

TIRITI O WAITANGI/TREATY OF WAITANGI AUDIT OF APEC 2021

The methodology for this audit is set out in 4 parts:

Part A gives an overview of the purpose, scope, criteria, methodology, qualifications, and an outline of a Tiriti Impact Assessment of the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA).

Part B sets out the reference points for the audit, being the four articles of Te Tiriti o Waitangi and the Kaupapa of Te Rangitikupu derived from Te Tiriti.

Part C adapts the template for the Tiriti o Waitangi audit developed by Ngā Tōki Whakarururanga to APEC 2021.

Part D lists the considerations/questions for the audit to assess.

PART A: OVERVIEW OF THE APPROACH TO THE AUDIT

Ngā Tōki Whakarururanga has developed a Tiriti o Waitangi/Treaty of Waitangi audit template to assess compliance with its Tiriti o Waitangi kaupapa through the lens of Te Ao Māori.

As requested, that template has been customised here for the conduct of a Tiriti o Waitangi/Treaty of Waitangi audit of APEC 2021. It is provided to Te Rangitukupu solely for that purpose and on the understanding that the conceptual integrity of the audit is maintained. If Te Rangitukupu wishes to amend core elements of the template it should seek the agreement of Ngā Tōki Whakarururanga to any such changes.

Purpose

This audit will evaluate the processes, activities and outcomes of New Zealand's hosting of APEC in 2021 against te Tiriti o Waitangi and the Tiriti-based kaupapa on which Māori entities based their participation, as set out in Te Rangitukupu.

It is understood that the Ministry of Foreign Affairs and Trade (MFAT) is conducting its own analysis of APEC 2021 in relation to Māori.

These complementary assessments from the Tiriti partners should be used to set a new bar in the realisation of Te Tiriti in future APEC and other international trade activities.

Specifically, this audit should enable:

1. Accountability of participating Māori entities and the Crown to relevant Māori constituencies for APEC 2021
2. Quality assurance of work undertaken, through a Tiriti o Waitangi lens
3. MFAT to understand and develop a Tiriti-based approach to future APEC activities and to its international activities more generally
4. The Crown, including Ministers and all Crown agencies, to develop Tiriti-based systems of decision-making and governance for future APEC activities and international activities more generally
5. Māori entities to enhance their future role in APEC and in international activities more generally, with reference to the Crown and to each other.

Scope

The Tiriti/Treaty Audit should cover:

1. Role and functioning of Te Rangitukupu (the entity) in relation to APEC 2021;
2. The Tiriti/Treaty relationship between Te Rangitukupu and the Crown;
3. Engagement with iwi taketake;
4. Māori participation in general APEC activities;
5. Rangatahi activities; and
6. The Ringa Ropa Rōpu for the IPETCA.

Audit criteria

The Tiriti/Treaty audit assesses these activities against:

1. the four articles of Te Tiriti o Waitangi, and
2. the kaupapa of the Māori entities set out in Te Rangitukupu.

Methodology

The audit needs sufficient time and resources to:

1. Review relevant documents, including meeting minutes, correspondence with officials and Ministers, and outcomes reports;
2. Interviews with each of the participating Māori entities, key contractors, technical advisers, MFAT negotiators and officials, with a sample of Māori participants in the APEC 2021 activities, and with indigenous representatives from other countries who participated in the activities under review.
3. Review APEC documents, including agendas, statements and speeches

Reporting of the results

The audit will be most useful if it reports:

1. a Tiriti assessment of the six different activities against the two criteria in narrative form;
2. a tabular summary for the six reference points in relation to each Tiriti o Waitangi article, as below.

The report also needs to identify:

- positive initiatives that should be built upon;
- negative experiences that must not happen again;
- proposals for Tiriti-compliant approaches to ongoing and future APEC activities,
- proposals for new approaches or activities;
- lessons for Māori; and
- lessons for the Crown.

