

**KAITIAKITANGA AND
LOCAL GOVERNMENT:
TANGATA WHENUA PARTICIPATION
IN ENVIRONMENTAL MANAGEMENT**

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

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PREFACE

Sustainable management of New Zealand's natural and built environments depends as much on the values and beliefs of individuals and communities, as it does on specialist knowledge about environmental effects or resource use efficiencies. The natural environment and natural resources of each part of this country have particular meaning and values for the iwi and hapū who are tangata whenua of that place. The challenge for all New Zealanders is to acknowledge and accommodate each others' values in a way that enhances and strengthens environmental management and, ultimately, sustainable development.

We need to keep a clear focus on what we all want in terms of environmental qualities — a focus on the positive, rather than on what we don't want, which can be an unfortunate preoccupation of too many New Zealanders. We need to accommodate a diverse range of knowledge and values, rather than shut out potentially constructive alternatives. For tangata whenua and councils, good consultation and communication are fundamental, so that decision-making is based on sufficient knowledge and understanding.

This investigation, returning to a topic first assessed by this office six years ago, has revealed a number of important improvements in tangata whenua participation in RMA processes, but has also identified many ongoing difficulties. Notable advancements include the establishment of iwi resource management units in many areas, the development of iwi resource management plans, and increased willingness of many councils and developers to work with tangata whenua. However despite such initiatives, there is continuing damage to places and natural resources important to tangata whenua. There is a complex mix of reasons for this, including uncertainties about iwi representation and mandating, councils' tendency to focus on process rather than environmental outcomes, and poor representation of tangata whenua on councils. From a total of 1123 elected councillors nation-wide, only 39 are Māori. That is a severely inadequate foundation for effective decision-making on environmental management. Environment Bay of Plenty has recognised the urgency of this issue and is proposing a Māori electoral constituency system for proportional representation of the region's communities on the council.

One of the most critical determinants for tangata whenua participation in resource management matters is the willingness of councils and other stakeholders to recognise the information and accumulated knowledge bases of iwi, hapū and whānau. Gaining acceptance of the legitimacy of such community-based knowledge, as opposed to formal institutional research, is not only an issue for tangata whenua — for example, farming communities also have considerable experiential knowledge. However the validity of different kinds of information is critical to the effective long-term management of wāhi tapu and other natural taonga, and to community support for councils' work under the Resource Management Act.

Tangata whenua involvement, as kaitiaki for the natural taonga in their area, in councils' environmental management, is highly dependent on the RMA. The Local Government Act makes no reference to the Treaty of Waitangi or its principles, and local authorities are not part of the Crown with regard to Treaty responsibilities. Given the recent enthusiasm to amend the RMA in a number of areas, it is essential that any statutory provisions that affect Treaty requirements are rigorously protected. However, tangata whenua do support changes to the RMA that would improve their ability to participate in council processes and contribute to environmental management. A collective effort, working together for mutual benefit, is what will move all New Zealanders onto more sustainable development pathways.

As a conclusion to this Preface, I would like to widen our horizons to take in some important international trends that are directly relevant to the evolution of environmental management by councils and tangata whenua. At the 1998 Local Government Conference, Maritta Koch Weisen, World Bank Director of Environment and Community Development in Latin America, spoke of the Bank's shift in investment to a new focus on developing the abilities, knowledge and skills of local communities — a shift from 'hardware' (building physical infrastructures) to 'software' programmes (building human and societal systems). In this context the priorities are information needs, and increasing the capacities of communities and non-governmental groups to contribute. This investment in human potential is the key to advancing environmental management; it is the pathway to sustainable development. There are enormous possibilities for constructive initiatives with councils and tangata whenua within this kind of kaupapa or conceptual approach.

Dr J Morgan Williams
Parliamentary Commissioner for the Environment

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FOREWORD

The issues addressed in this report are important issues for New Zealand environmental management. It is important therefore that the boundaries and directions of the discussion, and the basic ground from which it derives, are clearly mapped out.

There is now general agreement that we need to do everything we can to ensure that our management of the natural environment is sustainable. There is also widespread agreement that New Zealand needs to work constructively to develop effective practical responses to the Treaty of Waitangi. We find less consensus, however, as soon as we turn from the broader general principles to the nitty-gritty details, and try to negotiate a sense of what those ideals might actually mean out in the real world. This investigation encountered a wide diversity of perspectives, beliefs, values and perceptions amongst the range of people and agencies involved in environmental management at local government levels. There are often significant differences between what the law provides and people's expectations of the law and legal processes. This report therefore records a spectrum of different views and evidence, reflecting the range of information and opinion that has been presented to the investigation.

Inevitably this investigation deals with a broad suite of issues under the heading of 'environmental management'. From the outset the investigation has worked from the fundamental assumption that process and outcomes are interrelated, and that the consultation, procedures, policies and systems employed by local government and tangata whenua will have some impact on the environmental results that come out of those processes. The report therefore is concerned with other issues – such as the principles of the Treaty, the statutory requirements, the responsibilities and policies of councils, mechanisms for consulting with tangata whenua, the experiences and feelings of iwi and hapū in their dealings with local government – insofar as they contribute positively towards good environmental outcomes, or hinder the achievement of such outcomes.

Inevitably too this investigation takes a broader approach to 'the environment' than the merely biophysical. Tangata whenua are concerned as kaitiaki for the taonga passed down by the ancestors, which include both tangible natural things and intangible – the spiritual, cultural and historical dimensions of which the physical landscape is only the outward manifestation. Tangata whenua have always dealt with such dimensions as a normal part of heritage and culture, and their meanings for iwi, hapū and whānau. There has in recent years been increasing recognition of the importance of these concepts to tangata whenua in Court decisions and in Waitangi Tribunal reports. An appreciation of the close interconnection between the physical (resources, species, landforms and processes) and the intrinsic (mauri, mana, wairua and whakapapa) gives a fuller understanding of what comprises 'the natural environment' for tangata whenua.

The following discussion is offered therefore to progress the debate on these issues, in anticipation that better understanding will lead to better systems and more efficient processes, which will lead to better environmental outcomes.

1. INTRODUCTION

Part II of the Resource Management Act 1991 (RMA) expresses the purpose and philosophy of the Act. The purpose is to promote sustainable management of natural and physical resources. In achieving that purpose, every person who exercises functions and powers under the RMA is required to recognise and provide for the matters of national importance in section 6, have particular regard to the matters listed in section 7, and take into account the principles of the Treaty of Waitangi under section 8. Of the matters listed in sections 6 and 7, a number have particular relevance to tangata whenua, namely:

- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6(e));
- kaitiakitanga (section 7(a)); and
- recognition and protection of the heritage values of sites, buildings, places or areas (section 7(e)).

Within the operational parts of the RMA, tangata whenua participation in resource management is expressly provided for in the requirements that local authorities consult Māori and have regard to a number of matters, including iwi management plans, in the preparation of policy statements and plans.

In 1992, when the RMA was only newly enacted, the Parliamentary Commissioner for the Environment (PCE) put forward a series of proposed guidelines to assist local government and iwi and hapū to develop procedures for consultation. The proposed guidelines covered a range of matters including:

- the principles of the Treaty of Waitangi;
- ways for councils to develop a relationship with tangata whenua;
- advice on the consultation process and on education;
- suggestions regarding consultative committee structures; and
- specific suggestions for dealing with resource consent applications concerning resources identified as taonga by tangata whenua.

Over the years a variety of citizens' concerns have been brought to the attention of the PCE, where the key issue was the effectiveness of communication between tangata whenua and local government. These cases highlighted situations where:

- consent applications affecting environmental resources and values of significance to iwi and hapū had not been notified and had resulted in the destruction and desecration of taonga including archaeological sites, wāhi tapu, wetlands and coastal foredunes;
- councils had permitted the discharge of effluent into the sea despite tangata whenua objections;
- councils had failed to recognise the mandate of different iwi;
- tangata whenua considered that their values had been disregarded in policy and plan development; and
- councils had avoided consultation with tangata whenua.

1.1 Background to the investigation

Such matters also came through strongly in other investigations undertaken by the PCE, particularly the 1996 studies into *Public Participation under the Resource Management Act — the Management of Conflict* and *Historic and Cultural Heritage Management*. Since 1992 there have been changes in the wider situation, such as the development of a substantial body of case law on the RMA, the settlement of some Waitangi Tribunal claims, and the rise of urban Māori groups. Other factors have remained constant, such as the desire of iwi and hapū for meaningful involvement in RMA decision-making processes, to safeguard taonga tuku iho, and to ensure that there is recognition of the particular significance of these taonga to tangata whenua.

The nature and effectiveness of local authority interaction and communication with tangata whenua is still an area of significant concern for many iwi and hapū. It is also an area of no little uncertainty for many councillors and their staff. There are important (if poorly understood) linkages between consultation, the policy-setting and decision-making processes, the information requirements of those processes, and the quality and relevance of the eventual environmental outcomes.

In late 1997 the Commissioner decided to undertake an investigation into the opportunities and constraints, priorities and alternative options for tangata whenua involvement in local authority environmental management and planning. The 1992 study and proposed guidelines provided a logical framework in which to assess the key issues for iwi, hapū and councils. This investigation progresses beyond consideration of consultation as a process, and explores the links between processes and better environmental outcomes.

1.2 Terms of reference

The terms of reference for this investigation are:

1. To return to the Parliamentary Commissioner for the Environment's 1992 study, *Proposed Guidelines for Local Authority Consultation with Tangata Whenua*, to identify:
 - (a) factors currently affecting tangata whenua participation in environmental planning and resource management in New Zealand;
 - (b) principal points of change and continuity since the 1992 assessment; and
 - (c) a range of approaches for achieving positive environmental outcomes.
2. To report on the investigation in the Parliamentary Commissioner's annual report to Parliament for the year ended 30 June 1998, and to report the outcomes of the investigation by 30 September 1998.

1.3 Authority

Section 16(1)(b) of the Environment Act 1986 empowers the Commissioner to investigate the effectiveness of environmental planning and environmental management carried out by public authorities. This investigation is one of the last in the PCE's Local Government Review

Programme, initiated in 1993, specifically reviewing local government environmental management under the RMA. The Ministry for the Environment has embarked on a programme to monitor RMA implementation issues as part of a five-year strategic programme. The PCE will continue to audit RMA performance issues when monitoring and concerns expressed by citizens indicate a specific need.

This investigation has been developed within the following priority areas identified in *Future Directions*, the PCE's strategic plan for 1997 to 2001:

- public participation in resource management;
- the provision of information for environmental management; and
- the co-management of resources with tangata whenua.

The PCE's Departmental Forecast Report for 1997 identified as a critical issue the ability of tangata whenua and other interested parties to participate effectively in environmental management processes.

The investigation team conducted a series of interviews with managers and staff of the three councils assessed in the 1992 report — Auckland, Hawkes Bay and the West Coast Regional Councils — and with tangata whenua in each region. A number of other consultation examples were examined to highlight interesting new initiatives. The 1992 guidelines provided the framework for questioning interviewees about:

- the evolving situation for iwi, hapū and councils with resource management through the later 1990s;
- new and newly significant priorities for resource management, points of continuity, major trends and areas of concern; and
- practical options for iwi and hapū participation in resource management processes.

The principal emphasis of this investigation is on the experiences of tangata whenua and local authorities in their efforts to work together to achieve sustainable environmental management under the RMA. To complement the more detailed information obtained in the case study areas and establish the wider context, interviews were also conducted with a range of key people, including several developers with extensive experience in working with councils and tangata whenua in RMA consent application processes. Unfortunately the scope of this investigation did not allow more comprehensive canvassing of the views and concerns of resource consent applicants, consultants and developers with regard to RMA processes and tangata whenua participation. This could be an area for future inquiry.

The investigation team spoke with 34 staff from 9 councils, and with 84 tangata whenua representatives from 34 groups. The people consulted are listed in Section 7.1.

Background papers, reports and materials were also surveyed. A bibliography is given in Section 7.2.

A number of initiatives with relevance for tangata whenua participation in environmental management are being undertaken by other agencies. While there is good work being done, there is little purposeful communication or

1.4 Methodology

1.5 Other initiatives

co-ordination amongst the various initiatives, even when there are significant areas of overlap and contiguity. In some cases agencies or their staff were not aware of work being advanced elsewhere. Projects may be designed to address the particular responsibilities or priorities of the agency or sector group concerned, although there are broader issues at stake.

The initiatives outlined briefly below are being undertaken at the national level, but there are also various programmes being advanced at local or regional levels by councils, researchers and other agencies.

For tangata whenua, two fundamental principles should be noted. Firstly there are the demands of multiple consultation processes on iwi and hapū representatives (refer 4.5.8 below). And there is the fragmentation of policy and systems under the various separate programmes, which can make it more difficult to achieve appropriately integrated environmental and resource management. In the traditional Māori world view, all things are inter-related, from the mountains to the sea.

1.5.1 Maruwhenua: Ministry for the Environment

The Ministry for the Environment has broad general responsibilities for monitoring the implementation of the RMA and promoting good practice. As part of its monitoring, the Ministry undertakes an annual survey of all local authorities, which includes the collection of base information on the consultation mechanisms used most frequently by local authorities. The Ministry has also recently embarked on a programme to improve perceptions and practice under the RMA.

In late 1997 the Maruwhenua Division of the Ministry initiated a programme to design robust research methods to gather useful information on issues and trends at the interface between iwi and local government. The Centre for Māori Studies and Research at the University of Waikato was contracted to assist with the development of a research methodology. An interview methodology was trialled in six case study council areas in early 1998. It is proposed that research will continue on an ongoing basis, to track trends and identify useful examples, and to raise issues and stimulate debate. Maruwhenua noted that in future the programme might focus on iwi management plans, practical guidelines, or a series of seminars.

In January 1998 the Ministry published *He Tohu Whakamarama: A report on the interactions between local government and Māori organisations*. This reports on the responses to a questionnaire sent out to councils and tangata whenua in 1994. The response rate was limited, but nevertheless the Ministry felt that the information collected gave some indication of issues which should be discussed. The report identified issues for further consideration including:

- methods for effective consultation;
- early and informed Māori participation;
- identifying and involving all iwi and hapū groups;
- funding and support;
- cultural awareness; and
- development of iwi resource management plans.

In December 1997 Local Government NZ published *Liaison and consultation with Tangata Whenua: A survey of local government practice*. The survey, undertaken in early 1997, recorded local government's consultation processes and current mechanisms without attempting to evaluate their effectiveness or merits. Tangata whenua were not surveyed. The survey found that a wide variety of processes are being employed by councils, and discussed a number of issues including legal and constitutional matters, the implications of the Treaty, costs, and consultation with urban Māori groups.

1.5.2 Local Government New Zealand

Local Government NZ also commissioned a paper from Chen and Palmer, public law specialists, on *Local Government and the Treaty of Waitangi*, and intends to produce a series of future papers that will look at local government, Māori and the Treaty. It is intended that the survey of council practices will be repeated every two years to measure change.

The Ministry is working on a publication *Consultation with Māori: A Guidebook*, which it intends to release in the near future. The Guidebook is a revision of the 1993 *Guide for Departments on Consultation with Iwi*, including a discussion of the Crown's consultation obligations, and an update on more recent experiences and case studies. It is targeted at Crown agencies but Te Puni Kōkiri expects it will also be useful for wider audiences including local government.

1.5.3 Te Puni Kōkiri: Ministry of Māori Development

CRESA (the Centre for Research, Evaluation and Social Assessment, a private agency) is undertaking research with PGSF funding from FORST (the Foundation for Research, Science and Technology) into territorial local authorities' perception of, and responses to their obligations under the Treaty of Waitangi. The project comprises a survey of all territorial local authorities and unitary councils, with an extensive questionnaire, and more detailed case studies of three councils. The survey's focus is not primarily on the RMA; a wider range of issues are addressed including roading, rating and the Local Government Act.

