Maori 1650-1850AD*.

Additionally, Bristol Street is in the vicinity of the former Māori reserve lands at Little Hagley Park. The primary kainga nohoanga for Kaiapoi Māori, along with whanau from other parts of Te Tai o Mahaanui, when travelling to trade with the settlers at Market square. The reserve was disestablished due to the opposition of community groups and elements within local government ('Maoris angry over Little Hagley Park 'reserve', *The Press*, 7.7.1976, p.17)

## Mahinga Kai

Sustaining food sources for the physical and cultural health of future generations, and supporting manaakitanga (hospitality and reciprocity), is of paramount importance.

## Recommendations

### Rūnanga Position

Consultation with kaitiaki and assessment of the proposal against the relevant policies in the Mahaanui Iwi Management Plan (IMP) have informed the recommendations set out below.

The Department of Corrections have sought guidance on the below matters:

- Who should be approached to deliver the tikanga module for the programme
- Do the Runanga wish to participate in the selection panel to choose the tikanga module provider?
- How might the provider engage with Rehua marae and how they might work with them in an on-going manner?
- How to engage with the local community and wider stakeholders

- Working with Corrections to incorporate Ngāi Tahu kawa into the design of the programme.
- Naming the programme
- Participating in the referral panel that determines who is placed in the programme.
- Participating in employment selection panels
- Participation in regular reviews of the programme

The programme will be targeted primarily at men who have long-standing personal or iwi links to Christchurch.

Recommendations made by the kaitiaki are as follows:

- An option to name the facility. Naming of the facility would be a process undertaken by the Upoko of Te Ngāi Tūāhuriri Rūnanga, Te Maire Tau, and facilitated via Mahaanui Kurataiao.
- Nomination of a tikanga advisor - the Rūnanga may wish to assign a tikanga advisor to the project.
- Any activities associated with the implementation of this proposal should be managed to avoid adverse impacts on ecological processes, particularly waters, species or habitats.
- The return of native and endemic species is in keeping with Māori tikanga of improving the current state of the environment. Landscaping utilising indigenous species should be established on site to create urban habitat for taonga species, allowing for the provision of mahinga kai while also ensuring participants can establish a connection to the whenua.
- Mahinga kai is a source of mana and an integral part of Ngāi Tahu culture. Opportunities to enhance, and advocate for, biodiversity and mahinga kai should be explored within the urban landscape.

## Rūnanga Position

Based on analysis of the information provided, Te Ngāi Tūāhuriri Rūnanga, exercising its Rangatiratanga, does not oppose the granting of the required consents for the Department of Corrections Bristol Street project. Further engagement with Ara Poutama will be at the discretion of Te Ngāi Tūāhuriri Rūnanga.



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