	Kawanatanga (Art 1)	Rangatiratanga (Art 2)	Oritetanga (Art 3)	Whakapono (Art 4)	Overall
Role & functioning of Te Rangitukupu					
Tiriti relationship of Te Rangitukupu and Crown					
Engagement with Iwi Taketake					
Māori participation in general APEC activities					
Rangatahi activities					
Ringa Ropa Rōpu for IPETCA					

Peer review

The draft needs to be provided to Te Rangitukupu for comment before being finalised.

The draft report needs to be peer reviewed by someone of similar competencies, approved by the co-chairs of Te Rangitukupu.

Qualifications

The competencies of the auditor need to include:

1. an advanced understanding of Te Tiriti o Waitangi and tikanga Māori;
2. preferably competence in te reo Māori;
3. working knowledge of APEC;
4. independence from MFAT and participating entities in Te Rangitukupu; and
5. proven writing and interview skills.

The appointment of the auditor needs to be approved by the co-chairs of Te Rangitukupu.

Tiriti o Waitangi/Treaty of Waitangi Impact Assessment of IPETCA

The work to develop the IPETCA was part of the APEC project, but differs in that it is a written instrument whose negotiation occurred outside of APEC with a sub-set of APEC members and provides for a formal ongoing process.

A separate Tiriti/Treaty Impact Assessment of IPETCA should be conducted with reference to Te Tiriti o Waitangi, te Rangitukupu kaupā and the United National Declaration on the Rights of Indigenous Peoples, and which critically evaluates the

- recognition and adoption of indigenous worldviews, values and practices;
- the potential benefits to Māori, by different sectors and communities;
- extent of protections for Māori rights and responsibilities;
- omissions and limitations of the document, including matters for future review;
- the empowerment of Indigenous Peoples; and
- power relationships between the State Parties and Indigenous Peoples, including decision-making and resourcing.

PART B: AUDIT OF APEC 2021 AGAINST TE TIRITI O WAITANGI AND TE RANGITUKUPU KAUPAPA

This Tiriti o Waitangi/Treaty of Waitangi audit assesses the APEC 2021 activities against two inter-related criteria:

- 1) the four articles of Te Tiriti o Waitangi, and
- 2) the Tiriti-based kaupapa of the Māori entities set out in Te Rangitukupu.

1) Te Tiriti o Waitangi

Each article of Te Tiriti o Waitangi serves a different function within a coherent covenant that is informed by He Whakaputanga o Te Rangatiratanga o Nu Tirenī.

***Kawanatanga – Article 1** provides for the Government to exercise authority over its people and authority delegated by Māori. Government authority is qualified by the obligation to recognise Rangatiratanga, as per Article 2, and ensure the protection of Māori rights, interests, duties and responsibilities. This aspect of the agreement is further established within the other articles of Te Tiriti.*

***Tino Rangatiratanga - Article 2** affirms the continued unfettered powers, duties and responsibilities of Rangatira to ensure the exercise of Māori authority collectively over their own affairs and resources in a manner consistent with tikanga Māori.*

***Oritetanga - Article 3** ensures parity and equity between Māori and the Crown's people, and acknowledges that equity in rights and outcomes does not mean equal treatment or aspirations, but equal rights and capabilities to define and pursue aspirations according to a people's fundamental principles, laws and beliefs.*

***Whakapono - 4th Article** guarantees the active protection and equal status of philosophies, beliefs, faiths and laws.*

2) Te Rangitukupu Kaupapa

The kaupapa of the Māori entities set out in Te Rangitukupu applies Te Tiriti o Waitangi to the context of APEC 2021:

The Māori entities enter this Memorandum recognising:

1. *That shared authority in the international domain is informed by the domestic relationship between Māori Peoples Whānau, Hapū and Iwi and the Crown and the tino rangatiratanga and kāwanatanga that has endured since the 1835 He Whakaputanga o Nga Rangatira o Nga Hapū o Niu Tirenī and 1840 Te Tiriti o Waitangi.*
2. *The need to preserve mana tuku iho (mana inherited) and mana whakahaere (exercise of that inherited power to preserve and maintain hapū mana and rangatiratanga).*

