

Absolutely Positively
Wellington City Council

Me Heke Ki Pōneke

Ordinary Meeting of Kōrau Tōtōpū | Long-term Plan, Finance, and Performance Committee Supplementary Agenda

9:30 am Rātū, 17 Hakihea 2024

9:30 am Tuesday, 17 December 2024

Ngake (16.09), Level 16, Tahiwī

113 The Terrace

Pōneke | Wellington



**KŌRAU TŌTŌPŪ | LONG-TERM PLAN,
FINANCE, AND PERFORMANCE
COMMITTEE
17 DECEMBER 2024**

**Absolutely Positively
Wellington City Council**
Me Heke Ki Pōneke

Business

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A. General Business

COUNCIL SUBMISSION FOR THE PRINCIPLES OF THE TREATY OF WAITANGI BILL

Kōrero taunaki | Summary of considerations

Purpose

1. The purpose of this report is to confirm the Council's submission to Parliament on the Principles of the Treaty of Waitangi Bill, due 7 January 2025.

Strategic alignment

2. The most relevant community outcomes, strategic approaches, and priorities for this paper include:

Community outcomes:

- Cultural Wellbeing - A welcoming, diverse and creative city.
- Social Wellbeing - A city of healthy and thriving whānau and communities.

Strategic approaches

- Integrating te ao Māori.

Priorities

- Celebrate and make visible te ao Māori across our city.

Relevant previous decisions

3. There have been no relevant previous decisions.

Significance

4. The decision is **rated high significance** in accordance with schedule 1 of the Council's Significance and Engagement Policy.
5. The submission is rated high significance due to the importance of te Tiriti / the Treaty and its principles to Wellington City and the significant levels of public interest in the Bill.

Financial considerations

Nil Budgetary provision in Annual Plan / Long-term Plan Unbudgeted \$X

6. The decision in this report is to approve the submission and does not involve financial commitments from the Council.

Risk

Low Medium High Extreme

7. The internal strategic risk of ‘inadequate partnership practice’ (identified in the Council’s Strategic Risk Register) is relevant to this submission. The submission underscores the critical role te Tiriti / the Treaty and its principles have in supporting the Tākai Here partnership agreement between mana whenua and the Council.

Authors	Kristine Ford, Principal Policy Advisor Arihia McClutchie, Pou awaha
Authoriser	Andrea Reeves, Chief Strategy and Finance Officer Karepa Wall, Chief Māori Officer

Taunakitanga | Officers’ Recommendations

Officers recommend the following motion:

That the Kōrau Tōtōpū | Long-term Plan, Finance, and Performance Committee:

1. Receive the information.
2. Approve the submission.
3. Agree to delegate authority to the Chief Executive to make amendments to the draft submission (Attachment 1) to reflect any feedback of the Kōrau Tōtōpū | Long-Term Plan, Finance and Performance Committee.

Whakarāpopoto | Executive Summary

8. The purpose of this report is to seek approval for the Council’s submission (Attachment 1), which:
- a) strongly opposes the Principles of the Treaty of Waitangi Bill currently before Parliament;
 - b) reaffirms that te Tiriti o Waitangi / The Treaty of Waitangi forms the foundation of local government’s core responsibilities; and
 - c) affirms its opposition in alignment with Tākai Here partners as our Tiriti / Treaty partners.
9. On 7 November 2024, the Principles of the Treaty of Waitangi Bill (the “Bill”, Attachment 2) was introduced to Parliament as part of the 2023 coalition agreement between the National Party and ACT, with NZ First also supporting its first reading.
10. The Parliament website describes the purpose of the Bill is: “*to set out the principles of the Treaty of Waitangi in legislation, and require, where relevant, those principles to be used when interpreting legislation...*”
11. The Bill redefines the principles of Te Tiriti o Waitangi / the Treaty of Waitangi (te Tiriti / the Treaty) in legislation and mandates use of the newly defined principles when interpreting laws that refer or relate to te Tiriti principles.
12. The Bill proposes three principles, which can be summarised as:

Principle 1, civil government: The Crown has full power to govern in the interests of everyone and in line with the rule of law and democratic principles.

Principle 2, rights of hapū and iwi Māori: The Crown recognises the rights hapū and iwi had when they signed te Tiriti, but those rights differ from the rights of everyone only when specified in legislation, Treaty settlements, or other agreements with the Crown.

Principle 3, right to equality: Everyone is equal before the law and has the same fundamental human rights without discrimination.

13. The commencement of the Bill would be subject to a binding referendum, meaning it would not come into force without the support of a majority of voters. People will be required to vote ‘yes’ or ‘no’, accepting either all the principles in the Bill, or none of them.
14. A draft submission strongly opposing the Bill has been prepared, urging its withdrawal (Attachment 1). Note that the submission states the Council does want to appear before the committee. The closing date for submissions is Tuesday, 7 January 2025.
15. The submission outlines the following five reasons the Council opposes the Bill:
 - a) The existing Tiriti / Treaty principles are well-established and provide an ‘instrument of mutuality’.
 - b) Te Tiriti / the Treaty principles are a robust foundation for community and relationship building.
 - c) Rights for individual Māori are ignored.
 - d) Achieving equity requires tailored approaches.
 - e) Limitations of the referendum.
16. The submission highlights how the Bill attempts to address a “problem” that does not exist. The Council has had no issues in weaving the existing principles, as developed by the courts and Waitangi Tribunal, into its planning, policy, decision-making, and delivery.
17. The Council must now decide between three options:
 - a) Not submitting on the Bill.
 - b) Submitting the drafted submission (Attachment 1).
 - c) Amending and submitting revised content.