1.5.4 Public Good Science Fund research

Through the first half of 1998 the Minister for the Environment, Hon Simon Upton, has advanced a broad-based process to review the Resource Management Act and its implementation. In April 1998 the "think piece" *Land Use Control under the Resource Management Act*, commissioned by the Minister from consultant Owen McShane, was released with three accompanying critiques. The paper was intended to be a provocative challenge to the status quo, and to generate debate. Submissions were received, and the Minister has continued discussion of the issues and various options through his Internet site.

1.5.5 Resource Management Act review

The McShane paper specifically did not address questions of tangata whenua consultation or participation in environmental management, although in its assessment of the heritage provisions in Part II of the RMA it ventured into areas where there would be significant impacts on matters of concern to iwi and hapū. The paper did not demonstrate any understanding of the values or perspectives of tangata whenua, or of the close interconnections between the biophysical environment and the cultural and heritage values of natural taonga. The paper also did not address the statutory requirements regarding Māori relationships with taonga,

kaitiakitanga and the principles of the Treaty, or the requirements to consult with tangata whenua.

The Minister has noted the distinction between local authorities' processes and procedures under the RMA, and the actual provisions of the legislation itself. There is concern amongst tangata whenua at the processes being followed for the RMA review, and about opportunities for input into those processes. There are grave concerns amongst iwi and hapū about the potential for amendment to the legislation which could have adverse impacts on:

- the ability of iwi and hapū to contribute to environmental management under the RMA; and
- the requirements for local government and others to recognise and provide for Māori relationships with their ancestral lands, water, sites, wāhi tapu and other taonga, to have particular regard to kaitiakitanga, and to take the Treaty principles into account.

1.5.6 Heritage Management review

Through 1998 the Minister for Conservation, Hon Nick Smith, has been conducting a review of the structures and systems for management of historic heritage. The PCE's 1996 report on *Historic and Cultural Heritage Management in New Zealand* identified areas where management could be more effective, and recommended that the Māori Heritage Council review current initiatives and develop strategies to address the issues. A hui was held at Te Herenga Waka Marae in November 1996, which resolved to move towards the establishment of a stand-alone Māori heritage body, to work with the Government on strategies, and to undertake further consultation with iwi and hapū.

In May 1997 the Māori Heritage Council reported to the Minister of Conservation identifying an urgent need for:

- a National Heritage Strategy to establish a kaupapa that would confirm the mana of iwi and hapū as kaitiaki for Māori heritage and other taonga in their rohe;
- participation and empowerment of Māori, including the development of iwi and hapū resource management plans, the consolidation of iwi and hapū databases, and the development of codes of practice and protocols with councils and other agencies;
- legislative amendments to the Historic Places Act, RMA and Antiquities Act; and
- funding to fulfill the necessary consultation and the statutory and legal requirements.

In January 1998 the Minister of Conservation released *Historic Heritage Management Review: A Discussion Paper for Public Comment*, and a series of hui and public meetings were held throughout the country to discuss concerns and priorities. The key issues raised in the hui include:

- self-management by hapū and iwi of wāhi tapu and other heritage sites;
- the Treaty responsibilities of the Crown;
- legislative reform;
- resourcing and practical requirements;
- appropriate protection of sensitive information; and
- defining and valuing heritage.

The Minister of Māori Affairs is undertaking a review of Te Ture Whenua Māori Land Act 1993; amending legislation is planned for introduction in 1999. The review will cover the principles and policies of the Act, and address a range of related issues including:

- the role and jurisdiction of the Māori Land Court;
- land tenure and land title systems;
- representation of iwi and hapū, and mandating; and
- customary rights.

**1.5.7 Te Ture
Whenua review**

2. LEGAL BACKGROUND

In the course of this investigation, it became evident that understanding of the nature and role of local government and the role of the Courts in resource management varies widely. There are also significant differences between the statutory provisions and case law on the one hand, and people's expectations of the law and legal processes on the other, as well as various interpretations of the principles of the Treaty of Waitangi and what they might mean in practical terms. Some effort is made here to clarify, as far as is possible, some of these issues by setting out the law as contained in statute and as developed by the Courts.

2.1 Constitutional arrangements

In *Greensill v Waikato Regional Council*,² Judge Treadwell clarified for the parties the role of the Planning Tribunal. He stated that:

2.1.1 The role of the Planning Tribunal /Environment Court¹

the Tribunal is not a legislative body but a court of record charged with the administration of the Resource Management Act 1991 ... in accordance with the meaning and intention of that statute, such meaning and intention being derived from the words used by Parliament in formulating the sections of that statute. In so doing the Tribunal must pay regard to other statutes and concepts as directed by Parliament.

Judge Treadwell's point is that, in the context of the Resource Management Act 1991 (RMA), the Courts interpret the law as enacted by Parliament; they do not make law but clarify what is the law, although that distinction may be a fine one.

Local authorities are creatures of statute. Their existence depends on the Local Government Act 1974 (LGA), which largely relates to the structure, organisation and purposes of local government.

2.1.2 The status of local authorities

Section 37K LGA sets out the purposes of local government which include:

- (a) Recognition of the existence of different communities in New Zealand;
- (b) Recognition of the identities and values of those communities;
- (c) Definition and enforcement of appropriate rights within those communities; and
- (g) Recognition of communities of interest.

Section 37S sets out the functions, duties and powers of regional councils by reference to a list of Acts, including the RMA and the LGA itself. Section 37SC allows regional councils to transfer functions and powers to their constituent authorities.

¹ In 1996 the Planning Tribunal was renamed the Environment Court. This paper will use either name depending on which applied at the time of a particular case.

² W17/95, 6 March 1995, Judge Treadwell.

Under s 37T, territorial authorities have the functions, duties and powers conferred on them by the LGA, any other public Act, any applicable local Act, and any Order in Council giving effect to a reorganisation scheme.

Local authorities are not subject to the direction and control of the Crown or central Government, except that the Minister of Local Government has the power to initiate a review of the performance of a local authority, and may, depending on the outcome of such review, appoint a commission to act in place of the local authority.³ A review may be undertaken:

- where there has been a significant or persistent failure by a local authority to meet its statutory obligations; or
- where there has been significant and identifiable mismanagement of resources by a local authority; or
- where there has been a significant and identifiable deficiency in the management or decision-making processes of a local authority.

Local government is, of course, subject to the law as amended from time to time by Parliament, and the Audit Office has the responsibility to audit the “money and stores of local authorities” under the Public Finance Act 1977.⁴

Local authorities are not funded by Parliament through annual appropriation. They are largely funded by way of rates on landowners in their respective areas and by way of charges imposed for services provided. Councillors are elected by the ratepayers and residents of their areas. Local authorities interact with central Government as distinct entities.

The LGA does not refer to the Treaty of Waitangi. Palmer comments that “in matters of local government structure and purposes, no special objective or consultative duty has been accorded to Māori, although the Treaty must be recognised as part of the fabric of New Zealand society”.⁵

Local authorities are not part of the Crown for the purposes of the Treaty of Waitangi, and they are not generally considered to be the Treaty partner in place of the Crown in the local context. However, the Waitangi Tribunal⁶ has stated that the Crown remains responsible for local authority actions where the Crown confers or delegates a power on the local authority which may affect Treaty obligations.⁷ The Crown has devolved responsibility for certain matters to local authorities by statute and the provisions of those statutes govern the extent to which local authorities are required to consider the principles of the Treaty. The Waitangi Tribunal, in the *Manukau Harbour Report*, stated that “[i]t is not any act or omission of the [Auckland

³ Section 692M LGA.

⁴ Section 25(1)(c) Public Finance Act 1977.

⁵ Kenneth A Palmer *Local Government Law in New Zealand* 2nd ed (The Law Book Company Ltd, 1993) 29.

⁶ The Treaty of Waitangi Act 1975 established the Waitangi Tribunal to consider claims relating to the Treaty and, where claims are substantiated, to recommend to the Crown the action that should be taken to provide redress. In 1993, the Act was amended to clarify that the Tribunal had no jurisdiction to recommend the return to Māori ownership or the acquisition by the Crown of private land (which would include council land).

⁷ *Manukau Harbour Report* (WAI 8/1985) p 99; *Ngawha Report*, 1993, p 153. Refer to section 4.2.3 below.

Harbour] Board that is justiciable but any omission of the Crown to provide a proper assurance of its Treaty promises when vesting any responsibility in the Board”.⁸

The RMA refers to iwi authorities as the bodies representing tangata whenua to be consulted by local authorities in preparing policy statements and plans, and as public authorities to which local authorities may transfer powers under s 33. Iwi management plans recognised by iwi authorities are among the relevant matters to be considered by local authorities in preparing policy statements and plans.

2.1.3 The status of iwi authorities

The term “iwi authority” is one of convenience intended to catch all bodies which represent iwi. The term was originally coined to reflect the provisions of the Runanga Iwi Act 1990, which provided for the incorporation of runanga to represent iwi. That Act was repealed in 1991.

It will be a matter of fact whether or not a particular body is recognised by an iwi as its representative for particular purposes. It is possible that one iwi might be represented by more than one iwi authority for different purposes. In some cases, Māori trust boards established under the Māori Trust Board Act 1955 might qualify as iwi authorities as defined by the RMA. Tribal runanga may also be iwi authorities. The determining factor will be whether the body is recognised by its iwi as representative of the iwi and therefore has authority to represent and act for the iwi in particular matters.

The question of what exactly is an iwi for the purposes of identifying an iwi authority is more difficult. Often hapū are more active in resource management matters than iwi, yet it is iwi that the RMA acknowledges.⁹ In addition, the position of urban Māori groups is unclear (refer 4.4.3).

The Treaty of Waitangi is part of the law of New Zealand to the extent that it is incorporated into statute.¹⁰ There has been some indication by the Courts that it may sometimes be appropriate to refer to the Treaty in interpreting statutes where the provisions of those statutes are not entirely clear.¹¹ However, this has not been clearly established as a rule of law. The LGA makes no reference to the Treaty, whereas the RMA requires the principles of the Treaty of Waitangi to be taken into account. Were the Courts to be required to interpret provisions of the LGA that they found to

2.1.4 Legal status of the Treaty of Waitangi

⁸ “Justiciable” in this context means only that such action by the Crown could be considered and reported on by the Waitangi Tribunal.

⁹ See *Ngati Kahu v Tauranga District Council* [1994] NZRMA 481 and section 2.4.2.1 below.

¹⁰ *Te Heu Heu Tukino v Aotea District Māori Land Board* [1941] NZLR 590 (Privy Council).

¹¹ *New Zealand Māori Council v Attorney-General (Lands case)* [1987] 1 NZLR 641, 655-656 where Cooke P indicated that, when interpreting ambiguous legislation or working out the import of an express reference to the principles of the Treaty of Waitangi, the Court will not ascribe to Parliament an intention to permit conduct inconsistent with those principles; and *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188, 210, where the High Court was considering the Water and Soil Conservation Act 1967 the extrinsic materials considered included the Treaty of Waitangi Act 1975, the Waitangi Tribunal interpretations of the Treaty and the Town and Country Planning Act 1977.

be unclear, arguably they could refer to the principles of the Treaty of Waitangi as an aid to interpretation.

Alternatively, it could be argued that the LGA and the RMA are interrelated to the extent that they comprise a comprehensive statutory scheme, in much the same way as Chilwell J found the Town and Country Planning Act 1977 and the Water and Soil Conservation Act 1967 to be such a scheme in *Huakina*.¹² Then, it might be argued further that the reference to the Treaty in the RMA might be read in to the LGA.

2.2 What are the principles of the Treaty of Waitangi?

The principles of the Treaty of Waitangi are cited as authority for the existence of a duty on the Government to consult with Māori and, by virtue of s 8 RMA, that principle must be taken into account by local authorities in their resource management decision-making. Whereas the provisions of the Treaty were written down in both Māori and English and are now recorded in the First Schedule to the Treaty of Waitangi Act 1975, there is no authoritative and exhaustive statement of the principles of the Treaty. Indeed, in the *Lands case*, Sir Ivor Richardson sounded a note of warning with his comment that:¹³

Regrettably, but reflecting the limited dialogue there has been on the Treaty, it cannot yet be said that there is broad agreement as to what [the Treaty] principles are.

2.2.1 The principle of reasonable co-operation – the duty to consult

In 1989 the Government set out its interpretation of the principles based in part on pronouncements of the Court of Appeal.¹⁴ The Government has identified a principle of the Treaty to the effect that “[b]oth the Government and iwi are obliged to accord each other reasonable cooperation on major issues of common concern”. It is from the principle of reasonable co-operation, which incorporates the obligation on the Treaty partners to act in good faith, that the Treaty obligation to consult with tangata whenua is derived.¹⁵

In 1987, in *New Zealand Māori Council v Attorney-General (Lands)*, Sir Ivor Richardson made it clear that there is no “absolute open-ended and formless duty to consult” implicit in the Treaty. As he explained the duty to consult:¹⁶

... the responsibility of one Treaty partner to act in good faith fairly and reasonably towards the other puts the onus on a partner, here the Crown, when acting within its sphere to make an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty. In that situation it will have discharged the obligation to act reasonably and in good faith. In many cases where it

¹² *Huakina*, above note 11, at 210.

¹³ The *Lands case*, above note 11, 673.

¹⁴ *Principles for Crown Action on the Treaty of Waitangi*, The Prime Minister, July 1989.

¹⁵ *Lands case*, above note 11, 672; *New Zealand Māori Council v Attorney-General (Forests case)* [1989] 2 NZLR 142, 152 (CA); and *Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301.

¹⁶ Above note 11, at 683.

seems there may be Treaty implications that responsibility to make informed decisions will require some consultation. In some extensive consultation and co-operation will be necessary. In others where there are Treaty implications the partner may have sufficient information in its possession for it to act consistently with the principles of the Treaty without any specific consultation.

The Waitangi Tribunal, in its 1991 report on the Ngāi Tahu claim, quoted the above passage from the *Lands case* and went on:¹⁷

It follows from Sir Ivor Richardson's discussion that in some cases more than others consultation by the Crown will be highly desirable if not essential, if legitimate Treaty interests of Māori are to be protected. ... Environmental matters, especially as they may affect Māori access to traditional food resources – mahinga kai – also require consultation with the Māori people concerned. In the contemporary context, resource and other forms of planning, insofar as they may impinge on Māori interests, will often give rise to the need for consultation. The degree of consultation required in any given instance may, as Sir Ivor Richardson says, vary depending on the extent of consultation necessary for the Crown to make an informed decision.

In *New Zealand Māori Council v Attorney-General (Forests)*,¹⁸ the Court of Appeal observed that in the *Lands case*, the Court of Appeal had stressed the concept of partnership and went on to comment “[w]e think it right to say that the good faith owe[d] to each other by the parties to the Treaty must extend to consultation on truly major issues”. However, the fact that a council has consulted with Māori in one context, does not give rise to a legitimate expectation on the part of Māori that they will be consulted in other contexts.¹⁹

The *Lands* and *Forests cases* together with the comments of the Waitangi Tribunal make it clear that the duty to consult is a practical means of ensuring that the Crown is adequately informed to enable it to act consistently with the principles of the Treaty. Consultation is a means to an end, not an end in itself.

More recently, in *Ngāi Tahu Māori Trust Board v Director-General of Conservation*²⁰ the Court of Appeal referred to the obligation to consult as “empty” in the context of the facts of the particular case and the requirement that the Conservation Act 1987 “be so interpreted and administered as to give effect to principles of the Treaty of Waitangi”. The Court found that the principles of the Treaty were not limited to the duty to consult; there was an obligation of active protection of Māori interests. This is in line with the *Lands case*, where the Court of Appeal endorsed the importance of each

2.2.2 Active protection of Māori interests

¹⁷ *Ngai Tahu Report*, Vol 2, 1991, p 245.

¹⁸ [1989] 2 NZLR 142, 152.

¹⁹ *Te Heu Heu v Attorney-General* CP44/96 High Court, Rotorua, Robertson J, 15 May 1998.