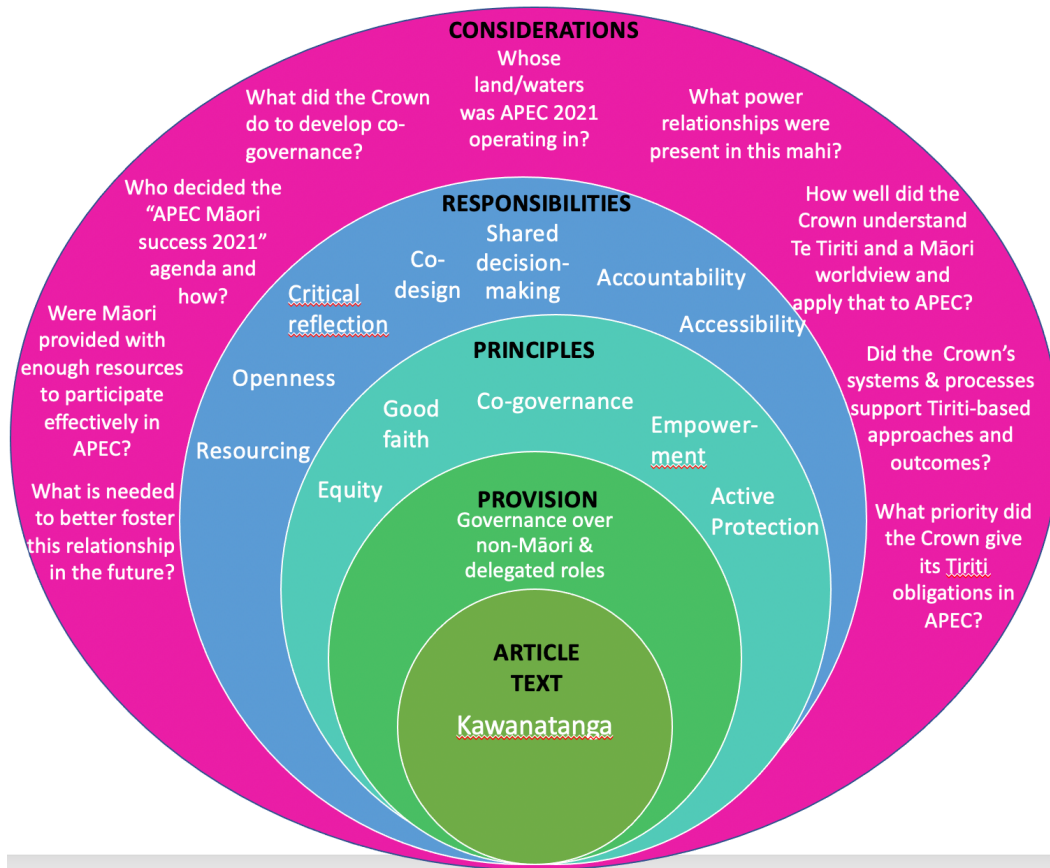
3. *The responsibilities of rangatira as leaders to preserve and uphold the mana and rangatiratanga of their hapū and the responsibilities of the Crown to represent Tauwiwi.*
4. *The importance of tikanga-based trading relationships to Māori peoples whānau hapū and iwi and the significance of trade to the economy of Aotearoa New Zealand and the livelihoods and wellbeing of its people.*
5. *Information is essential to the exercise of mana and tino rangatiratanga through effective participation in decision-making by collective, participatory, and accountable processes.*
6. *The need to develop a new approach to trade policy and the negotiation of international trade agreements that gives effect to the Tiriti relationship and establishes mutual respect and collaboration between the parties.*
7. *Te Tiriti/the Treaty is a relationship of equals. Legally it is an international treaty whereby at least two sovereign nations entered into an agreement to set out how they were to structure their relationship with each other.*

PART C: ADAPTATION OF TE TIRITI/TE RANGITUKUPU TO APEC 2021

Core principles and responsibilities for each Tiriti article, and Te Rangitukupu’s Kaupapa, have been applied to APEC 2021. The resulting considerations and questions for the audit . These are listed again in Part C.