Takenga mai | Background

18. On 7 November 2024, the Principles of the Treaty of Waitangi Bill was introduced to Parliament (Attachment 2). The Bill is a product of the 2023 coalition agreement between the National Party and ACT. The National Party and the third coalition partner NZ First have committed to supporting the Bill through its first reading.
19. The Bill seeks to redefine te Tiriti / the Treaty principles in legislation and require the redefined principles to be used when interpreting legislation.
20. Section 6 of the Bill proposes the following principles:

“Principle 1

The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws,—

(a) in the best interests of everyone; and

(b) in accordance with the rule of law and the maintenance of a free and democratic society.

Principle 2

(1) The Crown recognises, and will respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it. (

2) However, if those rights differ from the rights of everyone, subclause (1) applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.

Principle 3

(1) Everyone is equal before the law.

(2) Everyone is entitled, without discrimination, to—

(a) the equal protection and equal benefit of the law; and

(b) the equal enjoyment of the same fundamental human rights.”

21. On 14 November 2024, the Bill was read for the first time and referred to the Justice Committee for consideration. The closing date for submissions is 7 January 2025.

Kōrerorero | Discussion

22. The statements of the National Party indicate they will not support the Bill beyond the select committee process. This would mean the Bill is unlikely to be passed into law based on statements of opposition from other political parties as well.

23. At a high level, if the Bill was ratified and enacted as law there would be a wide range of impacts for the Council, the city and the country. Accordingly, the submission requests withdrawal of the Bill.

24. The draft submission provides the following five reasons why the Council strongly opposes the Bill:

- **The existing principles are well-established and provide an ‘instrument of mutuality:** The existing principles of te Tiriti o Waitangi / the Treaty of Waitangi have provided the Council an ‘instrument of mutuality’ fostering beneficial and reciprocal relationships. These principles have been adopted and embraced through years of jurisprudence and actions of successive governments. The Bill presents fundamental challenges to the Council in that it would unsettle the established jurisprudence and our ability to fulfil our statutory purpose, decision-making obligations and operational responsibilities concerning iwi and Māori.
- **Te Tiriti / the Treaty principles are a robust foundation for community and relationship building:** The Council is deeply concerned about the potential local impact of this Bill, as it risks undermining efforts to build positive social cohesion in Wellington and may damage existing relationships.
- **Rights for individual Māori are ignored:** It is unclear whether the Bill applies to all Māori, as it specifically defines the rights of iwi and hapū only, potentially ignoring individual Māori rights.

- **Achieving equity requires tailored approaches:** The Bill asserts that all people are equal without discrimination, however achieving equity often requires tailored approaches that may appear discriminatory. Moreover, the rights to equality are already clearly established under New Zealand’s existing legislative framework.
 - **Limitations of the referendum:** The proposed referendum lacks transparency as it does not provide detail on the reasons for the proposed changes, the options to address these, or provisions for open consultation with the community.
25. The draft submission highlights the importance of te Tiriti / the Treaty to Wellington and acknowledges the widespread public concern demonstrated during the hīkoi opposing the Bill.
 26. The submission affirms its opposition to the Bill in alignment with the following:
 - Te Rūnanga o Ngāti Toa Treaty Principles Bill Submission.
 - Te Rūnanga o Te Āti Awa ki te Upoko o te Ika Treaty Principles Bill Submission.
 - Porirua City Council Treaty Principles Bill Notice of Motion and Submission.
 - Hutt City Council Treaty Principles Bill Notice of Motion and Submission.
 - All other local government submissions opposing the Bill.
 27. The submission notes the Council would like to appear in support of the submission.

Kōwhiringa | Options

28. The committee could:
 - a) not make a submission; or
 - b) approve the drafted submission (Attachment 1); or
 - c) approve the submission with amendments.

Whai whakaaro ki ngā whakataunga | Considerations for decision-making

Alignment with Council’s strategies and policies

29. Submitting on the Bill is aligned with Council’s strategic direction and current policy and planning documents.

Engagement and Consultation

30. There has been no community engagement in consideration of a submission on this Bill. Given the timeframes this was not practical.

Māori Impact Statement

31. This submission has been developed in collaboration with our Tā kai Here partners and it notes that it should be read in conjunction to their separate submissions.
32. The Council’s submission highlights how the Bill has significant implications for Māori and accordingly it strongly opposes the Bill.
33. Recognising that this Bill is highly unlikely to become law, the Council has opted not to propose specific amendments. Instead, we offered the five themed observations to underscore why we believe the Bill undermines the advancement of indigenous rights and jeopardises future cohesion within Wellington and across the nation.

Financial implications

34. There are no financial implications associated with this decision.

Legal considerations

35. The Council's legal team have been involved in drafting the submission.
36. The submission cites examples of legislation requiring the Council to adhere to the principles of te Tiriti / the Treaty, such as the Resource Management Act 1991. The examples were used to demonstrate how the Council already effectively and successfully adheres to the principles, highlighting how the Bill is unnecessary.

Risks and mitigations

37. This submission is classified as high significance under the Significance and Engagement Policy due to the substantial public interest in the Bill.
38. The submission addresses the internal strategic risk of 'inadequate partnership practice' identified in the Council's Strategic Risk Register. The submission underscores the critical role of te Tiriti / the Treaty and its principles in supporting the Tākai Here partnership agreement between mana whenua and the Council.
39. Furthermore, the submission emphasises how Tākai Here affirms the te Tiriti / Treaty as the foundation of the relationship between the Council and mana whenua, reinforcing the Council's commitment to act in accordance with te Tiriti o Waitangi.

