



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

SPEECH

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Minister in Charge of Treaty of Waitangi Negotiations

EVENT: 1998 Local Government New Zealand Conference

**VENUE: Town Hall
Dunedin**

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EMBARGOED UNTIL DELIVERY

It is a pleasure to be with you today and I wish you well with your deliberations. I have been asked to share with you some insights on how the Treaty of Waitangi relationships are developing, what part local government has in that, what the future may be for the Crown/Maori relationship and the effect of that on all of us. I am happy to attempt to do so recognising that there are many different views and the topic is a complex one.

Most countries, if not all, have a minority culture. As often as not, there will be a number of what academics call "servient systems" within what they call the "dominant system". Put more simply, in any given society there will be a majority culture and one or more minority cultures. In a democracy the will of the majority will prevail, and there is therefore always a risk that minority rights and interests are either ignored or at least forced to submit against their will. Thus tension is inevitably present. In a civilised society protection is given the servient culture to a greater or lesser extent. If it is not there is a risk of extinction of that culture, and, as few of us like being extinguished and absorbed into an alien culture, it can sometimes tragically lead to protest, peaceful perhaps at first, then violent, and even civil war. I do not think that is overstating the risk although clearly the degree of risk varies from country to country.

In New Zealand various governments almost from the time of the acquisition of sovereignty until only about 30 years ago, followed a deliberate policy of assimilation of the Maori into an Anglocentrically dominated culture. We were not alone in that. Others adopted similar policies. It is not necessary to be critical about the approach which may well have been thought to have been sensible for the country as a whole. But of course it is doubtful whether Maori were asked whether they wished to be subsumed. Were they to be asked, they may have been distinctly unhappy as we would have been in like circumstance. In recent years many countries including ours have concluded that that approach was not only unfair but foolish. Rather the differences between peoples should be valued, respected, and tolerance of other cultures encouraged. We could and should learn from each other. No one culture had the right to claim some absolutist superiority.

As a result of this change in attitude, the Maori culture, which had been under a sentence of death for so long, began a revival which provides evidence that shows that fortunately we had not gone so far as to make this impossible. With this revival came a renewed hope that perhaps justice might be achievable for the losses and sufferings of a colonial era. Of course there have always been Maori protests since the time the suffering began. But it was subdued, acquiescent, modest, polite, and hidden. Now protest became more visible, there were land marches and occupations including that at Bastion Point. Sometimes vandalism occurred. But one reason for all of this was that there was no forum where these grievances could be aired. The rights and guarantees in the Treaty were unenforceable in the Courts.

In 1975 the Waitangi Tribunal was established and has, in the intervening years, reported on many claims. Its task is to determine when and where the Crown breached its Treaty obligations. It can then make recommendations as to how the prejudice suffered as a result might be removed. These recommendations are not binding unless they relate to the return of land presently or originally owned by SOEs or certain forests. It is up to the claimants and the Crown to try to resolve the claims where they are held valid, not only to do justice for actions of the past, but to restore a fruitful and positive relationship between a given iwi and the Crown.

These negotiations and settlements are not all that is involved. The provision of health, education and welfare services need not all be delivered in the same way if it is clear that better results will be achieved by a flexible approach. The delivery of such services to Maori and other cultures may well take into account different criteria - not in entitlements, but in the way those entitlements are actually delivered. We are making good progress here. The relationship between Maori and the government is progressing well.

But of course it's not just the government that has had to reconsider its attitudes and positions. It is also for local government and indeed each of us individually to think again and to work out ways to achieve harmony within any given community. We cannot continue any longer to think everyone is the same. We are not. So those of us both in central and local government who exist to serve our fellow citizens have the

burden of generating goodwill, tolerance and an understanding of those differences. And just as central government has tried to do this so too have many local bodies. The relationship between local iwi and local government in many regions is very good and in others is improving by the day. There are probably one or two yet to turn their minds to it.