ARTICLE 1. KAWANATANGA – CROWN GOVERNANCE OVER NON-MĀORI AND DELEGATED ROLES

***Kawanatanga – Article 1** provides for the Government to exercise authority over its people and authority delegated by Māori. Government authority is qualified by the obligation to recognise Rangatiratanga, as per Article 2, and ensure the protection of Māori rights, interests, duties and responsibilities. This aspect of the agreement is further established within the other articles of Te Tiriti.*



Principles

- Co-governance
- Good faith
- Empowerment
- Active protection
- Equity

Responsibilities

- Shared decision-making
- Co-design
- Critical reflection
- Accountability
- Openness
- Resourcing
- Accessibility

Questions for the audit

- How did kawanatanga give effect to the rangatiratanga of iwi, hapu and whanau whose whenua/moana APEC 2021 was operating in?
- How well did the Crown understand Te Tiriti o Waitangi, Tikanga Māori and a Māori worldview and apply that to APEC 2021?
- Who decided the “APEC Māori success 2021” agenda and how?
- What priority did the Crown give to its Tiriti obligations in APEC?
- What power relationships were present in this mahi?
- Was the Tiriti relationship of Crown and Mana Whenua as rangatira to rangatira?
- Did the Crown’s systems and processes support Tiriti-based approaches and outcomes?
- What did the Crown do to develop co-governance for APEC 2021 and how effective was that in empowering joint decision-making?
- Which decisions was the Crown prepared to share power over?
- Were Mana Whenua provided with sufficient resources and timely information to participate effectively in APEC?
- What is needed to better foster this relationship in future APEC activities and international activities generally?

ARTICLE 2: TINO RANGATIRATANGA – AUTONOMY AND UNQUALIFIED AUTHORITY THAT CARRIES RESPONSIBILITIES AND DUTIES

Tino Rangatiratanga - Article 2 affirms the continued unfettered powers, duties and responsibilities of Rangatira to ensure the exercise of Māori authority collectively over their own affairs and resources in a manner consistent with tikanga Māori.