²⁰ [1995] 3 NZLR 641.

partner acting in good faith towards the other, informed decision-making and active protection.²¹

However, the Court, in *Ngāi Tahu*, was at pains to confine its decision to the particular facts of the case, emphasising its uniqueness and limited precedent value. “It is plain that on the particular facts of this case a reasonable Treaty partner would not restrict consideration of Ngāi Tahu interests to mere matters of procedure.” This case dealt with the direct relationship of the Treaty partners, rather than that between local government and Māori imposed by the RMA.

2.3 The principles of the Treaty of Waitangi in the context of the Resource Management Act 1991

The purpose of the RMA is “to promote the sustainable management of natural and physical resources” (s 5). “Sustainable management” means: managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety, while—

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The principles of the Act, generally accepted as being contained in ss 6 to 8 of Part II, are to be applied in environmental decision-making under the Act to the extent that they assist in the promotion of sustainable management.²² The matters of national importance in s 6 and the other matters in s 7 contain a range of matters some of which relate only to Māori. Section 8 provides:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

The Environment Court has confirmed that, for the purposes of s 8 RMA, consultation is one of the principles of the Treaty of Waitangi.²³ In *Haddon v Auckland Regional Council*,²⁴ the Planning Tribunal accepted that the principles of the Treaty stated by the Court of Appeal in the *Lands case* provide a useful guide for the purposes of the RMA, but the Tribunal acknowledged the danger of extrapolating judicial interpretations of one Act to another because of the different purposes of the Acts. The Tribunal in *Sea-Tow Ltd v Auckland Regional Council*,²⁵ noted that “[t]he principles of

²¹ *Lands case*, above note 11, 682.

²² *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70; *Mangakahia Māori Komiti v Northland Regional Council* [1996] NZRMA 193.

²³ *Gill v Rotorua District Council* (1993) 2 NZRMA 604, 616.

²⁴ [1994] NZRMA 49.

²⁵ [1994] NZRMA 204, 214.

the Treaty known as those of redress, of partnership, and of tribal self-regulation, affect the Crown in its executive capacity” (ie the Government). It also stated “[w]e recognise that resource management decisions can take into account the Crown’s duty of active protection of Māori interests, and of informed decision-making, where relevant”. A recent article has identified a shift away from a s 8 focus on consultation toward a wider focus which deals with consultation as one means to the end of informed decision-making, rather than an end in itself.²⁶

Also in *Haddon*, the Planning Tribunal discussed the duty “to take into account” the principles of the Treaty. Judge Kenderdine cited the Supreme Court’s finding in *R v CD*²⁷ that the duty “to take into account” is not the same as “to have regard to”. Matters which are to be taken into account must necessarily affect the discretion of the decision-maker, whereas matters to which the decision-maker must have regard do not limit or affect that discretion. The latter must be considered but may be rejected or given such weight as the decision-maker considers appropriate in the circumstances. Judge Kenderdine comments further that “[i]t would appear that the duty ‘to take into account’ indicates that a decision-maker must weigh the matter with other matters being considered and, in making a decision, effect a balance between the matters at issue and be able to show he or she has done so”.²⁸ The obligation “to take into account” is clearly stronger than “to have regard”.

The matters in Part II RMA may conflict with each other in particular cases, and then councils will need to balance the conflicting matters against each other.²⁹ In particular cases, there may be matters not listed in Part II, which need to be balanced as well.³⁰ The need to weigh matters and ensure that they promote sustainable management means that there can be no absolute requirement on local authorities to act in a manner acceptable to tangata whenua. A requirement on local authorities to act consistently with the Treaty principles³¹ might not always promote the sustainable management of natural and physical resources, for example, in *Mataka Station Ltd v Far North District Council*,³² the Māori applicants proposed undertaking a papakainga development on their ancestral land which would have some houses prominently sited on a coastal ridge. The appellants objected on the basis that this would not be consistent with s 6(a) RMA as to the preservation of the natural character of the coastal environment. The Planning Tribunal approved the application on condition that the houses be relocated away from the ridge.

²⁶ Paul Beverley “The Incorporation of the Principles of the Treaty of Waitangi into the Resource Management Act 1991” (1997) 1 NZJEL 125, 141.

²⁷ [1976] 1 NZLR 436, per Somers J.

²⁸ *Haddon*, above note 24, 61.

²⁹ *EDS v Mangonui CC* [1989] 3 NZLR 257; *Mataka Station Ltd v Far North District Council* A69/95, Judge Bollard, 20/7/95.

³⁰ *Marlborough District Council v New Zealand Rail Ltd and Sea Shuttles Ltd* [1995] NZRMA 357.

³¹ It should be noted that the Waitangi Tribunal has recommended that s 8 RMA be amended to require decision makers to act in a manner consistent with the principles of the Treaty of Waitangi: *Ngawha Report*, 1993. 155.

³² Above note 29.

2.4 The basis for consultation under the Resource Management Act 1991

The legal requirement for local authorities to consult can arise in two distinct ways. It can arise:

1. from the interpretation of the provisions of Part II RMA:
 - Some obligations imposed by ss 6 and 7 cannot be complied with without consultation;
 - The duty to take into account the principles of the Treaty of Waitangi includes a duty of consultation; and
2. through specific statutory direction to consult contained in the Act:
 - Regional policy statements and plans, and district plans (ss 61(1), 66(1), and 74(1)) are required to be prepared in accordance with Part II and in the manner set out in the First Schedule.

Applicants for resource consent may be required to consult in the preparation of their assessments of environmental effects. In *Aqua King Ltd and Fleetwing Farms Ltd v Marlborough District Council*,³³ Judge Kenderdine outlined the two types of consultation with Māori in relation to resource consent applications under the RMA:

They are the applicant's consultation or otherwise under the Fourth Schedule, and the council officers' consultation under Part II of the Act which arises from the principles of the Treaty of Waitangi 1840. That consultation is an obligation which pertains only to councils.

2.4.1 By applicants

The Fourth Schedule to the RMA explicitly requires the applicant for resource consent to include in the assessment of effects on the environment (AEE) “an identification of those persons interested in or affected by the proposal, *the consultation undertaken, and any response to the views of those consulted*” (cl 1(h)). This provision does not oblige applicants to consult interested or affected persons, but in many cases it would be unwise not to consult.³⁴ It is not only tangata whenua who may be consulted, but frequently tangata whenua will be affected by or interested in the proposal for which consent is sought. The Environment Court has stated that “[i]t is recognised good practice that applicants for resource consent engage in consultation with the tangata whenua where their proposals may affect the matters referred to in s 6(e) and 7(a), and that those reporting to consent authorities [ie council officers] on such applications inform themselves and advise on those matters”.³⁵

Consultation is good practice, but there is no compulsion on applicants to consult. If an applicant does not consult, council officers are not required to consult in their place although a request for further information under s 92 may be made of the applicant and that may, in effect, require the applicant to consult.³⁶

³³ [1995] NZRMA 314, 320.

³⁴ *Greensill*, above note 2, 8.

³⁵ *Paihia & District Citizens Assn Inc v Northland Regional Council* A77/95, Judge Sheppard, 10/8/95.

³⁶ See further *Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities*, Parliamentary Commissioner for the Environment, Wellington, 1995, paras 6.1 and 6.2.

2.4.2.1 Plan and policy statement preparation

Local authorities are explicitly required to consult the tangata whenua of the area who may be affected, “through iwi authorities and tribal runanga” during the preparation and change of policy statements and plans (First Schedule, cl 3(1)(d)). When the RMA was enacted, the Runanga Iwi Act 1990 was in force, so that there was an expectation that there would be a clear structure of iwi authorities with which to consult.³⁷

2.4.2 By councils through officers

Although cl 3(1)(d) is explicit as to which bodies should be the conduit for consultation with tangata whenua, in *Ngāti Kahu v Tauranga District Council*,³⁸ the Planning Tribunal accepted that, in the circumstances of that case, consultation should be with the two hapū who were the tangata whenua of the particular area, because the hapū would be directly affected by the council’s urban growth strategy. The iwi had indicated strong support for direct consultation with the affected hapū. It is not clear from this case whether local authorities should contact affected hapū directly without first contacting the iwi. In practice, local authorities may sometimes need to contact the iwi authority or runanga, in order to ascertain who it is that they should consult on a particular matter.

In *Otaraua Hapū of Te Atiawa v Taranaki Regional Council*, the Environment Court noted the different types of process under the RMA and the requirements as to consultation which apply to those types of process. The consultation required in the context of plan preparation was described as follows.³⁹

- a) The investigation and preparation of a District or Regional Plan where consultation is mandatory insofar as councils are concerned. At this stage they are an administering body charged with producing a [plan] for public scrutiny.
- b) The public notification of a plan followed by the lodging of submission. At this stage the Council has changed from being an administrative body to a quasi-judicial body – that is it must consider the submissions filed in a fair and impartial manner and cannot as a council indulge in unilateral consultations with any particular party. Its officers may consult with all parties to any particular submission with a view to achieving consensus or s 99 [pre-hearing meetings] procedures can be used.

In theory, thorough consultation at the plan preparation stage should mean that extensive consultation in respect of some resource consent applications will be unnecessary. However, once a plan has been notified, the local authority must impartially consider the submissions and cross-submissions on the plan on their merits “without being fettered in its decision-making responsibility” by the outcome of earlier consultation.⁴⁰

³⁷ The Runanga Iwi Act 1990 was repealed in 1991.

³⁸ [1994] NZRMA 481.

³⁹ W129/96, 20 September 1996, Judge Treadwell, at p 3.

⁴⁰ *Ngati Kahu*, above note 38, 510.

2.4.2.2 Resource consent applications

A council is not obliged to consult with tangata whenua when the council is acting as a consent authority in hearing and determining resource consent applications. When making a decision on a consent application, a council is acting in a quasi-judicial capacity which requires that it act fairly towards the parties involved in the consent, whether they support or oppose the application. For the council, as decision-maker, to consult with one party and not the others would be inequitable and leave the council open to allegations of bias.

The officers of the council may undertake consultation as it is their function to gather the relevant information to be put before the council. As the Planning Tribunal put it in *Rural Management Ltd v Banks Peninsula District Council*:⁴¹

If there is to be any consultative process, it can be undertaken by officers of the consent authority who can report back to the consent authority and whose report is open to all parties to accept or contest as the case may be. Those officers cannot however consult on behalf of the consent authority, they can merely consult as officers for the purpose of obtaining information which can be relayed back to the consent authority for its consideration along with other evidence.

In *Mangakahia Māori Komiti v Northland Regional Council*,⁴² the Planning Tribunal found that the consent authority had acted appropriately in leaving its officers to consult with the komiti “in order that the komiti could fully advise on the concerns held by Māori over the applications”. It was further held that consent authorities may encourage applicants to consult tangata whenua; however, where those parties are clearly opposed in their points of view, the consent authority should not attempt to reach an understanding with either party to the disadvantage of the other, since that would prejudice its position as a quasi-judicial body.

Part II – Section 8

Section 8 requires consent authorities, in achieving the purpose of the RMA (to promote sustainable management of natural and physical resources), to take into account the principles of the Treaty of Waitangi. The Planning Tribunal, in *Hanton v Auckland City Council*,⁴³ has stated that s 8 does not impose on consent authorities the obligation of the Crown under the Treaty or its principles and it emphasised that the obligation on consent authorities is *to take those principles into account* in reaching decisions.⁴⁴ The Tribunal explained that the situation of a consent authority considering a resource consent application is different from that of the Crown in that the consent authority is not disposing of Crown assets in a way that may render them unavailable for redressing Treaty grievances; the consent authority is following quite a detailed code of procedure (as contained in the RMA) which does not overlook the place of tangata whenua, but which omits any express duty to consult; and the consent authority’s function is to act

⁴¹ [1994] NZRMA 412.

⁴² Above note 22, 205.

⁴³ [1994] NZRMA 289, at 301.

⁴⁴ Refer section 2.3.

judicially; consultation with one section of the community prior to a public hearing would be inconsistent with that function.⁴⁵

A line of cases commencing with *Gill v Rotorua District Council*⁴⁶ supports the existence of a duty on consent authorities to consult with tangata whenua in relation to resource consent applications, which is derived from the principles of the Treaty of Waitangi. However, more recently a number of decisions of the Planning Tribunal have departed from the *Gill* line, commencing with *Hanton v Auckland City Council* and including *Greensill*.⁴⁷ In the latter, Judge Treadwell stated explicitly that there was no compulsion to consult on the part of applicants nor council officers. The consent authority itself is clearly excluded from consulting since this could breach the principles of natural justice.⁴⁸ Nevertheless, the Environment Court has confirmed that it is good practice for council officers to consult.⁴⁹

The Court of Appeal in *Watercare Services Ltd v Minhinnick* confirmed that s 8 RMA does not give any individual a right to veto any proposal.⁵⁰ This is consistent with the High Court's decision in *Ngāi Tahu Māori Trust Board v Director-General of Conservation*, where Neazor J noted that the right to be consulted has never been understood as involving a power of veto.⁵¹

In *Te Runanga o Taumarere v Northland Regional Council*,⁵² the Environment Court considered a proposal for disposal of high quality treated sewage to a wetland and thence into the sea. The runanga objected to the proposal as the disposal of sewage, regardless of how well it was treated, would mean that Māori would not be able to collect shellfish from the bay affected. The Environment Court found that, although the council had consulted at considerable length and made changes to the proposal as a result, it had not adequately investigated alternatives, and therefore the proposal was not an appropriate use of the coastal environment and did not enable local Māori to provide for their well-being. The Court also found that the council's proposal fell short of what was required by s 8, to the extent that a possible disposal option that would not offend against the Treaty principle of active protection had not been eliminated as not feasible. The Court made it clear that, if further investigation showed that disposal to ground bores was not feasible, the urgent public health needs of the whole community may have to prevail over the cultural needs of tangata whenua.

⁴⁵ As to this last point see also *Ngatiwai Trust Board v Whangarei District Council* [1994] NZRMA 269; *Rural Management*, above note 41; *Whakarewarewa Village Charitable Trust v Rotorua District Council* W61/94; and *Mangakahia Māori Komiti*, above note 22.

⁴⁶ Above note 23; *Haddon*, above note 24; *Wellington Rugby Football Union Inc v Wellington City Council* W84/93; *Quarantine Waste (NZ) Ltd v Waste Resources Ltd* [1994] NZRMA 529.

⁴⁷ Above note 2. Cited with approval in *Tawa v Bay of Plenty Regional Council* A18/95 and *Banks v Bay of Plenty Regional Council* A31/95.

⁴⁸ *Ngatiwai Trust Board* above note 45; *Hanton* above note 43; *Rural Management Ltd* above note 41.

⁴⁹ *Paihia and District Citizens' Association*, above note 35.

⁵⁰ [1998] NZRMA 113.

⁵¹ High Court, Wellington, CP 841/92.

⁵² [1996] NZRMA 77, 92-95.

Part II – Sections 6 and 7

An obligation to consult may also be inferred from other provisions of Part II. Section 6(e) requires decision-makers under the RMA to recognise and provide for matters of national importance, including “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga”. Local authorities are required to have particular regard for other matters, including “kaitiakitanga” (s 7(a)) and “the recognition and protection of the heritage values of sites, buildings, places or areas” (s 7(e)).

The Environment Court, in *Director-General of Conservation v Marlborough District Council*, commented:⁵³

We fail to see how under s 6 of the Act, consent authorities are able to recognise and provide for the matters listed in s 6(e) if they do not consult with iwi because they would not have adequate knowledge of the issues on which to make an informed decision.

Logically, consultation with tangata whenua would be necessary to establish what relationship they have with what lands and how that could best be provided for.⁵⁴ In *Otaraua Hapū of Te Atiawa v Taranaki Regional Council*,⁵⁵ Judge Treadwell noted that if there is no consultation, the consent authority would not be in a position to apply its mind to s 6(e) or s 7(a).