Disability and accessibility impact

40. There are no impacts to disabled people or accessibility associated with this decision.

Climate Change impact and considerations

41. There are no climate impacts associated with this decision.

Communications Plan

42. We will prepare a media release regarding the Council's submission, once approved.

Health and Safety Impact considered

43. There are no health and safety impacts associated with this decision.

Ngā mahinga e whai ake nei | Next actions

44.

Date	Action/Milestone	Comments
7 January 2025	Submissions close on the Bill	The Council submission needs to be lodged by this date.

Attachments

- Attachment 1. WCC Submission to the Treaty of Waitangi Bill Page 9
Attachment 2. Principles of the Treaty of Waitangi Bill Page 20

Submission on behalf of Te Kaunihera o Pōneke the Wellington City Council to the Justice Select Committee on the Principles of the Treaty of Waitangi Bill

Mihi

Ō tātou mate tuatini, e takoto mai nā i runga i ō tātou marae maha, kua ūhia ki ngā taumahatanga, e tika ana kia poroporoakitia rātou. Tukuna rātou kia okioki, haere, haere atu rā. Āpiti hono, tātai hono, ko te akaaka o te whenua ki a tātou te hunga ora.

Submitter details

This submission is from Te Kaunihera o Pōneke, the Wellington City Council.
PO Box 2199, Wellington 6140
113 The Terrace, Wellington Central 6021

Wellington City Council **does** wish to appear before the Committee to speak to our submission.

Introduction

1. This submission on the Principles of the Treaty of Waitangi Bill (the “Bill”) is on behalf of Te Kaunihera o Pōneke the Wellington City Council (the “Council”). The Council **strongly opposes** the Bill for the following reasons:
 - a) **The existing principles are well-established and provide an ‘instrument of mutuality’:** The existing principles of te Tiriti o Waitangi / the Treaty of Waitangi have provided the Council with an ‘instrument of mutuality’ fostering beneficial and reciprocal relationships. These principles have been adopted and embraced through years of jurisprudence and actions of successive governments. The Bill presents fundamental challenges to the Council in that it would unsettle the established jurisprudence and our ability to fulfil our statutory purpose, decision-making obligations and operational responsibilities concerning iwi and Māori.
 - b) **Te Tiriti / the Treaty principles are a robust foundation for community and relationship building:** The Council is deeply concerned about the potential local impact of this Bill, as it risks undermining efforts to build positive social cohesion in Wellington and may damage existing relationships.
 - c) **Rights for individual Māori are ignored:** It is unclear whether the Bill applies to all Māori, as it specifically defines the rights of iwi and hapū only, potentially ignoring individual Māori rights.
 - d) **Achieving equity requires tailored approaches:** The Bill asserts that all people are equal without discrimination, however achieving equity often requires tailored approaches that may appear discriminatory. Moreover, the rights to equality are already clearly established under New Zealand’s existing legislative framework.
 - e) **Limitations of the referendum:** The proposed referendum lacks transparency as it does not provide detail on the reasons for the proposed changes, the options to address these, or provisions for open consultation with the community.
2. The widespread public concern was demonstrated during the hīkoi opposing the Bill, which saw significant participation by Wellingtonians and people from across

Aotearoa. Despite these challenges, the collective good-natured, positive and optimistic spirit displayed on Wellington's streets inspires great hope for our shared future. Further, our partnership with mana whenua helped to ensure the hīkoi ran smoothly and safely. As already alluded to, this Bill could impact such collaboration in future.

3. Because it is known, as a practical political matter, that this Bill is very unlikely to become law, the Council has chosen not to propose specific amendments. However, we offer the following observations to illustrate why we believe the Bill hinders the advancement of indigenous rights and undermines future cohesion in Wellington and the whole country.
4. The Council affirms its opposition in alignment with the following:
 - Te Rūnanga o Ngāti Toa Treaty Principles Bill Submission.
 - Te Rūnanga o Te Āti Awa ki te Upoko o te Ika Treaty Principles Bill Submission.
 - Porirua City Council Treaty Principles Bill Notice of Motion and Submission.
 - Hutt City Council Treaty Principles Bill Notice of Motion and Submission.
 - All other local government submissions opposing the Bill.
5. The Council supports the findings and recommendations of the [Waitangi Tribunal Ngā Mātāpono/The Principles: Interim Report](#) and the recommendations of the [Regulatory Impact Statement: Providing certainty on the Treaty principles](#).
6. We thank the Committee for considering our submission and for your work.

A. The existing principles are well-established and provide an 'instrument of mutuality'

Wellington and te Tiriti / the Treaty

7. Te Tiriti / the Treaty holds significant importance for Wellington, just as Wellington has played a vital role in te Tiriti / the Treaty's history. **Appendix One** provides an overview of Wellington's unique connection to the Treaty/te Tiriti, including its history as a settlement for many immigrants before te Tiriti / the Treaty was signed and as the location where te Tiriti / the Treaty documents are now preserved.
8. Today, te Tiriti / the Treaty remains a cornerstone of Wellington life. It not only underpins the continued immigration of many residents but also continues to guide and shape the city's work, ensuring its relevance in modern times.