Principles

- Mana Māori
- Self-determination
- Tikanga
- Good faith

Responsibilities

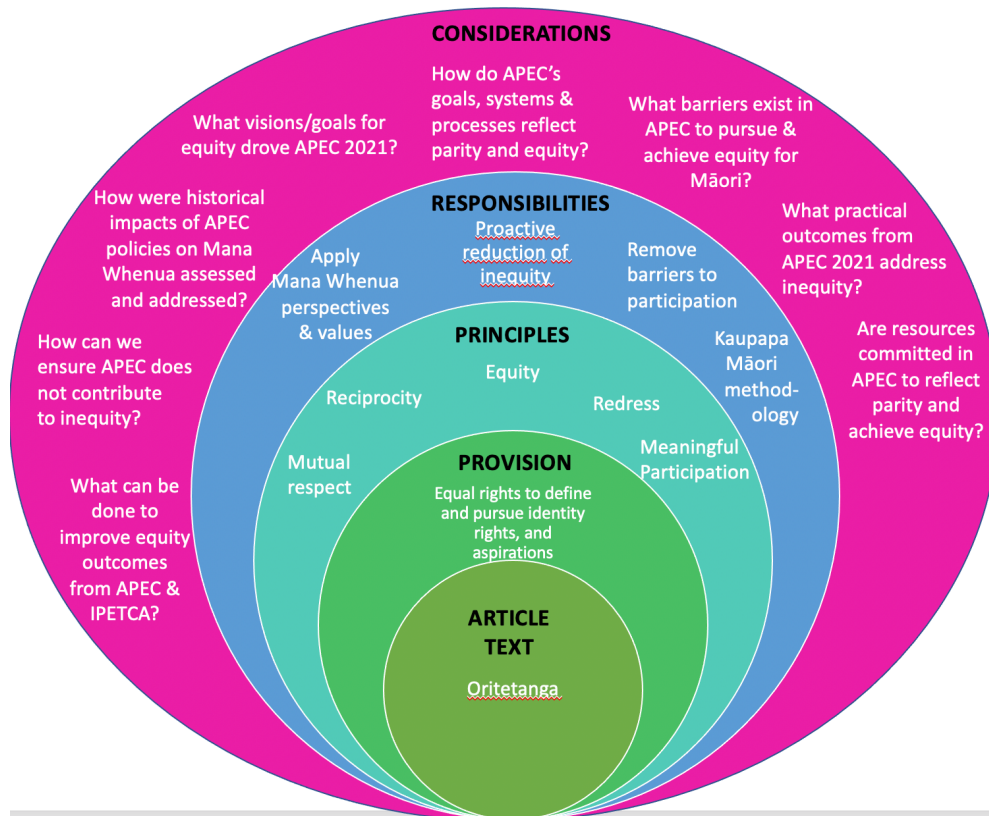
- Early proactive engagement
- Decision making authority
- Kaitiaki relationships
- Whanaungatanga relationships
- Developing capacity
- Interface with the Crown
- Accountability

Considerations for the audit

- What authority did iwi, hapu and whanau whose whenua/moana APEC 2021 was operating in exercise in relation to APEC 2021 activities and decisions?
- Could all Mana Whenua with an interest/concern about APEC take part?
- How aware were participating Mana Whenua entities of their Tiriti responsibilities and how did their actions reflect them?
- How well did Mana Whenua entities develop/centre/recognise Māori expertise in this mahi?
- What tangible benefits were there for Mana Whenua from participation in APEC 2021?
- What gains can Mana Whenua realistically expect in the future from APEC 2021?
- Were the investment of Mana Whenua time and resources justified by the outcomes?
- How did participating Māori entities make themselves and their mahi accessible to Mana Whenua?
- How did participating Māori entities make themselves and their mahi accountable to Mana Whenua?
- How can participating Māori entities better connect to Mana Whenua in the future on APEC/IPETCA?
- How were relationships between Mana Whenua and iwi taketake developed in APEC 2021?
- How can relationships between Mana Whenua and iwi taketake be strengthened through and relating to APEC and IPETCA?
- How can participating Māori entities identify and meet education and advocacy needs of Mana Whenua on APEC?

ARTICLE 3: ORITETANGA: PARITY AND EQUITY TO DEFINE, PROTECT AND PURSUE IDENTITY, RIGHTS AND ASPIRATIONS

Oritetanga - Article 3 ensures parity and equity between Māori and the Crown's people, and acknowledges that equity in rights and outcomes does not mean equal treatment or aspirations, but equal rights and capabilities to define and pursue aspirations according to a people's fundamental principles, laws and beliefs.