In the context of s 7(a), the Planning Tribunal has reiterated that it is good practice for council officers to consult where the applicant has not consulted or not consulted adequately with Māori in a case involving matters of Māori interest.⁵⁶

Notification decision

A local authority’s decision to notify an application for resource consent or not is important as that decision determines whether there will be an opportunity for public involvement in the decision through the submission process. In many instances, where local authorities determine that the effects of a proposal are likely to be minor, the application need not be notified if the people affected by it give their written approval. In many cases, tangata whenua will be among those affected by a proposal.

In discussing the High Court’s decision in *Worldwide Leisure Ltd v Symphony Group Ltd*,⁵⁷ Judge Treadwell in the Planning Tribunal concluded that, in the context of a decision as to notification, a council officer with delegated decision-making authority is under an obligation to consult with

⁵³ W89/97, Judge Kenderdine, 22/9/97, p 19. Although Judge Kenderdine refers to consultation by consent authorities, it is likely that she meant that council officers, rather than the consent authorities, should consult as she has very clearly stated in earlier judgments that it is for council officers to consult and put the information before the consent authorities.

⁵⁴ *Worldwide Leisure Ltd v Symphony Group Ltd* High Court, Cartwright J, M1128/94; and *Haddon*, above note 24.

⁵⁵ Above note 39.

⁵⁶ *Berkett v Minister of Local Government* Judge Bollard, A103/95, 10 November 1995.

⁵⁷ Above note 55.

those whom he or she considers may be affected, before he or she can properly decide whether or not to notify the application.⁵⁸

2.4.2.3 Section 314 – Enforcement orders

The Court of Appeal has found that the fact of consultation having occurred is relevant to the decision as to whether or not something is noxious, dangerous or objectionable for the purposes of the making of an enforcement order under s 314 RMA.⁵⁹ Also relevant to that decision were the consideration of alternatives, the holding of a Māori blessing ceremony and failure to take up earlier opportunities to object. The Court also held that whether an activity is objectionable or offensive, or not, is to be assessed from the perspective of a reasonable member of the community at large, not from that of a reasonable Māori person.

Consultation is a means to an end; its purpose is to ensure that the decision-maker is fully informed.⁶⁰ If one party actively facilitates a consultative process and another chooses to withdraw without giving any reasons, they cannot later complain about inadequacy of consultation.⁶¹ In *Gill*, it was found that merely passive action, such as simply conveying information to the tangata whenua, was insufficient to enable the council to have particular regard to s 7 matters.

2.5 What is consultation?

In *Director-General of Conservation v Marlborough District Council*,⁶² the Environment Court considered the nature of consultation. It found that “a perfunctory letter accompanied by documents of notification, and equally general responses, do not provide consultation”. Judge Kenderdine commented:

The issue of consultation must be viewed in the light of the general issue of lack of consultation with Māori, the inability of iwi to respond and keep responding in any meaningful way without support structures in place: the fact that some applicants concentrate their resources on other issues to which pointed opposition may be expected: the flood of literally hundreds of [marine farming] licences and the urgency of applications which inundated the council with limited resources, let alone the iwi groups without resources.

Since the publication of the PCE’s *Proposed Guidelines* in 1992, *Wellington International Airport Ltd v Air New Zealand Ltd*⁶³ remains the leading case on consultation generally. That case clarified the nature of consultation to the effect that:

- consultation must be allowed sufficient time, and genuine effort must be made;
- it is to be a reality, not a charade – the party consulting may have a plan in mind, but must have an open mind and be ready to change;

⁵⁸ *Greensill*, above note 2, 7.

⁵⁹ *Watercare*, above note 51.

⁶⁰ The *Lands case*, above note 11, and *Forests case*, above note 15.

⁶¹ *Rural Management*, above note 41.

⁶² Above note 54, 19.

⁶³ [1993] 1 NZLR 671 (CA). The Court of Appeal endorsed McGechan J’s statement on consultation made in the High Court proceedings.

- to “consult” is not merely to tell or present, nor is it to agree;
- consultation does not necessarily involve negotiation toward an agreement, although it may do so, as the tendency in consultation is to seek consensus;
- “consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done”;⁶⁴
- the party consulted should be adequately informed so as to be able to respond intelligently; and
- there are no universal requirements as to form nor as to duration – what is appropriate will vary according to the context.

In the context of plan preparation, councils are not bound to consult with tangata whenua for however long it may take to reach consensus. Councils should consult for a reasonable time in the circumstances, “in a spirit of goodwill and open-mindedness, so that all reasonable (as distinct from fanciful) planning options are carefully considered and explored”.⁶⁵ Neither need consultation lead to consensus between applicants and Māori. Where the interests and concerns of the parties cannot be reconciled there is little that a council officer can do other than listen to both sides and ensure that their concerns are adequately reported to the consent authority.⁶⁶

The amount of consultation should be proportionate to the extent, and likely effect, of the proposal in question.⁶⁷

Consultation is a two or three way process.⁶⁸ All persons and groups with an interest must be involved; consultation should not be with one party only. Consultation is an active process. In *Otaraua Hapū of Te Atiawa v Taranaki Regional Council*, the Environment Court considered a proposed consultation process for which the hapū was seeking endorsement. The proposal would involve a number of meetings between the tangata whenua and the council but would not always include the applicant. The Court indicated that to exclude the applicant from the meetings would be to depart from the normal understanding of consultation, and that the holding of a series of meetings as proposed should not be the norm in all matters.

2.5.1 Who should be consulted?

The Environment Court will avoid, if possible, making findings concerning the status or representation of iwi.⁶⁹ In *Luxton*, the applicant had consulted with tribal authorities who had provided statements of support for the proposal. The Tribunal commented that the applicant should not be

⁶⁴ *West Coast United Council v Prebble*.

⁶⁵ *Ngati Kahu*, above note 38.

⁶⁶ *Mangakahia Māori Komiti*, above note 22.

⁶⁷ *Paul v Whakatane District Council* A12/95, Judge Sheppard, 13/3/95.

⁶⁸ *Rural Management*, above note 41; *Otaraua Hapū*, above note 39.

⁶⁹ *Luxton v Bay of Plenty Regional Council* A49/94, Judge Sheppard; *Tawa*, above note 47.

disadvantaged by the failure of the runanga board to pass a formal resolution about the proposals.

Where there are competing claims by local Māori to mana over a particular area, such as a stretch of foreshore, a consent authority should not make any preference among the competing groups; rather it should involve all in the consent process.⁷⁰ Consent authorities are not required to decide between competing groups who claim status as kaitiaki.⁷¹ There must be a genuine attempt to consult with all those who claim status as kaitiaki.⁷²

The High Court in *Minhinnick v Watercare Services Ltd*⁷³ considered whether adequate consultation had taken place. The appellant argued that the consultation by Watercare with iwi representatives was inadequate on the basis that the working party set up by the company did not properly identify those who should have been consulted. Some individuals had left the consultation process because of a dispute as to which group had mana whenua in respect of the stonefields. However, the Court found that Watercare had made genuine efforts to consult with Māori.

In *Minhinnick*, the High Court noted that s 30 of the Te Ture Whenua Māori/Māori Land Act 1993 gives the Māori Land Court the power, at the request of any Court, to supply advice in relation to any proceedings before that Court as to the persons who are the most appropriate representatives of any class or group of Māori affected by those proceedings. Under s 37 of that Act, any person may, with leave of the Māori Land Court, apply to it for the exercise of that jurisdiction.⁷⁴

Policy statements and plans are to be prepared by regional and territorial authorities in accordance with their functions under ss 30 and 31 RMA respectively, and the provisions of Part II, their duty under s 32 and any regulations. In addition, local authorities are to have regard to a number of documents to the extent that their content has a bearing on the resource management issues of the region or district. These documents include relevant planning documents recognised by an iwi authority affected by the policy statement or plan (ss 61, 66, 74). “Iwi authority” is defined in s 2 as “the authority which represents an iwi and which is recognised by that iwi as having authority to do so”. A Māori trust board established under the Māori Trust Boards Act 1955 would be an iwi authority for the purposes of the RMA.

2.6 Opportunities for greater involvement of tangata whenua in resource management

2.6.1 Iwi management plans

⁷⁰ *Tawa*, above note 47; *Banks*, above note 47.

⁷¹ *Ngatiwai Trust Board*, above note 45.

⁷² *Ngatiwai Trust Board*, above note 45. At the date of this judgment, “kaitiaki” was defined in such a way as not to be restricted to Māori. An amendment to the RMA in 1997 replaced the definition of “kaitiakitanga” with “the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship”.

⁷³ [1997] NZRMA 553. This case concerned the construction of a sewer pipeline across the Matukuturua stonefields in South Auckland.

⁷⁴ *Minhinnick*, above note 50, 567.

2.6.2 Transfer of powers by local authorities

Section 33 RMA enables local authorities to transfer any of their functions, powers or duties under the RMA, with specific exceptions, to any public authority. The exceptions relate to the approval of a policy statement or plan or changes to either, the issue or recommendation of a designation or heritage order, and the power of transfer itself (ie where an local authority has transferred a power to another public authority, that public authority cannot transfer the power to anyone else). A public authority for the purpose of this provision includes any iwi authority.

The transfer of powers to an iwi authority was discussed in *Whakarewarewa Village Charitable Trust v Rotorua District Council*, where the Planning Tribunal noted that the circumstances of Whakarewarewa village would have warranted control to be vested in an iwi authority if there had been one.⁷⁵

A local authority remains responsible for the exercise of powers it has transferred and it may change or revoke the transfer at any time by notice to the transferee. Before a local authority may transfer any of its powers, it must notify the Minister for the Environment of its proposal, go through the special consultative procedure specified under the Local Government Act 1974, and be in agreement with the intended transferee public authority that the transfer is desirable. The criteria for establishing that the transfer is desirable are that:

- the intended transferee represents the appropriate community of interest relating to the exercise of the power;
- efficiency;
- and technical or special capability or expertise.

Section 716A LGA sets out the special consultative procedure, which requires that notice of a proposal be placed before a meeting of the council, and that the council give public notice calling for submissions on the proposal to be made within a specified period (not less than one month nor more than three months). All those who make submissions are entitled to a reasonable opportunity to be heard in open meetings of the local authority, a committee or a community board; all submissions are to be publicly available; and the decision on the proposal should be made at a meeting of the local authority regardless of whether a community board or committee of the local authority heard the submissions.

In 1988, the Government, in its discussion paper on the Resource Management Law Reform exercise, recorded that it had agreed, inter alia, that:⁷⁶

new legislation should provide for more active involvement of iwi in resource management, including statutory requirements for consultation, and noted that the question of opportunity for greater Māori participation in local and regional government is still to be looked at in the context of the reform of local and regional government.

⁷⁵ W61/94, Judge Kenderdine, 25 July 1997.

⁷⁶ *People, Environment and Decision Making: the Government's Proposals for Resource Management Law Reform* (Ministry for the Environment, December 1988) 24.

In *Minhinnick*,⁷⁷ Justice Salmon noted that s 249(2) RMA enables the appointment of a Judge of the Māori Land Court as an alternate to an Environment Court Judge. The RMA also provides for the appointment of Environment Commissioners or Deputy Environment Commissioners.⁷⁸ In considering whether a person is suitable to be appointed as an Environment Commissioner (or deputy), the Minister of Justice is required to have regard to the need to ensure that the Environment Court possesses a mix of knowledge and experience in matters coming before it. Some of the areas of knowledge and experience considered desirable are: economic, commercial and business affairs, local government and community affairs, planning, resource management, architecture, engineering, alternative dispute resolution processes and matters relating to the Treaty of Waitangi and kaupapa Māori.

A person appointed as an Environment Commissioner or deputy is required to take an oath of office that he or she will honestly and impartially perform the duties of the office.⁷⁹ The Principal Environment Court Judge may appoint special advisers to assist the Court in particular proceedings.⁸⁰ A special adviser is not a member of the Court.

2.7 Representation on the Environment Court

1. Local authorities are not part of the Crown for the purposes of the Treaty of Waitangi, and they are not generally considered to be the Treaty partner in place of the Crown in the local context. They are required to take into account the principles of the Treaty of Waitangi under s 8 RMA (2.1.2).
2. The Treaty of Waitangi is part of the law of New Zealand to the extent that it is incorporated into statute. It may be appropriate to refer to the Treaty in interpreting unclear statutory provisions (2.1.4).
3. There is no authoritative and exhaustive statement of the principles of the Treaty (2.2).
4. It is from the principle of reasonable co-operation, which incorporates the obligation on the Treaty partners to act in good faith, that the Treaty obligation to consult with tangata whenua is derived (2.2.1).
5. Consultation is a practical means of ensuring that the Crown is adequately informed to enable it to act consistently with the principles of the Treaty. Consultation is a means of ensuring that decision-makers in the resource management context are able to make informed decisions (2.2.1).
6. The Environment Court has confirmed that, for the purposes of s 8 RMA, consultation is one of the principles of the Treaty of Waitangi (2.3).

2.8 Summary

⁷⁷ *Minhinnick*, above note 50, 567.

⁷⁸ Section 253 RMA.

⁷⁹ Section 256 RMA.

⁸⁰ Section 259 RMA.

7. The matters of national importance (s 6) and other matters (s 7), and the principles of the Treaty of Waitangi (s 8), are to be applied in environmental decision-making under the RMA to the extent that they assist the promotion of sustainable management of natural and physical resources (2.3).
8. Consultation is good practice, but there is no compulsion on either applicants or council officers to consult in the context of resource consents (2.4.1).
9. Consultation with tangata whenua on consent applications is not to be undertaken by the consent authority; it is for council officers to undertake consultation where appropriate (2.4.2.2).
10. Consultation does not mean that any person has a right of veto over a proposal (2.4.2.2).
11. Adherence to the principle of consultation does not necessarily mean that the principle of the Treaty of Waitangi as to the active protection of Māori interests is satisfied (2.4.2.2).
12. If there is no consultation, the consent authority is not in a position to properly consider the matters in ss 6(e) and 7(a) (2.4.2.2).
13. Consultation need not lead to consensus (2.5).
14. It is not for local authorities nor for the Environment Court to decide which iwi or hapū are tangata whenua of a particular area and therefore have authority to speak on particular matters (2.5.1).
15. Section 33 RMA enables local authorities to transfer some of their functions, powers or duties under the RMA to any public authority. A public authority for the purpose of this provision includes any iwi authority (2.6.2).

3. CASE STUDIES

The investigation returned to the three case study areas assessed in 1992 for the development of the *Proposed Guidelines*. The three areas provide a useful range of experience, from a major metropolitan centre, to a medium-sized provincial centre with an urban and rural mix, to a region of small communities in a rugged landscape of farms and wilderness. As can be seen from the case studies below, there is also a range of systems and approaches currently operating in the three regional councils and amongst tangata whenua in each area.

In addition to the three principal case studies, summaries are also included of four situations where interesting new initiatives are being pursued.

The following case study sections give a synthesis of the information provided to this investigation in relation to the current systems and mechanisms operating between tangata whenua and councils. Part 4 then addresses the concerns, values and priorities raised in the interviews, looking at the wider issues and context. Part 4.9 looks specifically at some of the effects of contemporary environmental management and development upon natural places, resources and taonga of importance to tangata whenua.

With over one million people, Auckland is the most heavily populated region in New Zealand. It is also the largest centre of economic activity, and the focus of continuing growth. Growth is accompanied by increased demand for water, higher levels of sewage and waste generation, pressure on the capacity of the region's infrastructure, traffic generation and urban expansion. Pressure from urban development is placing increasing demands on the region's natural and physical resources, and having negative impacts on environmental values, resources and sites of special significance to tangata whenua.

Auckland is home to numerous iwi. Successive migrations, occupations, intermarriages and conquests have resulted in overlapping boundaries of closely related tribes. Fragmentation and tension amongst iwi and hapū has become common. There is also a large population of Māori from other parts of the country, many of whom are associated with the new urban Māori groups.

A large number of councils and other agencies have environmental management responsibilities in the rohe of Auckland iwi. Although the main focus for this case study is the Auckland Regional Council, tangata whenua experiences with other councils were highlighted in discussions. This study has therefore included a sampling of other councils to illustrate different initiatives and relationships that exist in the greater Auckland area.