The existing te Tiriti / Treaty principles and the Council

9. Parliament first introduced the concept of te Tiriti / the Treaty principles in the Treaty Waitangi Act 1975 but did not define them. Forty-five years ago, the Waitangi Tribunal was established by the Treaty of Waitangi Act and achieved Royal assent on 10 October 1975. The Tribunal makes recommendations on claims to determine whether certain matters are inconsistent with the principles of the Treaty/te Tiriti.
10. While te Tiriti / the Treaty may not explicitly use the term "principles", the English text concludes with an undertaking "to accept and enter into the same in the full spirit and meaning thereof". This underscores that te Tiriti / the Treaty encompasses more than its literal words. The concept of "principles" embodies this idea, reflecting the full spirit and meaning of te Tiriti / the Treaty. These principles are intended to reflect the spirit

and intent of the te Tiriti / te Treaty, including the mutual obligations and responsibilities of the parties.

11. The Council, under the Local Government Act 2002, is in a somewhat different position to the Crown. The Act distinguishes the Crown and local government:
Section 4: *“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.”*
12. The prime responsibility in te Tiriti / te Treaty terms belongs to the Crown and the role of local government is seen as subsidiary to that through the enactment of legislation. As the Committee will be aware, local government is simply ‘a creature of legislation’ and has no separate constitutional status.
13. Therefore, any change to legislation specifying the meaning of te Tiriti / te Treaty principles will have an immediate indirect effect on local government. These effects are largely unknown. But our experience of te Tiriti / the Treaty and the present legislation is positive: **the existing principles of te Tiriti / the Treaty have posed no challenges and have provided positive solutions to issues affecting all Wellingtonians.**

Te Tiriti / the Treaty and its principles as an ‘instrument of mutuality’

14. The Treaty of Waitangi Bill was introduced in November 1974 by the Minister of Māori Affairs, Hon Matiu Rata. In his [speech](#), he said *“while the Treaty can be regarded as the possession by the whole of our nation of an instrument of mutuality that has endured for the past 134 years, to the Māori people it is a charter that should protect their rights”*¹.
15. As Hon. Matiu Rata stated in 1974, te Tiriti / the Treaty will be viewed by Māori as a charter that protects their rights. For public institutions representing the nation, such as the Council, te Tiriti / the Treaty serves as an instrument of mutual respect and understanding. Through it, we can address challenges that might otherwise seem intractable. This has been the experience of both New Zealand as a nation and Wellington City Council.
16. In long-term planning, when the Council sets goals and priorities for achieving strategic success, te Tiriti / the Treaty serves as a valuable instrument of mutuality, enhancing prioritisation and decision-making. This process requires more than a literal reading of te Tiriti / the Treaty’s text; it demands an understanding of its principles. These principles, while not a constitution, legislation, or set of directives, provide meaningful guidance. They reflect thoughtful interpretation and the application of contemporary thinking to a historic agreement that continues to shape our nation profoundly.
17. One of Wellington’s earliest modern examples of the positive benefits of te Tiriti / Treaty considerations and its role as an ‘instrument of mutuality’ was the resolution of longstanding issues with the disposal of sewage and human waste into the sea along the Southern coast. In the 1980s, this issue became the focus of a significant campaign rooted strongly in Māori tikanga. The democratic process involved a city-wide

¹ <https://babel.hathitrust.org/cgi/pt?id=uc1.b2940146&view=1up&seq=790>

- referendum, extensive campaigning during local election cycles, and the lodging of a Waitangi Tribunal claim.
18. Public support for the case – driven by both Māori cultural and environmental arguments – prompted the Council to respond constructively. This led to the claimants taking the rare step of withdrawing their Tribunal case, marking it as a successful ‘modern’ te Tiriti / the Treaty claim.
 19. Subsequently, historical claims related to the city were also resolved with the active cooperation and participation of the Council. Many outcomes from these settlements continue to engage the Council and mana whenua in the active management of shared assets.
 20. The Council adheres to the principles of te Tiriti o Waitangi / the Treaty of Waitangi as required by other legislation, including (but not limited to):
 - **The Resource Management Act 1991**, s8 requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to take into account the principles of te Tiriti o Waitangi / Treaty of Waitangi.
 - **The Urban Development Act 2020**, s4 requires that in achieving the purpose of the Act, all persons performing functions or exercising powers under it must take into account the principles of te Tiriti o Waitangi/ the Treaty of Waitangi.
 - **The Marine and Coastal Area (Takutai Moana) Act 2011**, which although not specifically referencing ‘principles’, requires that in order to take account of te Tiriti o Waitangi / the Treaty of Waitangi, this Act recognises, and promotes the exercise of, customary interests of Māori in the common marine and coastal area.
 21. While our Tākai Here partnership agreement and Tūpiki Ora Māori Strategy (refer clause 27) do not explicitly reference ‘principles,’ they affirm te Tiriti / the Treaty as the foundational basis of the relationship between the Council and mana whenua, and commit to acting in accordance with te Tiriti o Waitangi.
 22. The introduction to our District Plan states: “*The Council recognises that the need to consult with mana whenua stems from te Tiriti o Waitangi principle of partnership, requiring both parties to act reasonably and make informed decisions.*” Additionally, one of the Plan’s strategic objectives states: “*Resource management processes include mana whenua as active participants in a way that recognises te Tiriti o Waitangi and its principles*”.
 23. These examples reflect solutions, not problems—nothing is broken. The Council has been successfully and effectively weaving te Tiriti / the Treaty principles and Te Tiriti o Waitangi / the Treaty of Waitangi throughout our planning, policy, decision-making and community engagement processes.
 24. No changes are needed. If this Bill was enacted, and the Council had to incorporate these (unnecessary) provisions, there would be considerable costs and resources required – unlikely to be welcomed by our communities and ratepayers in this current constrained environment.

B. Te Tiriti / the Treaty principles are a robust foundation for community and relationship building

25. Te Tiriti / the Treaty and its principles, as defined by the Courts and the Waitangi Tribunal, provide a strong and effective foundation for community building, both

nationally and locally. They offer a framework that empowers the Council to address and resolve issues, fostering unity and collaboration.