Principles

- Equity
- Redress
- Reciprocity
- Mutual respect
- Meaningful participation

Responsibilities

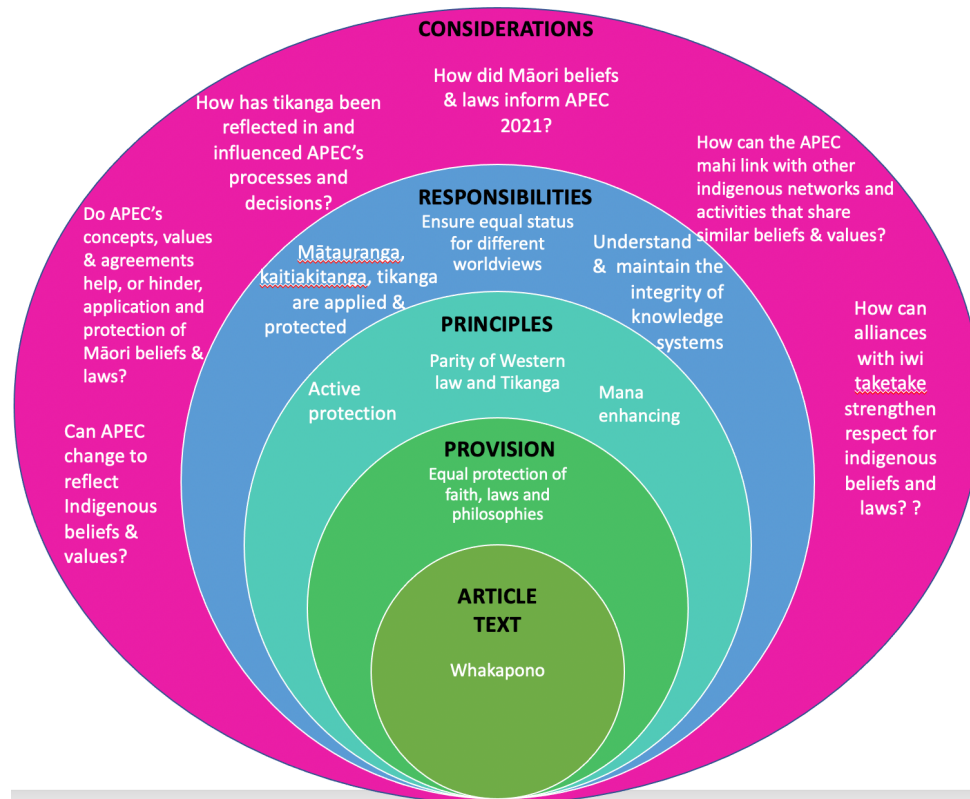
- Proactive reduction of inequity
- Apply Mana Whenua perspectives and values
- Remove barriers to participation
- Kaupapa Māori methodology

Questions for the audit

- How do APEC's goals, systems and processes reflect the status of indigenous peoples as Mana Whenua in relation to the status of non-indigenous peoples?
- Can APEC's goals, systems and processes empower Mana Whenua and Iwi Taketake to define and pursue their aspirations according to their principles, laws and beliefs?
- How were historical impacts of APEC values, priorities and policies on Mana Whenua assessed and addressed?
- How were barriers to pursuing and achieving equity for Mana Whenua identified for APEC 2021?
- What visions/goals for equity drove APEC 2021?
- What practical outcomes from APEC 2021 address inequity?
- Did participating Māori entities have the necessary access to decision making to address issues of equity?
- Does the commitment of resources in APEC 2021 and for future APEC activities reflect parity and are they adequate to achieve equity?
- What can be done to improve equity outcomes from APEC and IPECTA?
- What can be done to ensure APEC does not contribute to inequity?

ARTICLE 4: WHAKAPONO – ACTIVE PROTECTION AND EQUAL STATUS OF PHILOSOPHIES, BELIEFS, FAITHS AND LAWS

Whakapono - 4th Article guarantees the active protection and equal status of philosophies, beliefs, faiths and laws.



Principles

- Parity of Western law and Tikanga
- Active protection of Mātauranga
- Active protection of Kaitiakitanga
- Mana enhancing

Responsibilities

- Ensure equal status for different worldviews
- Understand and maintain the integrity of knowledge systems
- Mātauranga, kaitiakitanga, tikanga are applied and protected
- Develop empowering processes

Questions for the audit

- How did Māori beliefs and laws inform APEC 2021?
- How has Tikanga been reflected in and influenced APEC 2021 processes and decisions?
- How has Tikanga been reflected in and influenced IPETCA processes and decisions?
- Do APEC's concepts, values and agreements help, or hinder, application and protection of Māori beliefs and laws?
- Is APEC capable of changing to reflect these values?
- How can the APEC mahi link to other indigenous networks and activities that share similar indigenous beliefs and values?
- How can alliances with Iwi Taketake strengthen respect for indigenous beliefs and laws?