3.1 Introduction

3.2 Auckland

3.2.1 Background

3.2.2 Councils

3.2.2.1 Auckland Regional Council

Policy and planning

The Regional Policy Statement was developed with extensive consultation with tangata whenua, and recognises the importance of building relationships with iwi and involving tangata whenua in the preparation, implementation and monitoring of policy and planning documents. The council advised that feedback received from iwi includes the iwi perception that not enough has yet been done to implement the policies outlined in the RPS. The council has developed Memoranda of Understanding with a number of Auckland iwi, which include details for iwi involvement in council programmes and processes. The council provides funding for tangata whenua contributions where iwi are contracted to give input.

Consultation with tangata whenua in the development of plans and policies has included the work for the Regional Growth Strategy, specific-issue plans, and parks management plans. As part of the council's process to develop its ten-year Strategic Plan an extensive research programme was undertaken by Hirini Matunga of Auckland University, canvassing the views and priorities of all iwi in the region. The proposed Strategic Plan includes the development, with tangata whenua input, of a Relationship Strategy, which would include communication, education, and resourcing.

The council acknowledged that comprehensive monitoring is needed on a range of matters including resource consent conditions, compliance and relationships. It was noted that some tangata whenua are being proactive to determine how they can be involved in environmental monitoring; Some council staff acknowledged the potentials in bringing together Western science and Māori approaches, and in training for tangata whenua.

Relationships with tangata whenua

There are a range of attitudes amongst elected councillors regarding tangata whenua involvement in council processes, and it was noted that changing membership has been significant. Currently most dialogue on environmental management is at the staff level. The council usually deals with individual tangata whenua spokespersons representing the wider iwi or hapū, although there have been hui to discuss proposed council policies and plans, and to inform iwi on RMA issues.

Council staff acknowledged that there can be differences between iwi aspirations and the actual consultation. It was noted that budget allocations for consultation with identified groups on particular policies or plans are decided early on; if at a later stage other iwi groups come forward, the requirements to fund additional consultation may cause difficulties. It was also reported that changes both in council staff and iwi personnel have resulted in lack of communication at changeover on big projects with long timeframes. Systems for monitoring the effectiveness of consultation, or checking continuity as projects progress, have not always been robust.

Iwi liaison officers have produced guidelines for consultation with tangata whenua. However council staff reported that some mandating and representation issues amongst iwi and hapū remain unresolved.

Council management of resource consent applications

The sheer volume of resource consent applications makes it difficult for staff to consult at the face to face level valued by Māori. To avoid consultation overload, a trial project is being established using a summary grid process. A weekly summary of all consent applications will go to relevant council officers and all major iwi groups. Tangata whenua will identify those consent applications where consultation is sought. Payment will be made to tangata whenua on a contract basis for assistance with consent applications processing, subject to performance review.

Different divisions within the council have developed different processes to meet the particular requirements of each kind of resource consent application:

Groundwater:

Council staff have used iwi resource management plans to identify, area by area, which tangata whenua need to be consulted. Discussions are held with tangata whenua as part of the process whereby consents to extract water are considered, to ensure that the conditions imposed on the consent reflect any tangata whenua concerns. A trial is to be initiated with Kawerau a Maki for assistance with groundwater consents.

Surface water:

Consents are dealt with on a catchment by catchment basis. All consents in a catchment expire together; therefore the wider cumulative effects can be reviewed, and iwi can identify concerns. Ongoing consultation also occurs in between these major reviews. Staff advise consent applicants who to consult, and facilitate site visits for applicants and iwi to discuss concerns and conditions and to identify values for protection. Staff clarify and explain scientific and technical matters for tangata whenua.

Coastal:

Extensive consultation was undertaken with tangata whenua on the regional coastal plan. Tangata whenua are classed as affected parties for all coastal consents. Some formal agreements have been negotiated as to how iwi wish to be consulted. Staff promote early consultation with tangata whenua; applicants are provided with advice on the relevant provisions in iwi resource management plans and given iwi contact details. Staff undertake site visits and dialogue with tangata whenua to identify issues and the full range of effects. Pre-hearing meetings are facilitated by council staff to work through any concerns. Coastal monitoring programmes are sent to tangata whenua for their input and approval.

Water quality:

Consultation is undertaken with tangata whenua on every consent application. The type of consultation depends on the size and scale of the activity. There were complications with tangata whenua participation in the consultation process for the Wastewater 2000 strategic plan. Council has established an audit group, with two tangata whenua members, for consent compliance. A technical group is assessing treated sewage disposal options and beneficial reuse of water and biosolids, including detailed costings of more environmentally sensitive discharge options.

Land disturbance

All consent applications are sent to tangata whenua.

3.2.2.2 Manukau City Council

Strategic directions

Established eighteen months ago, the Manukau City Council Treaty Team includes the CEO and staff from all areas of council. The team's kaupapa derives from the Treaty of Waitangi, addressing a wide range of issues — the role of the council, environmental management, legislative requirements, governance and education. A series of workshops on Treaty roles and responsibilities was developed. Councillors are now taking a lead on Treaty issues and seeking dialogue with tangata whenua to discuss appropriate relationships. The intended outcomes are:

- to recognise tangata whenua as the Treaty partner;
- to achieve a balance of cultures and values in council operations and policy;
- to incorporate Māori values in decision-making and policy development; and
- to build long-term relationships with tangata whenua for the future, to work together and support one another.

The ongoing relationships will be monitored to check satisfaction with council processes and performance, and to track the changes in behaviour and systems.

Relationships with tangata whenua

The council has separate relationships with Ngāi Tai, Huakina, Ngāti Paoa and Ngāti Te Ata. Mandating and representation issues have been unclear with Ngāi Tai. Huakina withdrew from its Memorandum of Understanding with the council in 1997. However, the council has had contracts with Huakina for a range of services. Other iwi are contracted for services provided on consent applications and other issues, and other administrative assistance is provided. There has been tension between different groups within Manukau City, including Māori, Asian and Polynesian communities. There have also been tensions in rural areas with issues concerning wāhi tapu.

3.2.2.3 Papakura District Council

Relationships with tangata whenua

The council sought advice from Local Government NZ regarding iwi groups who have conflicting claims to status. The council was advised to talk with all groups who believe they have an interest.

Papakura District Council has a Māori Standing Committee which includes three councillors and three Māori members, none of whom are official representatives of tangata whenua of the area. The committee reports on a wide range of issues, from the district plan through to day-to-day community issues; RMA matters are rarely on the agenda. The committee's advice carries the same weight as advice from other council committees. Huakina and Ngāti Paoa are currently not represented on the committee; Huakina withdrew their representative, preferring to deal with the council directly on all policy and cultural issues.

The council reported contact with Huakina Development Trust and Ngāti Paoa over the district plan and procedures for handling resource consent

applications, and advised that iwi concerns had been accepted and incorporated into the district plan. However, it was acknowledged that contact with tangata whenua is infrequent.

Papakura District Council advised that tangata whenua are contacted as and when issues arise. If expert advice is needed on particular issues, the council will commission tangata whenua at that time. The council reported that it was not aware of the Ngāti Paoa Resource Management Plan, and advised, with regard to Tainui's plan for the Manuka (Manukau) Harbour and Catchment, that it considered that aspects of the plan were contrary to council's regulatory responsibilities, and therefore the plan has not been used. The council advised that it has not been approached for assistance with the development of iwi resource management plans.

Council staff felt that iwi understand RMA processes and issues; there has been no need for staff to provide assistance with planning or RMA matters. However, on occasion staff have elucidated scientific and technical matters for tangata whenua.

Councillors and staff have visited marae on several occasions to learn about Māori protocols and areas of concern. Discussions have been held with tangata whenua about how to handle sensitive information. Iwi advised that they have not wished to identify some sites. The council noted that problems could arise where wāhi tapu have not been identified and developments go ahead as permitted activities.

Resource consent applications

If a consent application affects iwi, the council requires that applicants consult the appropriate iwi. The criterion for consultation is the size of the proposal; for example the Takanini motorway service area development required iwi to be consulted, but with smaller proposals the council does not always consider consultation necessary.

Consultants handle resource consent applications for the council, and are required to follow the statutory requirements for consultation. There is no means for the council to check the authority or appropriateness of consents sign-off processes, but the council noted that no complaints have been received to date.

3.2.2.4 Waitakere City Council

Relationships with tangata whenua

Waitakere City Council reported that its involvement with tangata whenua goes beyond the RMA requirements to include considerations of co-management options, social and economic issues, and work with urban Māori groups. The council is developing agreements with tangata whenua focusing on kaitiakitanga, joint management systems, and education and awareness.

The council has a Māori Standing Committee which includes both iwi and urban Māori representatives from the Waitakere City area. This committee deals mainly with social and economic issues; resource management issues are dealt with by iwi directly, but general environmental issues are reported to the committee. The council recognises tangata whenua status and is guided on these matters by tangata whenua. The council has not become

involved in conflicts between different iwi with claims to mana whenua, or in the debate between urban Māori and tangata whenua, but has sought advice from each group on appropriate roles and relationships.

The council is working with Kawerau a Maki to develop an agreement about processes and policies. Over the last few years the council has worked with Te Hao o Ngāti Whātua; more recently there has also been an approach from Te Rito o Ngāti Whātua. Partnership agreements are being developed with tangata whenua at both marae and runanga levels; the council hopes that the agreements will identify project priorities, funding and areas of interest.

The council believes that iwi need to be better resourced if they are to participate in RMA processes. Council planners help iwi with submission writing when necessary, and photocopying support is also provided. The importance of training, practical guidelines and induction programmes for new councillors and for iwi representatives was noted.

Waitakere City Council is considering management options for wāhi tapu sites on council land, including management by tangata whenua, or management under iwi direction. Computer mapping systems may be shared with tangata whenua to assist iwi to map and manage wāhi tapu sites. The council noted that there may be the potential for iwi representatives to become members of council committees and to be Hearings Commissioners.

3.2.2.5 Auckland City Council

In the past the Auckland City Council had a Māori advisory committee which included representatives from Ngāti Whātua, Tainui, Ngāti Paoa, the Auckland District Māori Council and the Māori Women's Welfare League. The council now works with a tangata whenua committee that provides advice on resource management issues and plans, and also, at the instigation of some iwi, consults directly with these groups through a process developed by the iwi. The council assists tangata whenua responding to applications for resource consents, through secretarial support and payment of fees to cover iwi costs.

In 1997, a process was initiated by Auckland City Council to identify tangata whenua partners within its boundaries. A historical report⁸¹ was commissioned to trace relationships and occupation over time, and in early 1998 tangata whenua were invited to a hearings process to make statements clarifying their status. A panel of Commissioners, three of whom are Māori and three councillors, are in the process of producing a report on their findings from the hearings. The council noted that the intended outcome of this initiative was to develop a proactive and binding policy for consultation, to clarify requirements for council consultation and to improve iwi participation in RMA processes.

3.2.2.6 Auckland Regional Māori Issues Group

The Auckland Regional Council and territorial local authorities have brought together a group of staff who work with tangata whenua issues from each council. The kaupapa of this group is to develop advice for councils in

⁸¹ Richard Kay and Heather Bassett, *Māori Occupation of Land within the Boundaries of Auckland City Council 1800 - 1940: An Historical Report for the Auckland City Council*, August 1997

the region to build relationships with tangata whenua in a more consistent way. Although the various councils and CEOs currently have widely differing approaches, the group is working towards identifying issues, goals and outcomes. A survey has been undertaken of each council's systems for consultation with tangata whenua.

Objectives for the group include clarification of:

- who councils should be dealing with;
- how best to manage relationships;
- Treaty of Waitangi issues;
- structures and processes;
- resourcing; and
- consistency.

3.2.3.1 Ngāti Paoa

The rohe of Ngāti Paoa extends from north of the Whangaparaoa across to the Piako River and Hauraki Plains. The *Ngāti Paoa Resource Management Plan*, completed in 1996, was sent to all councils in the Auckland area, but Ngāti Paoa noted that not all councils are using it. The iwi has not formally sought explanations when councils have not recognised or used the plan. Ngāti Paoa also have established a *Policy Statement for Resource Management* (1993) and protocols for project management.

Relationships with councils

Ngāti Paoa reported a range of situations with the various councils in their rohe. It was felt that relationships with councils are generally improving, although concerns were raised about:

- councils' procedures and failures in communication;
- adequacy of recognition for wāhi tapu in the North Shore District Plan;
- the lack of Ngāti Paoa representation on the Papakura District Council advisory committee; and
- the omission of Ngāti Paoa from Auckland Regional Council consultation on the management of an area where there are significant historical associations for the iwi.

Although Ngāti Paoa has contributed to the development of council policies and plans, the iwi feel that:

- their concerns are not being given sufficient weight in council decision-making on major issues, critical cases, and the notification of resource consent applications;
- regional and district plan references to iwi and hapū values are inadequate;
- the iwi are not involved early enough in the policy drafting process; and
- involvement is difficult because of the timeframes, the lack of technical expertise within the iwi, and resource constraints.

Ngāti Paoa were strongly concerned at the proposals for the Hauraki Gulf and the processes by which these have been advanced to date (refer 4.9.8).

3.2.3 Tangata whenua

Resource management planning and resource consent applications

Ngāti Paoa has established clearly structured systems for working through consent applications and providing responses and submissions to council plans and policy. The iwi reported that often relationships are better with resource consent applicants and developers than with councils.

Ngāti Paoa receive notified consent applications from councils, and non-notified consent applications from applicants directly. A full-time person is employed to coordinate the work. The regional council has suggested providing a summary list of non-notified consent applications to save the iwi time, but this system has not yet been initiated.

A four-member committee meets monthly to consider consent applications. Applicants are charged a set fee to cover costs. Ngāti Paoa advises the relevant council and the applicant of any concerns and proposed conditions on the consent. Major developers are familiar with this system and value the certainty it provides in the consent process; some other applicants have complained. Ngāti Paoa noted that they rely on the experience and expertise of associates for information on the technical aspects of some consent applications.

Ngāti Paoa uses a silent file system,⁸² with a map for general distribution which shows the areas within which lie wāhi tapu and other sites of significance. This indicates to resource consent applicants who wish to modify sites or undertake reclamation in that area that consultation with the iwi will be necessary. It is then at the discretion of the iwi, whether or not further information is provided to the applicant about the particular values of that site.

3.2.3.2 Ngāti Whātua o Orakei

Based at the Orakei Marae in central Auckland, Ngāti Whātua o Orakei has prepared an iwi regional policy statement which includes the history and vision for the future, and an environmental kaupapa and guidelines. Ngāti Whātua expects this policy and kaupapa to be considered by regulatory bodies in the region. The main objectives are to develop a true partnership in regard to management and monitoring. The iwi noted that over the years it has been made clear to councils who they should be dealing with.

Ngāti Whātua reported that relationships with councils are variable. There was concern at the recent Auckland City Council process to establish the iwi the council would deal with, and at the general processes operating within Auckland and North Shore City Councils for iwi input into planning and policy processes. However, Ngāti Whātua has a good working relationship with Waitakere City Council, which provided practical assistance with the secondment of an environmental planner to work with the iwi.

Ngāti Whātua deals both with resource consent applicants and councils. Ngāti Whātua are sent copies of notified and non-notified applications; the iwi determine whether or not they are an affected party.

⁸² Information about iwi and hapū resource interests and concerns which remain solely in the hands of tangata whenua

Ngāti Whātua has sought s33 RMA transfer of functions for some areas and although proposals have been discussed with councils, none have yet been granted.

Ngāti Whātua have a system of silent files. This information is tapu, and kaumātua agreement is needed to deal with these matters.

3.2.3.3 Te Hao o Ngāti Whātua

Te Hao was set up in 1993 as a resource management consultancy for Ngāti Whātua. Several marae have since developed independent arrangements with councils. Te Hao o Ngāti Whātua has a mandate from the Orakei Trust Board and runanga support; kaumātua are involved in the consideration of projects and in site visits. Te Hao works to a charter, which sets out a process for consultation; all councils have a copy. Te Hao's role is to provide the interface between the kaumātua who know and live the tikanga, and the developers, corporations and council personnel.