Our partnerships and implementation

26. In 2022, on the 182nd anniversary of the signing of te Tiriti / the Treaty in Wellington (April 1840), the Council and the three iwi groups holding mana whenua in the city, Te Rūnanga o Ngāti Toa Rangatira, Taranaki Whānui ki Te Upoko o te Ika (Port Nicholson Block Settlement Trust), and Te Rūnanganui o Te Āti Awa ki te Upoko o Te Ika a Māui signed the [Tākai Here](#) partnership that looks ahead and plans for the future of Wellington.
27. These relationships are supported by the wider Wellington community and following the signing of the partnership agreement, the Council adopted the [Tūpiki Ora Māori Strategy](#) on 5 May 2022 and continued to implement [Te Tauihu – our te reo Māori Policy](#) (see Appendix Two for a short summary).

Multiculturalism and te Tiriti / the Treaty

28. Te Tiriti / the Treaty implicitly provided for continued immigration to New Zealand and established the Crown's role in managing this. Increasingly, immigrants and the communities formed by their descendants have enriched their lives through an appreciation of Māori society and the stories of the land. This understanding is reinforced among our diverse young people by the new national curriculum, which incorporates New Zealand history, and Māori language and culture into school education, starting from early childhood. This trend is reflected in the growing number of new citizens, during ceremonies administered by the Council, who choose to take their oath or affirmation of allegiance in te reo Māori.
29. As the Department of Internal Affairs aptly stated in a publication for new citizens: *"Sometimes people see the Treaty as being of relevance only for Māori and Māori relations with the Crown. In fact, it is the origin of our common citizenship and common nation. It also provides, through consideration of our shared citizenship, a way for all ethnic and cultural groups to relate to Māori, giving a bicultural foundation to our multiculturalism".*²
30. The Council has dedicated significant effort in developing, promoting and maintaining positive and productive relationships with our communities, particularly with iwi and Māori. However, the introduction of this Bill and its likely impacts could undermine local social cohesion and significantly hinder progress in fostering strong relationships across our communities.

C. Rights for individual Māori are ignored

31. The Bill recognises the rights, as it defines them, of iwi and hapū. It ignores any rights individual Māori may have by stating in a proposed principle (derived from Article 2): *"the Crown recognises the rights that hapū and iwi had when they signed the Treaty/te Tiriti. The Crown will respect and protect those rights. Those rights differ from the rights everyone has a reasonable expectation to enjoy only when they are specified in Treaty settlements."*

² Choice – Whiriwhiria The New Zealand Citizenship Story Te Kōrero Taraunga o Aotearoa, Department of Internal Affairs, 2014 p14

32. This proposed principle effectively removes the consideration given to individual Māori citizens under the Local Government Act 2002, which 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.”* (emphasis added).
33. Under the Local Government Act 2002, the Council upholds the rights of all Māori in the city as well as the specific roles under law and tradition of hapū and iwi holding mana whenua. The Bill, in limiting Māori rights to those that are specific to iwi and hapū, takes away important current recognition of the many Māori living in Wellington who are not represented by mana whenua, iwi or hapū.
34. This rejection of individual rights also directly contradicts te Tiriti / the Treaty itself, which in several places refers to the individual rights of Māori people, in both the Māori and English texts: for example, in the Māori text:
- *“Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino e puta mai ki te **tangata maori** ki te Pakeha e noho ture kore ana”.* (The Queen desires to establish a government so that no evil will come to **Māori** and European living in a state of lawlessness).
 - *“Ko te Kuini o Ingarani ka wakarite ka wakaee ki nga Rangatira ki nga hapu - ki nga **tangata katoa** o Nu Tirani...”* (The Queen of England agrees to protect the Chiefs, the subtribes and **all the people** of New Zealand...).
 - *“Ka tiakina e te Kuini o Ingarani nga **tangata maori katoa** o Nu Tirani ka tukua ki a ratou nga tikanga katoa...”*. (Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the **respective families and individuals**...).
35. Additionally, the English text contains the following references pertaining to rights of individual Māori:
- *“For this agreed arrangement therefore concerning the Government of the Queen, the queen of England will protect **all the ordinary people** of New Zealand.”*
 - *“Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the **respective families and individuals**.”*
 - *“In consideration thereof Her Majesty the Queen of England extends to the **Natives of New Zealand** Her royal protection....”³ (emphasis added).*
36. Furthermore, the proposed principle is inconsistent with te Tiriti / the Treaty in that it does not accurately reflect Article 2, which affirms the continuing exercise of tino rangatiratanga. The proposed principle derived from Article 2 would recognise the rights that hapū and iwi had when they signed te Tiriti / the Treaty, but it would restrict those rights to those recognised in legislation, te Tiriti / Treaty settlements or other agreement with the Crown. Restricting the rights of hapū and iwi would mean that tino rangatiratanga guaranteed by te Tiriti / the Treaty exists only by a decision of the Kāwanatanga (the Crown). It eliminates te Tiriti / the Treaty and other indigenous rights

³ Translation by Professor I H Kawharu, published in Report of the Royal Commission on Social Policy, Wellington, 1988
<https://www.tepapa.govt.nz/discover-collections/read-watch-play/maori/treaty-waitangi/treaty-close/full-text-te-tiriti-o>

and purports to replace them with the ordinary rights that could be exercised by any individual or group of citizens.

37. The proposed principle does not recognise the distinct status of Māori as the indigenous people of Aotearoa New Zealand and in doing so calls into question the very purpose of te Tiriti / the Treaty and its status in our constitutional arrangements.