PART D: QUESTIONS FOR THE TIRITI/TREATY AUDIT OF APEC 2021

Article 1 Kawanatanga

- How did kawanatanga give effect to the rangatiratanga of iwi, hapu and whanau whose whenua/moana APEC 2021 was operating in?
- How well did the Crown understand Te Tiriti o Waitangi, Tikanga Māori and a Māori worldview and apply that to APEC 2021?
- Who decided the “APEC Māori success 2021” agenda and how?
- What priority did the Crown give to its Tiriti obligations in APEC?
- What power relationships were present in this mahi?
- Was the Tiriti relationship of Crown and Māori as rangatira to rangatira?
- Did the Crown’s systems and processes support Tiriti-based approaches and outcomes?
- Which decisions was the Crown prepared to share the power over?
- What did the Crown do to develop co-governance for APEC 2021 and how effective was that in empowering joint decision-making?
- Were Mana Whenua provided with sufficient resources and timely information to participate effectively in APEC?
- What is needed to better foster this relationship in future APEC activities and international activities generally?

Article 2 Rangatiratanga

- What authority did iwi, hapu and whanau whose whenua/moana APEC 2021 was operating in exercise in relation to APEC 2021 activities and decisions?
- Could all Mana Whenua with an interest/concern about APEC take part?
- How aware were participating Mana Whenua entities of their Tiriti responsibilities and how did their actions reflect them?
- How well did Mana Whenua entities develop/centre/recognise Māori expertise in this mahi?
- What tangible benefits were there for Mana Whenua from participation in APEC 2021?
- What gains can Mana Whenua realistically expect in the future from APEC 2021?
- Were the investment of Mana Whenua time and resources justified by the outcomes?
- How did participating Māori entities make themselves and their mahi accessible to Mana Whenua?
- How did participating Māori entities make themselves and their mahi accountable to Mana Whenua?
- How can participating Māori entities better connect to Mana Whenua in the future on APEC/IPETCA?
- How were relationships between Mana Whenua and iwi taketake developed in APEC 2021?
- How can relationships between Mana Whenua and iwi taketake be strengthened through and relating to APEC and IPETCA?
- How can participating Māori entities identify and meet education and advocacy needs of Mana Whenua on APEC?

Article 3 Oritetanga

- How do APEC's goals, systems and processes reflect the status of indigenous peoples as Mana Whenua in relation to the status of non-indigenous peoples?
- Can APEC's goals, systems and processes empower Mana Whenua and Iwi Taketake to define and pursue their aspirations according to their principles, laws and beliefs?
- How were historical impacts of APEC values, priorities and policies on Mana Whenua assessed and addressed?
- How were barriers to pursuing and achieving equity for Mana Whenua identified for APEC 2021?
- What visions/goals for equity drove APEC 2021?
- What practical outcomes from APEC 2021 address inequity?
- Did participating Māori entities have the necessary access to decision making to address issues of equity?
- Does the commitment of resources in APEC 2021 and for future APEC activities reflect parity and are they adequate to achieve equity?
- What can be done to improve equity outcomes from APEC and IPECTA?
- What can be done to ensure APEC does not contribute to inequity?

Article 4 Whakapono

- How did Māori beliefs and laws inform APEC 2021?
- How has Tikanga been reflected in and influenced APEC 2021 processes and decisions?
- How has Tikanga been reflected in and influenced IPETCA processes and decisions?
- Do APEC's concepts, values and agreements help, or hinder, application and protection of Māori beliefs and laws?
- Is APEC capable of changing to reflect these values?
- How can the APEC mahi link to other indigenous networks and activities that share similar indigenous beliefs and values?
- How can alliances with Iwi Taketake strengthen respect for indigenous beliefs and laws?