Te Hao advised that its relationship with Auckland Regional Council has been variable over the last two years, and reported better working relationships with developers than with councils. Developers contract Te Hao for advice on resource consent applications, and there have been many examples where good practical working partnerships have resulted in win-win solutions (refer 4.9.10).

Te Hao raised a number of concerns about the regional council's resource management planning processes. These included:

- staff are designing processes without tangata whenua input;
- staff have a limited amount of time available for developing relationships with tangata whenua;
- iwi management plans not being used, as councils are not required to recognise them but only to "have regard to" such documents;
- tangata whenua recommendations are not being given sufficient weight in council decision-making processes and plans;
- council decisions sometimes conflict with earlier decisions and policies; and
- Te Hao is often asked for advice on particular issues, such as biological control, sediment issues or erosion control, without payment for this service.

Te Hao developed a position statement to present to the Regional Growth Forum. The paper acknowledges the social impacts on Māori, and explains concepts like whanaungatanga, kaitiakitanga and wāhi tapu. It interweaves traditional values into the modern day context and identifies growth and development issues from the perspective of Ngāti Whātua.

It was noted that council staff have visited a number of marae, but the iwi believe that councils do not have the relevant expertise to make resource management decisions. Te Hao considers that councils need input from people with knowledge about the landscape and history, the environmental values and the full range of options for constructive outcomes, before making management decisions.

3.2.3.4 Te Rito o Ngāti Whātua

Te Rito o Ngāti Whātua developed as a separate identity from Te Hao o Ngāti Whātua to work directly with councils on resource management matters in the South Kaipara area.

Te Rito reported considerable variation in the opportunities for participation in the resource management processes of the councils in its rohe. Auckland Regional Council and the North Shore City Council send notified consent applications for Te Rito's consideration. Timeliness of tangata whenua involvement was identified as a major issue; it was noted that developers should come to tangata whenua at the earliest possible stages of a project. It was also noted that there is little protection against the adverse effects of illegal actions by landowners. Te Rito were also concerned about approval being given for projects by Māori without the relevant authority to speak for local people.

Te Rito reported limited involvement in council policy and planning processes. Te Rito felt that its submissions have gone unheeded, and had little faith in statements in council plans or other official statements. There was also dissatisfaction with the effectiveness of Historic Places Trust systems for protection of wāhi tapu and other sites of importance to the iwi (refer 4.9.2.2 below). Te Rito has received no support from councils for the development of their own management plan.

3.2.3.5 Ngātiwai

The Ngātiwai rohe extends from Tapeka Point down the coast to Pakiri. Ngātiwai is in the process of developing hapū resource management plans that will come together as a comprehensive iwi position. Broader principles and coordination are developed at the iwi level, but Ngātiwai feel it is appropriate for specific plans to be dealt with at the hapū level. No funding has been received from councils for the development of Ngātiwai plans.

Councils within the rohe have been provided with a formal statement about the Ngātiwai Resource Management Unit, which sets out the goal of sustainable management of resources, the mandate from and accountability to Te Iwi o Ngātiwai, a map of the rohe, and a research kaupapa. The unit has also supplied an information sheet and fee schedule for consent applicants. After some years the unit has increasing experience and capacity within legal and bureaucratic processes, and a strong track record and reputation for its environmental work.

Ngātiwai has sought section 33 transfers for the management of pā sites, and other sites of historical and archaeological significance. The iwi was advised by councils that they would not consider transfer of powers under section 33 at that time.

Relationships with councils

There are numerous councils within the Ngātiwai rohe — Auckland and Northland Regional Councils, Auckland City Council and Whangarei, Rodney, Kaipara and Far North District Councils. Each council has a different approach, system and level of willingness to work with Ngātiwai. The iwi noted that it is no longer associated with Te Kotahitanga o Te Taitokerau, a consultative system for Northland iwi supported by the

Northland Regional Council. Ngātiwai suggested that council budget cutbacks have limited the effectiveness of Te Kotahitanga's work.

Ngātiwai has sought proactive involvement in Auckland Regional Council forward planning, and had input into the council's Growth Strategy and Regional Policy Statement, but noted that this had not been satisfactory in achieving the integration of Ngātiwai concerns that was sought. The iwi noted that some council managers have been reluctant to recognise the relevance of Ngātiwai involvement. Although some councils have come to marae to present information, Ngātiwai considered these processes had been one-way, with few opportunities for discussion or negotiation.

Ngātiwai feels that at present the best option for protecting significant sites and natural areas is to bypass councils altogether and deal directly with landowners.

Resource consents

Ngātiwai receive all notified consent applications from councils in their rohe. Northland Regional Council sends non-notified consent applications to the Resource Management Unit if Ngātiwai is considered to be an affected party. A cultural impact assessment is undertaken and the applicant is charged according to an itemised schedule of fees. If the council response does not adequately provide for tangata whenua concerns, the iwi status changes from consultant/contractor to a submitter, opposing the application. The Ngātiwai position is protected in these processes in that the Resource Management Unit undertakes the cultural impact assessment and, if it becomes necessary, the hapū directly affected will take the objection.

Funding and support

An application was made to the seven councils operating within Ngātiwai's rohe for retainer funding for the operating costs of the Resource Management Unit for the 1997/98 financial year, to be split proportionally between the different councils. The application outlined the mandate, role and practical requirements of the unit, and proposed establishing accountability systems, a Memorandum of Understanding and specific contracts to determine responsibilities and expected outcomes. The application was rejected by the councils. No funding has been received from councils for the development of Ngātiwai resource management plans.

A planner was employed under a grant from Pacific Conservation and Development Trust (Rainbow Warrior Fund) for a limited time. Ngātiwai noted that an electronic network for communication between the unit and hapū would be a valuable mechanism.

3.2.3.6 Ngāti Wai ki Aotea

The Ngāti Wai ki Aotea Trust Board works closely with mainland Ngātiwai, but the Board's principal focus is Aotea, Great Barrier Island. The Trust Board, established in 1992, is developing a hapū resource management plan to offer guidance on matters of significance to Ngāti Wai ki Aotea.

Auckland City Council sends the Trust Board notified and non-notified consent applications for comment. Ngāti Wai ki Aotea have developed a process with the council to determine who is an affected party, when to consult and who to consult with. Auckland Regional Council only sends

notified consent applications; council staff decide whether a consent should be notified or not. Ngāti Wai ki Aotea representatives receive a basic consultation fee and some travel costs are met, although they advised that this does not cover the costs of hui to discuss the issues in order to present councils or applicants with robust and authoritative advice. There are no resources available to fund planners to work in the Trust resource management unit. There was concern at the limited time available for tangata whenua input, and the pressure of large numbers of consent applications and policy documents requiring response.

Ngāti Wai ki Aotea reported their strong concerns with the consultation processes undertaken for new management proposals for the Hauraki Gulf, including matters of representation at the Gulf Forum, and the lack of involvement of tangata whenua as the proposals have been developed (refer 4.9.8). There was also intense concern at the approach taken by some councils with regard to consultation with iwi; Ngāti Wai ki Aotea felt that consultation is often just a formality, with the right words being included in councils' policy statements, but no recognition of tangata whenua concerns and kaitiaki responsibilities, and inadequate involvement in planning groups to discuss future management of natural resources. There was concern at the management of sensitive information and wāhi tapu.

3.2.3.7 Huakina

The Huakina Development Trust is the environmental authority of the Tainui Māori Trust Board, and was established to represent the iwi on matters relating to the environment and the management of natural resources within their rohe. Huakina has developed an iwi resource management plan for the Manuka Harbour and catchments,⁸³ and all councils and marae have received copies. The plan sets out clear goals to guide Huakina and external agencies.

Huakina also have in-house guidelines for staff to follow in carrying out resource management work. Processes and policies are coordinated by Huakina with regular meetings and hui to confer with hapū and whānau. There is movement towards decision-making and policy development at the marae level.

Huakina staff reported a good working relationship with Auckland Regional Council; draft plans are provided for comment, and assistance with scientific and technical matters has been offered by council staff. There have been discussions about the management of sensitive information and the need for care regarding the location of wāhi tapu.

Huakina also reported a positive working relationship with Franklin District Council, with a good flow of information from the council to Huakina in relation to policies and structures, RMA processes and resource management issues. Huakina has a contract with Franklin District Council to provide presentations to councillors and staff on Tainui history, Treaty issues and Huakina's position and responsibilities. Huakina reported no contact with Papakura District Council, noting however that a large number of resource consent applications are being processed in this rapidly developing area.

⁸³ Commonly referred to as the Manukau Harbour

The Tainui Māori Trust Board provides some support for the Huakina environmental unit. Resource consent applicants are charged for costs associated with travel and information. Huakina has some contracts from councils for work on environmental issues, although applications to councils for regular retainer funding to maintain resource management capacities have been unsuccessful.

3.2.3.8 Ngāti Te Ata

Many people consulted for this investigation were keenly aware of the high-profile legal cases brought through 1997 by Nganeko Minhinnick of Ngāti Te Ata, and others, against Watercare Services Ltd's construction of a sewer pipeline across a remnant section of the ancient Matukuturua stonefields in South Auckland, a wāhi tapu of significant archaeological and historical value. The stonefields issue was discussed as a case study in the PCE's report on *Historic and Cultural Heritage Management*.⁸⁴ There was extensive publicity surrounding the challenges brought against Watercare through the Environment Court, High Court and Court of Appeal (refer 2.4.2.2).

Ngāti Te Ata felt that the lost stonefields cases only proved the futility of attempts to ensure recognition and protection under the current environmental management systems for the values and tikanga of tangata whenua. There was profound scepticism about the effectiveness of official reports and recommendations, and about the processes employed by councils and other official agencies, such as the Historic Places Trust, to address these issues. It was noted that the Ngāti Te Ata Tribal Policy Statement and resource management plan has been in place since 1991; however there was a deep feeling of hopelessness regarding the efforts of the iwi to communicate with councils and to get Ngāti Te Ata values and priorities into the decision-making processes.

There was concern at the overwhelming pressure of council priorities on slender iwi resources. Ngāti Te Ata reported that approaches to local government in South Auckland to address resourcing inequities had been unsuccessful. There was also strong concern at the approval by councils of resource consents for activities which affect tangata whenua values, with no notification or consultation with the iwi.

3.2.3.9 Ngāi Tai

Over the last few years there has been ongoing tension and conflict within Ngāi Tai about who has the authority to speak for Ngāi Tai. Two different authorities have each claimed a mandate as representing the collective interests of Ngāi Tai. There is considerable confusion and misinformation arising from this conflict and as a result relationships with councils, other agencies and other iwi are not always straightforward.

3.2.3.10 Kawerau a Maki

Based in West Auckland and the North Shore, Kawerau a Maki has developed a tribal resource management policy statement and has provided this to councils and to consultants.

⁸⁴ Parliamentary Commissioner for the Environment, *Historic and Cultural Heritage Management in New Zealand*, 1996, pp 15-18

Waitakere City Council has an agreement with Kawerau a Maki to provide advice on tangata whenua issues and representation. Kawerau a Maki gave a presentation to staff about tribal history, boundaries, kaitiakitanga, and future directions. The council sends Kawerau a Maki notified and non-notified consent applications and planning documents.

Kawerau a Maki are carefully developing their relationship with the Auckland Regional Council, and noted that recently their input was sought at the early stages of strategic plan development. However the iwi reported that other local authorities in the region have not involved them in consultation.

A number of concerns were noted regarding the processes and approaches followed by councils, including:

- representation issues;
- resourcing issues;
- timeframes for consultation, and the need for early involvement of tangata whenua;
- differences between mana whenua and other Māori groups;
- councils contracting consultants to undertake research into matters of history and culture only tangata whenua can speak for;
- monitoring of consultation for resource consent applications; and
- the need to recognise the differences in tikanga and processes of each iwi and not to try to standardise processes.

3.2.3.11 Hauraki

Based in the Thames-Coromandel area, the Hauraki Māori Trust Board has extensive Treaty claims across the region. The Board would like to develop a strategic iwi resource management plan, but has not had the resources to do this. Their input into resource management has been confined to a reactive role, providing input into council policies and plans, and responding to large numbers of resource consent applications. However the Trust Board seeks to be more proactive, to develop its own environmental management options, and to address issues at the wider ecosystem management level.

Hauraki reported that it had not established formal relationships with councils, noting that attempts at formalising relationships have been based on councils' priorities. Hauraki had produced an information booklet for councils, but noted that it is not being used. Hauraki felt that although some staff make an effort to include tangata whenua in council processes, there can be less openness to tangata whenua contributions amongst elected councillors. A workshop was held for iwi to discuss the cultural heritage component of the Auckland Region Strategic Plan, but Hauraki reported that such initiatives from councils were limited and infrequent. Some councils' efforts to talk with local people at marae levels had been ineffective when the wrong people were consulted. Hauraki feel that councils often disregard tribal processes and focus solely on their own processes and timeframes; Hauraki has not received information from any of the councils in their rohe about council policies and structures. The iwi cited their difficulties with the consultation process for the proposals for the Hauraki Gulf as a major concern (refer 4.9.8).

Resourcing was identified by the iwi as a major constraint on their abilities to fulfil their responsibilities in RMA processes. Hauraki noted that Auckland City Council has given some assistance for processing resource consent applications, including travel costs and meetings fees. Hauraki is concerned about the sheer volume of resource consent applications being sent to iwi for comment, and the lack of council feedback to affected parties on the outcomes of cases.

3.2.3.12 Te Whānau o Waipareira Trust

Te Whānau o Waipareira Trust, based in West Auckland, organises social programmes, training and employment for urban Māori in fields as diverse as horticulture and waste management. The Trust's main focus is on the promotion of social, economic and community benefits for urban Māori. Te Whānau o Waipareira Trust's mission statement is to:

“be a public forum of the people of West Auckland, concerned with ensuring that facilities and resources are better utilised to benefit and assist the Māori community.”

Te Whānau o Waipareira has a representative working with Waitakere City Council on RMA planning issues. Council staff and councillors are supportive of Te Whānau o Waipareira involvement in council processes.

Te Whānau o Waipareira is committed to integrated environmental management. Trust spokespersons noted that there is considerable potential for Te Whānau o Waipareira to take a more proactive role in the RMA arena in the future, and to become involved in policy development, planning processes and RMA training initiatives (refer 4.4.3). Te Whānau o Waipareira has a strong commitment to education, and has established a wānanga centre at Hoani Waititi Marae; training programmes in environmental management are planned.

3.2.3.13 Constraints to tangata whenua involvement in RMA processes

In discussions with Auckland iwi, a number of constraints to tangata whenua involvement in RMA processes, common to all groups, were identified. These included:

- limited capacities within Auckland iwi and hapū to deal with the large volume of RMA issues, in terms of time, expertise and resources;
- a general lack of information on councils' processes and policies, and limited dialogue currently occurring between kaitiaki and councils;
- the hierarchical nature of councils, and the differences in approach and understanding at the top political levels, and at the staff levels where most interaction with tangata whenua occurs;
- the inaccessibility of council reports – documents are often lengthy and full of bureaucratic and technical jargon;
- the lack of awareness within councils regarding tangata whenua history, traditions and values;
- the high turnover of council staff making it difficult to sustain relationships;
- wide variations in the commitment of councils to consult with tangata whenua and a general lack of coordination between councils;

- the emphasis of many councils on development and business priorities;
- late entry into council processes and the subsequent reactive nature of tangata whenua involvement;
- the narrow timeframes given to tangata whenua to provide advice to councils on policies and plans; tangata whenua are not given enough time to work through the issues at an early stage in the process and to discuss the issues with hapū and whānau;
- lack of tangata whenua resources for the costs involved in legal processes, if issues are taken to the Environment Court or other Courts;
- the limited role and support given to iwi liaison officers by councils, and the huge pressure on iwi liaison staff; and
- representation and mandating issues.