D. Achieving equity requires tailored approaches

38. The Bill introduces what might be described as 'hyper-equality', asserting in principle 3 that: *"Everyone is equal before the law and is entitled to the equal protection and equal benefit of the law without discrimination. Everyone is entitled to the equal enjoyment of the same fundamental human rights without discrimination."*
39. While the intent may be to address 'harmful discrimination', the principle as written risks undermining rights rather than enhancing them. Achieving fairness and justice often requires providing resources or opportunities based on individual needs to ensure equal outcomes. Equity focuses on recognising and addressing differences to create a level playing field.
40. Local government plays a vital role in addressing these differences by acknowledging diverse needs and contributions at various stages of life, enabling equitable participation in all aspects of city life. For example, we 'discriminate' in favour of the elderly by providing discounted bus fares. We 'discriminate' in favour of people in hardship through the provision of social housing. We 'discriminate' in favour of those who play sport through the public provision of playing fields. We 'discriminate' in favour of car drivers by improving roads. These tailored measures are essential for fostering inclusive communities, and no law should create uncertainty about these critical community-building functions.
41. Furthermore, the Council considers this proposed principle unnecessary and redundant. Rights to equal opportunities and protections against unfair treatment are already enshrined in existing legislation, including the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

E. Limitations of the referendum

42. The Bill proposes a referendum that will decide whether it comes into force. The wording in the Bill for the referendum is: *"Do you support the principles of the Treaty of Waitangi Act 2024 coming into force?"* with only yes/no options provided for response.
43. The Council strongly opposes the referendum's all or nothing approach. There will be no opportunity for people to support one part of the Bill and not another.
44. Additionally, there will be no options put forward in the referendum. Local government understands referendums and are required by law to fully inform those affected by any decision of the impact and present a range of options or solutions that have been considered and analysed.
45. The reduction of this complex and significant Bill, which has national and local implications, to a simple "yes/no" referendum poses risks of unintended or unexplained consequences. Placing decision-making about te Tiriti / Treaty matters in the hands of the non-Māori majority risks imposing adverse outcomes on those most directly affected by the Bill.

46. We are particularly concerned that critical local government issues affected by changes to the principles of te Tiriti / the Treaty would be overshadowed or lost in a complex and potentially divisive debate about the legislation. Any referendum on such a significant proposal must reflect its complexity and deep significance and acknowledge its profound implications, and allow for nuanced, balanced and informed consultation with our communities.

Conclusion

47. Te Tiriti / the Treaty and its principles as currently defined are a robust foundation for community building, both nationally and locally, effectively enabling us to address and resolve issues. All historical te Tiriti / Treaty claims within the region of the Wellington City Council have been fully and finally settled. The growing and improving relationships between the Council, iwi, hapū and Māori contribute to the peaceful, positive and thriving atmosphere that defines our capital city.
48. Now is not the time to define te Tiriti / the Treaty principles in law. If such a time were to come, the principles must be developed alongside tangata whenua, and to uphold Māori rights and ensure that the Treaty remains, for the nation as a whole, an enduring instrument of mutuality. What is being proposed in this Bill contradicts this vision by offering unfair, unhelpful and potentially harmful principles.
49. **The Council requests the Justice Select Committee support and advocate for the withdrawal of the Principles of the Treaty of Waitangi Bill.**

Appendix One – Wellington and the Treaty/te Tiriti

Summary of Wellington's te Tiriti / Treaty history

1. The Treaty holds great significance for Wellington, just as Wellington has always played a pivotal role in the Treaty. Te Tiriti / the Treaty was put forward, according to its English preamble "...in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of emigration both from Europe and Australia which is still in progress".
2. There can be little doubt that this was, in part, a reference to the arrival in New Zealand of the New Zealand Company ship, the Tory, which arrived in September 1839. The Port Nicholson Purchase Deed was signed on board by many Māori rangatira and New Zealand Company representatives, led by Colonel William Wakefield.
3. At the time, immigrants were already on their way, arriving on January 22, 1840, a fortnight before te Tiriti / the Treaty was signed. That date is still observed as Wellington's anniversary under s44(1) of the Holidays Act 2003. Many of our place names such as 'Somes Island' (Matiu), Lambton Harbour and Quay, Thorndon, Point Jerningham, Wakefield and Tory Streets, Chaffers Passage and Lowry Bay are names for people associated with the New Zealand Company and the Tory and other early ships.⁴ Fewer places and streets are named for the Māori involved in the purchase or Māori who occupied these lands well before the arrival of the Tory, reflecting the sad failure of the New Zealand Company and the Crown to honour its terms.
4. Wellington is also home to the heads of the Anglican Church in Aotearoa, New Zealand and Polynesia and the Catholic Church, each of which was represented at the first te Tiriti / Treaty signing and responsible for the oral 'fourth article' concerning religious freedom and state neutrality on religion.