What should that relationship be in an ideal situation? It might be helpful here to see the issues as first the problems of the past, and second the challenges of the future. Claims that the Crown breached its obligations to Maori in the past are claims against the Crown and no one else. But having said that, unfortunately it is not quite so simple. Let me give an example. The Crown confiscates land from Maori. If the Crown still holds the land then it is capable of being returned. We have made it clear that privately owned land cannot be available (unless the owner sells it to the Crown on the open market and it is subsequently used which is very rare but unobjectionable). But what about local body owned land? The answer is that the Crown treats that as private land and indeed in 1993 defined it as such by amendment to the Treaty of Waitangi Act to make sure that it could not be made subject to a recommendation by the Tribunal. It is different however for Crown land vested in the local body as administrator. There are many reserves which come into this category. They are owned by the Crown which can revoke the vesting order and use it in settlements. We would of course discuss any such proposal with the local body concerned. Of course that is not done lightly and, if it is, there will normally be covenants to protect existing public rights of access and use. They may be returned as freehold but, more normally will be vested in the tribe as administrators in your place. Some of you may be asking yourselves why bother then to return it at all. The answer is that in most of the claims the return of land, particularly when it had been unjustly acquired by the Crown in the first place, is absolutely critical if any settlement is to be reached. I have to say that in my experience the claimants rarely raise any objection to the continuation of public access rights unless it is an urupa or other wahi tapu which has over time been desecrated.

You may have taken from what I have said so far, that if a local body owns the freehold then it has no obligation whatever to Maori who may seek its return. It is true

that there is no legal duty to return it although I should tell you that Maori not surprisingly do not accept an inability to force the local body to return it, and a court may ultimately hold that they are right. But assuming for the moment that a local body is not obliged to return the land, nevertheless it may consider that it is in the interests of the community it serves to consider doing so either at market value or something less. It may for example come to the conclusion that a pa site of inestimable value to the local iwi and which is lying dormant could and should be returned if it had been expropriated from the iwi wrongly in the past. We, at central government level will always do our best to resolve the claims fairly. We have the primary responsibility. But if we cannot access what is critical to the claimant because it is owned by the local body then the durability of any settlement may be at risk. We need your help and understanding here. After all, it is in every one's interest that the settlement is as fair as possible and that settlements do not lead to relitigation later. In summary you are neither central government or private owners in the normal sense of those words. You are called local government. You can help in the settlement process. You can sometimes make all the difference. In this I seek your co-operation.

Most of you will be more concerned about your obligations under the Resource Management Act under which you may be required to consult with local iwi. I am not unaware of the problems this duty sometimes incurs. You may not know with certainty with whom you are meant to consult. You may be tempted to tell a would-be developer to do the consultation itself and simply suggest, rather hopefully, who the iwi might be. If the iwi extracts some consideration for its co-operation in a resource consent application you would rather not know. And for some the real problem is what weight to give iwi concerns particularly if they seem a little ephemeral or couched in spiritual terms. Well you have been elected to do a job. Sometimes the cause of all the problem is a lack of knowledge on the part of the local body or the developer. It may not be appreciated that there is a burial ground in the middle of a block being subdivided and before anyone knows it, the bulldozers have moved in and it's gone for ever.

In the Ngai Tahu settlement the parties worked hard to find a way through this. You may be aware that we developed a statutory acknowledgment regime. Under this Te

Runanga o Ngai Tahu (TRONT) nominated a number of sites of great importance to them, to which the Crown agreed. They set out in detail their views as to why that is the case. Those details are set out in the settlement legislation for all to see and the specific areas concerned are described as 'statutory areas'. They may be rivers or lakes or wetlands, or land sites such as mountains. The Crown has accepted that these are sites of great cultural and traditional significance to Ngai Tahu and has acknowledged statements by TRONT as to what that significance is. The settlement legislation will require that information regarding the statutory areas be attached to relevant plans. The local authority can adopt the statutory areas as part of the plan, if it wishes to do so. A summary of any resource consent application related to the statutory areas must be sent to TRONT. When deciding whether or not to notify the application the fact that it relates to a statutory area is something to which the consent authority must have regard.

Ngai Tahu can object to the application in the usual way as can anyone affected, but their objection has no greater weight than any other. The Council retains the right to make the final decision. So it is not a veto right or anything of the kind. It is designed to help in two important ways. First, to help raise the consciousness of consent authorities as regards the interest of local Maori in certain sites and to clarify what that interest is. This will assist greatly in defining potential problems before they arise. Second, it will assist councils in knowing whom they may need to contact regarding an application. It is likely this precedent will be used elsewhere.

I have tried to briefly explain where the Crown is coming from and the respective roles each of us have to play. We must never forget that by and large we all want the same thing. We want to protect the ecology for future generations. We do not want to negligently destroy our country's heritage both Maori or non Maori. We can only succeed in doing this if we work together co-operatively so that our period of trusteeship of power can result in the betterment of the generations of New Zealanders yet to come.