3.3 Hawkes Bay

3.3.1 Background

Hawkes Bay, on the eastern coast of the North Island, has a population of over 140,000. Throughout the region intensive land use and the prevailing weather patterns have resulted in severe environmental degradation. Little forest cover remains, and erosion is a significant problem in the hill country. Droughts are a recurring pattern and water use is a major issue for the region. Other pressures on natural and physical resources stem from farming and horticultural practices, development of rural subdivisions, gravel extraction and oil exploration. Hawkes Bay has one major iwi, Ngāti Kahungunu, comprising district level taiwhenua groups and subsidiary hapū.

3.3.2 Hawkes Bay Regional Council

Policy

The Regional Policy Statement uses the RMA as the basis for tangata whenua involvement in council processes. The RPS was developed by the former Runanganui through a process of dialogue with all hapū in the Hawkes Bay; it outlines resource management matters of significance to tangata whenua including:

*“the need to preserve and protect the mauri of natural and physical resources;
recognition of the guarantee of tino rangatiratanga and its relationship with kawanatanga in resource management planning and decision-making;
recognition of the Māori social fabric of whānau, hapū and iwi;
recognition of kaitiakitanga; and the protection of wāhi tapu...”*

The council is currently considering the development of a Treaty Policy, which it is envisaged would integrate a number of current policies and practices.

Representation

The council contracted the former Runanganui to provide input into council plans and policies. The council is aware that there are some tensions within Ngāti Kahungunu and also with other iwi groups whose rohe come within the council’s jurisdictional boundaries. The council is clear that these issues are for tangata whenua to resolve. In the meantime, the council works with Kahungunu and also consults other iwi if particular issues arise relating to their rohe.

Regional Council Māori Committee

The council has a Māori Committee with twelve members and three council representatives. Māori members are elected by the iwi; three members represent each of the following areas: Wairoa, Napier, Hastings and Central Hawkes Bay.

In 1994 the Māori Committee and the council adopted a Charter which identifies the special status of tangata whenua and recognises the importance of tangata whenua input into council decision-making. The council uses the Māori Committee as a forum for discussion on how to proceed with tangata whenua issues. If Māori Committee members are unable to attend a meeting, a proxy can vote on their behalf. Committee members are reimbursed for their travel costs and time, and the chairperson receives an annual retainer.

All council committees have a representative from the Māori Committee as a full committee member. The Māori Committee Chairperson also has speaking rights on all committees. Three Māori Committee meetings are held on marae each year and all council staff and councillors living in the area attend.

Resource consent applications

The council has a manual for staff that outlines the consultation process for resource consent applications. Applicants are encouraged to attend a pre-application meeting with council staff to clarify:

- the scope and detail of information required to support an application;
- the degree of consultation to be carried out before the application is lodged; and
- the cost of assessing and processing an application.

Māori Committee advice, regarding which hapū and whānau are affected by applications in specific geographical areas, is conveyed to the applicant. In cases where the iwi have unresolved concerns about an application, they are advised to lodge a formal submission. The application manager may try to resolve the situation through a pre-hearing meeting. If this is unsuccessful, the matters are addressed at a formal council hearing.

The council advised that iwi and hapū are always consulted when applications relate to discharges of human waste into water, where there is a possible disturbance to wāhi tapu and where cultural food sources are affected. If notified consents affect resources that are taonga, the council has special obligations under its charter with iwi. Most resource consents being renewed require consultation, although the council noted that consultation would be unlikely for renewals of consents for routine groundwater takes for irrigation or public water supply that have been in existence for some time. All new applications are reviewed by the iwi liaison officer as they come into the office, although it was noted that recent staff changes have resulted in some interruption to this procedure.

Education and information

The council acknowledged the importance of on-going education for councillors and staff. In early 1998, Professor Mason Durie of Massey University ran a Treaty workshop for the council. Attendance was high with the Māori Committee, most councillors and relevant staff present.

Hawkes Bay Local Government Study

In December 1996 the council resolved to undertake a study into the organisational structure of local government in the Hawkes Bay region. A consortium of independent consultants evaluated five alternative structural options, ranging from the existing structure to one or more unitary authorities in the region. Public consultation was excluded from the brief, although the consultants did meet with the Chairpersons of the Hawkes Bay councils' Māori Committees and iwi liaison officers for an informal discussion. The report notes that a large proportion of Hawkes Bay people are Māori, but the role that tangata whenua might play in the proposed governance structure for councils is not discussed. One section in the report summarises issues affecting Ngāti Kahungunu.

Advisory committees

Hastings and Wairoa District Councils and Napier City Council also work with Māori Advisory Committee systems. Ngāti Kahungunu generally support iwi consultative committees, although there are concerns about the way committees are currently operating. These include:

- knowledge and concerns of hapū are often not reaching the council decision-making table;
- information is often not reaching people in the community and decisions are being made on matters hapū are not aware of;
- representation issues, with not all manawhenua groups having direct involvement with the committees. Land trusts were identified as significant groups;
- the extent of some committee members' knowledge about history and values of the land;
- the constraints on members to undertake consultation with hapū; members are only funded for meetings and any further consultation is on their own resources and time;
- the reactive position of committees in relation to council issues and priorities;
- council reliance on the committee members and the Iwi Liaison Officer for consultation, rather than coming to hapū and whānau; and
- the inability of some committees to report in ways they would feel to be appropriate to the full council.

3.3.3 Tangata whenua

3.3.3.1 Te Taiwhenua o Heretaunga

The Heretaunga Taiwhenua, based in Hastings, has provided its resource management plan to the Regional Council. Heretaunga reported that they had been given advice by the Hastings District Council regarding the formal association of the iwi management plan with the District Plan (refer 4.4.6).

Heretaunga has had input on historical, cultural and spiritual matters into the Regional Policy Statement. However, the Taiwhenua noted that the RPS does not include sufficiently specific provisions to enable tangata whenua to

take an issue to the Environment Court should there be a breach of the policy. Heretaunga advised that although the RPS specifies outcomes — for example, no pollution of waters of significance to tangata whenua — they do not consider there is adequate detail about how such outcomes are to be achieved.

Heretaunga has a range of relationships with the various councils in Hawkes Bay. Although each council has a Māori committee, it was felt that the influence each committee has on council decision-making varies greatly. The Taiwhenua noted that members of the Regional Council's committee are included on the Regulatory and Hearings Committees; the Taiwhenua felt that in contrast, members of Hastings District Council's committee have less opportunity for input into other processes. Heretaunga reported that sitting fees and travel costs are provided for committee members.

Heretaunga do not receive non-notified consents and councils do not pay the Taiwhenua for their input on notified consents.

3.3.3.2 Whanganui a Orotu Taiwhenua

The Taiwhenua, based in Napier, noted their concerns at the attitudes of some elected councillors, and their lack of understanding of the Treaty and tangata whenua relationships with land and natural taonga. It was noted that iwi and councils must be able to meet on common ground where both parties are comfortable. Whanganui a Orotu reported that its representatives have been excluded from council discussions on matters of concern to them, on the basis of a conflict of interest. The Taiwhenua noted though that no one else can speak authoritatively on iwi matters. There was concern that consultants are used to analyse and interpret Māori values for councils, with no iwi involvement.

The Taiwhenua discussed developing an iwi management plan with council funding, but decided it would be unwise to be dependent on the council for plan development. There was concern that tangata whenua need to develop their own skills and expertise in resource management. It was noted that iwi need to be able to present their concerns and priorities to councils in appropriate professional and scientific language and formats.

Councils developed criteria for permitting certain activities without tangata whenua being fully aware of the significance this classification would have. Subsequently a number of developments have proceeded, including skyline housing, which tangata whenua do not support.

The Taiwhenua receives no resources for input into plans. In the past, Whanganui a Orotu has received occasional payments for advice on consents, but there has been limited contact with the regional council in relation to resource consents since the recent changeover in iwi liaison officer. There was concern at the lack of councils' monitoring of applicants' consultation, and the lack of feedback from councils on changes to recommended conditions for resource consents.

3.3.3.3 Wairoa Taiwhenua

Wairoa Taiwhenua are in favour of a formal iwi resource management plan, but have not yet developed one. The Taiwhenua noted that councils have been made aware of iwi concerns through the representatives on council Māori standing committees. The Taiwhenua have made it clear to councils that the Wairoa River is a taonga of local Māori, and that as the original owners, they are to be acknowledged.

There was strong concern for the strengthening of the old values and practices for nurturing and sustaining natural resources, and the recognition of traditional teachings and management skills. Wairoa Taiwhenua stated that the concept of mauri is fundamental to the Ngāti Kahungunu ethic for environmental protection, management and development (refer 4.3.3).

Wairoa Taiwhenua reported that their relationships with councils have improved, and acknowledged the usefulness of the committees as forums for discussion, although it was noted that consultation needs to be wider than just the committees. It was noted that the Wairoa council committee has 14 representatives when there are more than 30 hapū in the area. There had been confusions and mix-ups with consultation being undertaken with the wrong people. The Taiwhenua reported that the District Council had visited local marae to discuss their ten-year plan; the process for developing this plan gave tangata whenua the opportunity to identify their concerns.

Resourcing for iwi contributions on resource management issues was identified as a major issue restricting iwi involvement. There was also concern about the time necessary for information to be gathered to ensure informed decisions are made. It was noted that there is no funding for the Taiwhenua to seek technical advice.

Tangata whenua have had positive working relationships with a number of developers. Wairoa Taiwhenua were able to identify their concerns and developers adjusted their work to accommodate those concerns. The CEO of Westech, the international corporation undertaking exploratory drilling for oil and gas in the region, sought a meeting with tangata whenua to discuss the drilling proposals and identify any iwi concerns. The Taiwhenua noted however that crucial decisions can be made in Wellington or at other levels, without reference to local knowledge and priorities.

Wairoa Taiwhenua has established a computer mapping (GIS) system at their own expense. Tangata whenua are in the process of mapping all wāhi tapu and other sites of importance in the Wairoa area.

3.3.3.4 Ngāti Pārau

The hapū does not have a resource management plan although an application is currently with the Lotteries Grants Board Environment Committee for funding to develop a plan. An application to the Napier City Council for assistance to develop a management plan for an important pā site was unsuccessful; Ngāti Pārau were advised that the plan was a hapū responsibility.

There was acknowledgement that councils' Māori standing committees are helpful mechanisms, but concerns with their limitations. It was reported that some councils have come to marae for hui on planning and policy

documents, but the hapū are not involved sufficiently early in the development of these. There was concern at the consultation processes for such initiatives as the Napier residential rating review.

Ngāti Pārau has received information on RMA processes from councils, but observed that hapū do not always have the information or expertise to respond productively to issues as framed by councils. Ngāti Pārau do not receive all resource consent applications. The hapū reported that in some instances, developers have approached individuals for approval who do not have the relevant authority or mandate. There was also concern at the contracting by the Napier council of a Pakeha historian to identify and assess sites of significance to tangata whenua.

Ngāti Pārau emphasised the importance of consultation and involvement at the hapū levels, noting that councils need to develop relationships with every hapū in their area. Adequate resourcing was a priority. Improving skills and awareness both within hapū and within councils was seen as fundamental to building more productive partnerships.

3.3.3.5 Te Whānau Tamati o Ngāti Poporo

A hapū resource management plan is being developed that identifies and recognises local hapū, indicates hapū resource management concerns and specifies desired outcomes. Ngāti Poporo noted however that due to a lack of trust, sensitive information is held back from councils.

Ngāti Poporo reported that no information has been received about councils' structures and processes; the hapū felt that the communication processes are not wide enough. On occasions the regional council has approached the hapū for advice and come to the marae; however the hapū felt that because they had been given little information about the issues, and had little experience in dealing with council systems, they were not able to contribute effectively at that time. The comment was made that councils and local hapū communities are on different wavelengths, speaking different languages. There was a perception that consultation will be dominated by the frameworks and directions already set by councils.

Ngāti Poporo is often contacted by developers for advice on consents. Currently, tangata whenua receive no payment for their input into consents. An administration system will be developed by the hapū to deal with accounts for their services.

Training for tangata whenua was identified as an urgent priority to enable constructive participation in council processes. Kimi Ora Arts and Crafts Community School has been established to provide training for rangatahi, and resource management courses are to be developed in future.

3.3.3.6 Constraints to tangata whenua involvement in RMA processes

In discussions with Ngāti Kahungunu, key constraints to tangata whenua involvement in RMA processes, common to all the Taiwhenua groups and hapū, were identified. These included:

- limited capacity within Kahungunu to deal with resource management issues, both in terms of expertise and resources;

- lack of knowledge about council structures and processes, and about who to contact within councils to progress tangata whenua concerns;
- late entry into council processes and the subsequent reactive nature of tangata whenua involvement;
- a focus on process, rather than on outcomes and developing future directions;
- councils' focus on development of business opportunities which it was widely felt amongst the taiwhenua and hapū was to the detriment of tangata whenua participation, values and concerns;
- operational difficulties for Māori committees related to representation and knowledge base;
- variability in the commitment of councils to consult with tangata whenua, and lack of coordination between councils; and
- reliance by councils on the iwi liaison officer.

It was noted that a proportional representation system along the lines of the proposal being developed by Environment Bay of Plenty (refer 3.5.4) is being considered by Kahungunu for improved tangata whenua participation in the work of local authorities in the Hawkes Bay.

3.3.3.7 Ngāti Kahungunu Resource Management Unit

Ngāti Kahungunu Iwi Incorporated has proposed that a new resource management unit be established to deal with iwi environmental concerns. The proposed unit would be accountable directly to the iwi, and would:

- prepare a strategy document;
- establish policies, structure, and management systems;
- identify issues of potential conflict;
- employ professional staff with resource management and research qualifications, and if possible with Ngāti Kahungunu tribal affiliations;
- develop meaningful relationships with external agencies;
- maintain links with the existing councils' Māori Committees; and
- provide specialist advice to councils.

The Regional Council supports the establishment of the unit, recognising the usefulness of a reliable, professional consultancy service to coordinate advice from various Kahungunu hapū and other interests. The council noted the value of consistent, professionally produced iwi reports for resource consent applications, and the opportunities for the new unit to provide cultural awareness training for staff and councillors. The council acknowledged that it will also continue to deal with marae directly as required.

The unit may also undertake monitoring of plans, consents and social and economic conditions for its own purposes. Mechanisms to provide support for the unit, such as a retainer, are presently being investigated by council. The council advised that the future role of the Māori Committee may change when the new unit becomes established.

Although tangata whenua support the establishment of the unit, some hapū expressed concern that the runanganui will drive decision-making processes, rather than the hapū who have relevant knowledge and kaitiaki status.

Tai Poutini is the third largest region in New Zealand and extends over a distance of 600km, bounded in the east by the Southern Alps and in the west by the Tasman Sea. The region consists largely of indigenous forests and is very much a landscape of water — Te Wai Pounamu — rich in lakes and wetlands, and dissected by a number of large rivers. Major developments in the area include forestry, farming and tourism initiatives. The West Coast has a population of around 35,000 with only one major iwi, Ngāi Tahu. Within Ngāi Tahu there are two papatipu runanga for te Tai Poutini, as identified in the Te Runanga o Ngāi Tahu Act 1996, and a number of other whānau groups.

3.4 The West Coast

3.4.1 Background

The statutory requirements of the RMA provide the framework within which council operates. The council recognises the need to consult with Ngāi Tahu and to provide appropriate opportunities for participation in resource management. Council staff advised that consultation initiatives are undertaken to take into account tangata whenua values and concerns, to promote awareness, and to establish a forum where councillors can listen to the views of iwi representatives.

3.4.2 West Coast Regional Council

Mechanisms for consultation

Until 1993 council consultation was through an advisory committee, Komiti Rangapu. The Komiti was perceived by council staff and many tangata whenua to have promoted wide involvement in RMA processes and to have been a useful forum for information exchange. Komiti Rangapu included both Māori and councillors and decisions were reached by consensus. A core number of members attended regularly, but others with strong runanga affiliations did not attend.