Wellington is home to te Tiriti/ the Treaty

5. Te Tiriti / the Treaty documents are held and displayed by Archives New Zealand and National Library in Wellington. Each of these institutions holds significant amounts of published and unpublished material related to te Tiriti / the Treaty and subsequent actions by Māori and the Crown. These resources have been instrumental in the development of te Tiriti / Treaty settlements and jurisprudence. Parliament itself, arguably a te Tiriti / Treaty-based institution from the time Māori parliamentary representation was established in 1867, is here, as are the Courts which have developed our present understanding of te Tiriti / the Treaty principles.
6. The Governor-General, the constitutional descendant of the first representative of the monarch, William Hobson, is stationed in Wellington. Government agencies with a strong te Tiriti / Treaty focus such as Te Puni Kōkiri, Te Arawhiti (Crown-Māori relationships); Te Māngai Pāho, Te Taura Whiri i te Reo Māori (Māori Language Commission) and Te Mātāwai, Te Matatini, Te Whatu Ora (Health New Zealand), and the Department of Defence all have their head offices here. Massey University, Te Herenga Waka (Victoria University) and Otago University (Wellington) all make major contributions to mātauranga Māori (Māori knowledge) and cross-cultural

⁴ <https://teara.govt.nz/en/1966/port-nicholson/page-3>

understanding. The Law Commission, from its Wellington base, continues to contribute to the developing jurisprudence of te Tiriti / the Treaty.

7. Perhaps most importantly of all, the citizens of Wellington have supported Māori and te Tiriti / Treaty initiatives with great enthusiasm, from the Council's adoption of te reo Māori as an important part of our identity through to the tens of thousands of Wellingtonians who recently and actively expressed their opposition to this Bill.

Appendix Two – Summary of the Council’s Tūpiki Ora Māori Strategy and Te Tauihu – Te Reo Māori Policy

Tūpiki Ora Māori Strategy

1. The [Tūpiki Ora Māori Strategy](#), the pursuit of wellbeing, supports a Māori-led response to uplifting the wellbeing of whānau, anchored in the whakapapa (relationships) between people, place and nature. The Council is committed to ensuring that the decisions made over the next 10 years will be felt by the mokopuna of Pōneke in 50 years’ time. The benefits of this Strategy and Action Plan extend from the Māori community to the whole city, through:
 - a) Enhancing and promoting te ao Māori
 - b) Caring for our environment
 - c) Building capability
 - d) Thriving and vibrant communities.

Te Tauihu – Te Reo Māori Policy

2. The Council’s work related to Treaty/te Tiriti principles includes [Te Tauihu](#), our te reo Māori Policy, which aims to recognise te reo Māori as a taonga of iwi Māori and guide the Council’s actions towards becoming a bilingual city by 2040. The policy celebrates te reo Māori and supports its revitalisation within Council activities and Wellington City. Key actions to progress this include:
 - **Nōna te Ao** – a Māori-focused newsletter
 - **Mahau taupānga mō te reo Māori** – a free, simple, interactive app to help residents and visitors begin their reo Māori journey.
 - **Te Atakura - First to Zero** – Our climate action plan. Te Atakura refers to the peak of dawn, which in Māori culture symbolises a new start and opportunities.
 - **Matariki Puanga** - Annual free, whānau-friendly spectacular community-wide events celebrating the Māori new year.
 - Regular community feedback through our Residents Monitoring Survey, showing strong and improving public support for Māori culture recognition and the Council’s role in revitalising te reo Māori.⁵

⁵https://wellington.govt.nz/-/media/news-and-events/news-and-information/news/files/2023/rms2023_final.pdf?la=en&hash=5865991D96B82230AEF952F2D84182DEE6B2269A

Principles of the Treaty of Waitangi Bill

Government Bill

Explanatory note

General policy statement

The Principles of the Treaty of Waitangi Bill implements the Government policy to introduce a Treaty principles Bill, based on existing ACT Party policy, and to support it to a select committee as soon as practicable.

The overarching objective of the Bill is to define what the principles of the Treaty of Waitangi are in statute to—

- create greater certainty and clarity to the meaning of the principles in legislation:
- promote a national conversation about the place of the principles in our constitutional arrangements:
- create a more robust and widely understood conception of New Zealand’s constitutional arrangements, and each person’s rights within them:
- build consensus about the Treaty/te Tiriti and our constitutional arrangements that will promote greater legitimacy and social cohesion.

Parliament introduced the concept of the Treaty principles into legislation in the Treaty of Waitangi Act 1975, partially to reconcile the differences between the 2 texts. Parliament, however, did not define those principles.

The Treaty principles, as defined at this time, help reconcile differences between the te reo Māori and English texts and give effect to the spirit and intent of the Treaty when applied to contemporary issues. They apply to policy and operational decisions by Government (exactly what this requires depends on the context and there is guidance available to assist decision makers). They are used in the interpretation of legislation and are used by the Tribunal to review proposed Crown action or inaction, policies, and legislation.

Summary of key features

Principles

Civil government—the Government of New Zealand has full power to govern, and Parliament has full power to make laws. They do so in the best interests of everyone, and in accordance with the rule of law and the maintenance of a free and democratic society.

Rights of hapū and iwi Māori—the Crown recognises the rights that hapū and iwi had when they signed the Treaty/te Tiriti. The Crown will respect and protect those rights. Those rights differ from the rights everyone has a reasonable expectation to enjoy only when they are specified in Treaty settlements.

Right to equality—everyone is equal before the law and is entitled to the equal protection and equal benefit of the law without discrimination. Everyone is entitled to the equal enjoyment of the same fundamental human rights without discrimination.

Application

The Bill is an instrument of Parliament created for the purpose of interpreting Parliament's intent when it passes legislation.

The defined principles would be used exclusively to assist with the interpretation of an enactment where Treaty principles would normally be considered relevant, in addition to legislation that refers to Treaty principles directly. This does not necessarily require Treaty principles to be explicitly referenced in the legislation in question. Their application in decision making is determined by the nature of the decision rather than the explicit reference in legislation.

The Bill does not alter or amend the text of the Treaty/te Tiriti itself and does not apply to the interpretation of a Treaty settlement Act.

Commencement

The Bill will come into force if a majority of electors voting in a referendum support it. The Bill will come into force 6 months after the date on which the official result of that referendum is declared.

If a majority of electors voting in a referendum do not support the Bill, it will automatically be repealed.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=94>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 28 August 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.beehive.govt.nz/release/next-steps-agreed-treaty-principles-bill>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force 6 months after the date on which the official result of a referendum is announced if a majority of electors voting in that referendum support the Bill coming into force.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Bill.

Clause 4 defines terms used in the Bill.

Clause 5 provides that the Bill, when enacted, will bind the Crown.

Part 2

Principles of Treaty of Waitangi

Clause 6 sets out the principles of the Treaty of Waitangi for the purposes of the Bill.

Clause 7 provides that the principles of the Treaty of Waitangi set out in the Bill must be used to interpret an enactment if principles of the Treaty of Waitangi are relevant to interpreting that enactment. This is the case whether the reference to principles is express or implied.

Clause 8 provides that the Bill does not apply to the interpretation of a Treaty settlement Act, or the Treaty of Waitangi Act 1975 in relation to the settlement of a historical Treaty claim entered into after the commencement of the Bill.

Clause 9 provides that the Bill does not amend the text of the Treaty of Waitangi/te Tiriti o Waitangi.

Hon David Seymour

Principles of the Treaty of Waitangi Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Principles of the Treaty of Waitangi Act **2024**.
- 2 Commencement**
 - (1) If a majority of electors voting in a referendum respond to the question in **sub-section (2)** supporting this Act coming into force, this Act comes into force 6

- months after the date on which the official result of that referendum is declared.
- (2) The wording of the question to be put to electors in a referendum for the purposes of **subsection (1)** is—
- “Do you support the Principles of the Treaty of Waitangi Act **2024** coming into force?” 5
- (3) The wording of the 2 options for which electors may vote in response to the question is—
- “Yes, I support the Principles of the Treaty of Waitangi Act **2024** coming into force.” 10
- “No, I do not support the Principles of the Treaty of Waitangi Act **2024** coming into force.”
- (4) If a majority of electors voting in a referendum respond to the question in **subsection (2)** that they do not support this Act coming into force, this Act is repealed on the day after the date on which the official result of that referendum is declared. 15
- (5) This Act is repealed if it does not come into force under **subsection (1)** within 5 years after the date on which it receives Royal assent.
- (6) In this section, **referendum**—
- (a) means a referendum providing electors with an opportunity to decide whether this Act should come into force; and 20
- (b) includes any fresh referendum required to be held if the High Court, on a petition, declares the referendum under **paragraph (a)** to be void.

Part 1

Preliminary provisions 25

3 Purpose

The purpose of this Act is—

- (a) to set out the principles of the Treaty of Waitangi in legislation; and
- (b) to require, where relevant, that those principles must be used when interpreting legislation. 30

4 Interpretation

In this Act,—

historical Treaty claim has the same meaning as in section 2 of the Treaty of Waitangi Act 1975

Treaty settlement Act means— 35

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and

Principles of the Treaty of Waitangi Bill

Part 2 cl 6

- (b) any of the following:
 - (i) the Maori Commercial Aquaculture Claims Settlement Act 2004:
 - (ii) the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
 - (iii) the Nga Wai o Maniapoto (Waipa River) Act 2012: 5
 - (iv) the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010:
 - (v) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and secondary legislation that gives effect to section 10 of that Act: 10
 - (vi) any other Act that—
 - (A) provides collective redress or participation arrangements for claimant groups whose historical Treaty claims are, or are to be, settled by another Act; or
 - (B) otherwise relates to the settlement of a historical Treaty claim. 15
- 5 Act binds the Crown**
This Act binds the Crown.

Part 2

Principles of Treaty of Waitangi

20

6 Principles of Treaty of Waitangi

The principles of the Treaty of Waitangi are as follows:

Principle 1

The Executive Government of New Zealand has full power to govern, and the Parliament of New Zealand has full power to make laws,—

- (a) in the best interests of everyone; and
- (b) in accordance with the rule of law and the maintenance of a free and democratic society.

Principle 2

- (1) The Crown recognises, and will respect and protect, the rights that hapū and iwi Māori had under the Treaty of Waitangi/te Tiriti o Waitangi at the time they signed it.
- (2) However, if those rights differ from the rights of everyone, **subclause (1)** applies only if those rights are agreed in the settlement of a historical treaty claim under the Treaty of Waitangi Act 1975.

3

Principle 3

- (1) Everyone is equal before the law.
- (2) Everyone is entitled, without discrimination, to—
 - (a) the equal protection and equal benefit of the law; and
 - (b) the equal enjoyment of the same fundamental human rights.

7 Principles of Treaty of Waitangi set out in section 6 must be used to interpret enactments

- (1) The principles of the Treaty of Waitangi set out in **section 6** must be used to interpret an enactment if principles of the Treaty of Waitangi are relevant to interpreting that enactment (whether by express reference or by implication). 5
- (2) Principles of the Treaty of Waitangi other than those set out in **section 6** must not be used to interpret an enactment.
- (3) This section applies despite any other enactment, except **section 8**.

8 Act not to apply to interpretation of Treaty settlement Act or settlement of historical Treaty claim under Treaty of Waitangi Act 1975 10

This Act does not apply to the interpretation of a Treaty settlement Act, or the Treaty of Waitangi Act 1975 in relation to the settlement of a historical Treaty claim entered into after the commencement of this Act.

9 Treaty of Waitangi/te Tiriti o Waitangi not amended

Nothing in this Act amends the text of the Treaty of Waitangi/te Tiriti o Waitangi. 15