Kāti Waewae runanga chose not to work through the Komiti Rangapu system. Runanga concerns included aspects of the process by which the Komiti was established, the fact that the Komiti only had advisory status, and representation issues. Kāti Waewae were concerned that consent applications were being approved by Komiti members who had no knowledge of Kāti Waewae concerns, tikanga and history.

A number of events prompted the council to disband Komiti Rangapu, including constraints on council finances from 1993, and the introduction in 1996 of the Ngāi Tahu legislation that identified the papatipu runanga as having the authoritative mandate for Ngāi Tahu on the West Coast.

Council proposed the current system where representatives from the papatipu runanga are elected by the runanga onto the council Resource Management Committee. When particular issues arise, council contacts the representatives to discuss an appropriate course of action. The Kāti Waewae Upoko also deals directly with the council.

The iwi liaison officer (ILO) or kaitakawaenga is responsible for facilitating the relationship between iwi and council, and making sure concerns expressed during consultation processes are accommodated in council policies and plans. The ILO is presently employed on a part-time basis; her working hours have reduced as the relationship between council and tangata whenua becomes stronger. Council provides funding for representatives' travel to meetings, accommodation, and meeting fees, and expenses for hui

to discuss council plans and policy. In 1993 the council produced a booklet “Guidelines for Tangata Whenua Consultation on the West Coast”.

Resource consent processing

The council is developing a resource consent manual for staff. The Resource Management Committee decides on the notification of resource consent applications. The two iwi representatives identify issues that may affect tangata whenua, and the kaitakawaenga is also involved in identifying consent applications that may be of concern to iwi. Selected cases are copied and sent to key people for comment.

Applicants consult with tangata whenua regarding notified consent applications. A schedule of all non-notified consent applications is sent to runanga representatives. If they need more information, a copy of the full consent application is provided. Tangata whenua alert the ILO if they have any issues or concerns, and a meeting may be set up with tangata whenua, council and the applicant. If there is no resolution possible at this initial meeting, iwi are classed as an affected party and the consent application must be notified. Council advised that iwi concerns are taken into account in most cases.

Consultation

With a limited ratings base, council is severely constrained by its budget. The council actively seeks tangata whenua input on resource management issues; hui have been arranged to identify issues of concern to iwi, and to progress the coastal plan and other plans. There have been discussions with tangata whenua regarding sensitive information and wāhi tapu; however council does not yet have policy in place to deal with these issues.

There are still issues that need to be resolved with mandating and representation. The council noted that difficulties had been encountered in the development of the Regional Policy Statement because of competing groups within tangata whenua. The focus of the present consultation system is at the runanga level as defined by statute, and council acknowledged that tangata whenua not affiliated with the recognised papatipu runanga are constrained in their ability to participate.

Council conclusions

The council considered that its system for tangata whenua consultation is proactive, and that the runanga representatives are able to provide input into a range of council decision-making processes. Council noted that tangata whenua have not raised any formal complaints about the way in which council manages RMA processes. Overall, council was positive about its performance and its commitment to nurturing and developing its relationship with iwi.

3.4.3 Tangata whenua

3.4.3.1 Ngāi Tahu legislation

With the passing of the Te Runanga o Ngāi Tahu Act and the Ngāi Tahu (Pounamu Vesting) Act 1996, Te Runanga o Ngāi Tahu (TRONT) has been the legal representative body driving the process for settlement of the Ngāi Tahu claim. The eighteen papatipu runanga, as listed in the schedule to the TRONT Act, are regional collective bodies established by Ngāi Tahu in the

19th century around traditional marae-based communities. They are identified in the legislation as the official groups for liaison.

Some West Coast whānau are dissatisfied with the exclusive recognition of the papatipu runanga. There is concern on the West Coast that decisions are not being made at the local levels where the knowledge and kaitiaki status lie. A section 30 Te Ture Whenua case has been lodged with the Māori Land Court. Submissions have been made to the select committee considering the settlement Bill for the Ngāi Tahu claim.

3.4.3.2 Strengths of the current system

The papatipu runanga representatives on the council's Resource Management Committee feel that the present system is more constructive than the former Komiti Rangapu system. The representatives have voting rights and are full members of the committee with the same status as elected councillors. They feel that council decision-making is focused on the issues and outcomes, that tangata whenua are involved in a wider range of council issues, and that concerns can be dealt with earlier, in the planning stages.

The two papatipu runanga representatives report that councillors listen and include their views, letting the iwi representatives take the lead in committee discussions to work through issues of concern. They noted that it is important for official representatives to have a thorough knowledge and understanding of the history, the environmental issues and Treaty issues within Ngāi Tahu. They felt that representatives must have a strong base in tikanga and the ability to interpret traditional knowledge and values so that they can be integrated into council plans and processes.

3.4.3.3 Concerns about the current system

Although iwi generally support the mechanism of having runanga representatives on council, there are concerns about the way the system is currently operating. These include:

- information not reaching key people in the community and decisions being made without hapū awareness;
- knowledge and concerns of hapū not reaching the council decision-making table;
- cut backs in the kaitakawaenga position;
- lack of monitoring;
- council reliance on the two representatives rather than direct liaison with the runanga and others with knowledge and expertise; and
- council failure to establish formal relationships with the runanga under the new system.

Tangata whenua have not been involved in specific education initiatives to increase understanding within the council. Some councillors don't see any need for education on Māori issues and have publicly stated this.

Tangata whenua who are concerned about the present system place importance on the development of iwi resource management plans to advise councils of the issues affecting them. Those happy with the system see no urgency in the development of iwi resource management plans. Others consider that issues between Te Runanga o Ngāi Tahu and the West Coast should be resolved first.

In the past, plan development included hui to raise issues to be incorporated into policy. Iwi were involved in the development of the Regional Policy Statement, the Air Plan and Discharge of Contaminants Plan. Now draft documents are sent to the runanga, and some tangata whenua feel there is little opportunity to question the documents' content or direction.

There was concern at the shift in focus from the traditional hands-on management approach to a policy approach based on responses to draft plans. It was felt that there can be a gap between the writers of policy and the practitioners. What the words in a policy document actually mean in practical terms is often unclear. There was concern from some kaumätua and kuia at the loss of traditional knowledge amongst younger generations, who may have academic qualifications but it was felt lack practical understanding and experience of West Coast environmental matters. It was suggested that such vulnerabilities regarding tikanga and knowledge can be contributing factors in difficulties with processes, in sensitivities about mandating, and conflicts within the iwi.

3.4.3.4 Directions for the future

There is general agreement amongst Poutini Ngäi Tahu that greater clarity is needed about the different roles of Te Runanga o Ngäi Tahu, the papatipu runanga and other groups. It was suggested that council consultation should focus at the whänau level in Poutini Ngäi Tahu.

Tangata whenua sought improved financial support to participate in council processes, and resources to develop their own resource management plans. However some expressed their strong concern for runanga independence, and a sense that reliance on council funding could compromise mana and rangatiratanga.

Tangata whenua sought better information on council systems and processes, different aspects of the RMA, and how the legislation affects them. It was suggested that an annual ongoing scholarship to assist a Poutini Ngäi Tahu student to obtain resource management qualifications would be valuable.

It was suggested by one runanga representative that more effective broadly-based involvement of tangata whenua in environmental management could be achieved with a röpü structure modelled along the lines of the Mäori Health Advisory Group set up by the Regional Health Authority and the Mäori Women's Welfare League. It was suggested that the Ministry for the Environment could set up a system of advisory röpü groups to advise councils on RMA matters and resource consent applications, and to confer as appropriate with the wider tangata whenua community. Membership could include runanga representatives and others with the skills, knowledge and commitment to contribute to environmental management.

3.5.1.1 Ngäi Tahu Mäori Law Centre Resource Management Unit

Representatives from five local runanga have formed a working party in association with the Ngäi Tahu Law Centre in Dunedin to provide resource management advice to the Otago Regional Council. Runanga concerns and interests are coordinated by a Ngäi Tahu planner based at the Law Centre and the regional council is provided with this information for incorporation into council policies and plans. The runanga have been involved in the development of a range of regional council plans and policies including the proposed Water, Air and Land Plans. The Ngäi Tahu planner advised that regional council managers and staff are open and willing to work with tangata whenua, listen to their concerns and design plans accordingly.

The Ngäi Tahu Law Centre staff advised that a range of outcomes have been achieved including:

- an increased understanding by tangata whenua of the RMA process; RMA issues have been examined and tangata whenua have advanced their thinking and increased their capacity to engage on an equal footing with councils;
- direct tangata whenua input into plan preparation so that issues are addressed at an early stage in the process; as a result tangata whenua have a greater capacity to critique draft plans and advocate for iwi interests;
- a good working relationship between council staff and the runanga has been developed where free and frank discussions are possible;
- council staff and most councillors have a better understanding of iwi values and interests; and
- an increase in the capacity and confidence of tangata whenua, through the development of a resource management plan where there has been a concentrated effort and assessment of issues, objectives and management guidelines.

3.5.1.2 Kāi Tahu ki Otago Resource Consent Applications Office

In late 1997, an independent Kāi Tahu ki Otago⁸⁵ office was established in Dunedin employing a full-time person to process resource consent applications for four local runanga. The office operates on a user pays basis and applicants are charged for advice on all non-notified consents where tangata whenua have been identified as an affected party. The office advised that a good working relationship has been developed with the Otago Regional Council, and tangata whenua feel that staff are forthcoming with knowledge and information.

The Otago Regional Council sends all notified consents directly to the appropriate runanga to deal with; thus the mana of the runanga is recognised and the office staff member is free to concentrate on non-notified consents. Non-notified consent applications are summarised every week by council staff and sent to the office. Up to 20 consent applications are received each week. The summaries contain enough information to determine whether the application will require tangata whenua consultation. The Kāi Tahu staff member and council staff have worked closely to develop guidelines where particular issues of concern for the four runanga are identified.

⁸⁵

In the dialect of te Wai Pounamu, "k" and "ng" are interchangeable

3.5 Other examples

3.5.1 Ngäi Tahu

Kāi Tahu ki Otago has developed protocols with the Otago Regional Council and territorial local authorities to ensure information-gathering is undertaken by applicants prior to the lodging of a resource consent application. However, the transition to pre-application consultation is still taking place and as a result, tangata whenua involvement has in a number of instances occurred after applications have been lodged with council. At this stage applicants have produced a report detailing proposed developments and iwi can only advise the council of specific conditions they would like to set on the proposal. The Kāi Tahu staff member is in contact with council staff to discuss conditions and changes. It was noted that the council has been supportive of changes sought by tangata whenua, but that the council ultimately decides on appropriate conditions.

Constraints to the current system

Kāi Tahu ki Otago Ltd receives no baseline funding from council and relies solely on income from applicants. Setting up a small business has been a long and involved process.

It was reported that applications that cross council boundaries or areas of responsibility pose particular problems for the iwi. In one example, an applicant applied to the district council to cut a road to access a block of trees to be felled. The effects of road development are a district council concern, but the potential water pollution from the felling of the block of trees is the regional council's domain. The iwi had to submit to both councils. Inter-agency coordination is fundamental to the protection of Māori values.

Future directions

It was reported that Kāi Tahu ki Otago will establish a reporting system where the regional council gives feedback to the office staff on the conditions placed on consent applications and the monitoring of those consents. Ideally, the runanga would like to receive all consent applications before proposals have been developed. Tangata whenua could then work with applicants at the outset of the process, to design a proposal that iwi support. The council would receive a completed package and the resource consent application process would be more streamlined and efficient.

Kāi Tahu ki Otago would also like a role in monitoring consents and in organising education programmes for developers and consultants. Brochures explaining tangata whenua values and concerns would be developed and supported with training sessions.

3.5.1.3 Te Ao Marama

Te Ao Marama are an incorporated society formed by the four Murihiku runanga to deal with iwi liaison matters with the Southland Regional Council, Invercargill City Council, Southland District Council and Gore District Council. The local authorities entered into a charter of understanding with Ngāi Tahu o Murihiku in 1997 to define processes for facilitating runanga involvement and consultation on resource consent processes administered by the local authorities.

The councils provide funding for an iwi resource management office in Invercargill. That office provides input into the councils' planning processes including:

- an iwi perspective in all planning documents;
- iwi participation in plan development processes;
- consultation protocols enabling councils and staff to understand iwi procedure and protocol issues, history and cultural matters; and
- better informing the iwi of the processes and outputs from the councils.

A brochure has been developed for resource consent applicants which outlines the consultation process with iwi as agreed with the local authorities, and identifies issues of concern in relation to iwi values.

While the input into the plans and policy statements on behalf of the runanga is resourced by the councils' grant, resource consent applicants who require iwi consultation are charged on a user pays basis for the time involved in consultation. If that consultation is not successful and the perceived adverse effects are not mitigated, the application would go to a notified consent process and the kaitiaki runanga would take on the responsibility for any submissions involved. Ngäi Tahu consider that this arrangement implements the principles of representation, shared decision-making, active protection and tribal self-regulation.

Eighteen months ago, Ngäti Maru established Te Röpü Taiao o Ngäti Maru based in Thames to, among other things, increase the capacity of Ngäti Maru to participate in RMA processes. Past involvement in council processes had been limited and reactive, resulting in the loss of wähi tapu and other taonga.

3.5.2 Ngäti Maru

The röpü has grown with the demands of the job and currently a manager, a field officer, and monitoring and advisory staff are employed. The Thames Community Board of the Thames-Coromandel District Council supplied office space. The team will increase its capacity as the work load increases. A constant focus is on obtaining funding from a variety of sources to be able to expand and train new people for the röpü.

Resource management planning

Regional and territorial councils have at times contracted the röpü to produce reports detailing tangata whenua perspectives for plans and policies. Although Ngäti Maru has the opportunity to provide input, the iwi believe that a lack of communication and consistency between councillor and staff levels constrains the process. Ngäti Maru noted the importance of working together with staff to implement changes so that iwi concerns are taken into account in council practices.

Resource consent applications

Through experience, Ngäti Maru has developed policies and standards for dealing with resource consent applications. Each consent application highlights new considerations and increases the röpü's sense of what kinds of conditions need to be placed on applications. The röpü has clear processes for working on resource consent applications:

- applicants come directly to the röpü to determine who the affected parties are and who is associated with the land under application;

- the affected parties either work directly with the applicants or advise the rōpū of the management issues and concerns, and matters to be covered in the conditions;
- the rōpū and applicants work together to develop a memorandum of understanding, which is adopted as a condition of the consent if a consent is granted; and
- specific conditions placed on a consent application are developed and agreed upon before the applicant submits the application to council.

The rōpū deals with applicants on a case by case basis. It is made clear to applicants that agreeing to a consultation process is not a guarantee of agreement with a project. To date, Ngāti Maru has not had to oppose many applications as iwi concerns in relation to the protection of wāhi tapu and other taonga have largely been met.

Monitoring and cost recovery

The rōpū employs and trains tangata whenua to monitor consent applications to ensure that consent conditions are not breached. Consent applicants have funded training for tangata whenua to oversee developments, for example testing emissions and water quality. Researchers are employed by the rōpū to produce cultural impact studies and to work alongside archaeologists to evaluate the outcomes of particular consent applications.

Conclusions

Ngāti Maru feels that communication with councils and developers through the rōpū has resulted in a range of positive outcomes including:

- developments have been shaped through tangata whenua involvement to ensure that Māori interests are protected;
- planning is being done for positive environmental outcomes;
- alternative management options are being investigated by councils in relation to sewage treatment, discharge of contaminants into water, water use, air emissions and excavations;
- good working relationships are growing with council staff and developers;
- developers see the benefits in consulting tangata whenua at the early stages of proposal development; as reported in a feedback exercise, time, energy and resources are being saved and win-win solutions are being negotiated;
- councils are receiving consent applications where conditions have been developed and are supported by the applicant and tangata whenua;
- Ngāti Maru people interested in resource management are receiving vocational training and employment opportunities; and
- hapū are receiving recognition for their knowledge and status as kaitiaki, through direct involvement in RMA processes.

Ngāti Maru noted that negative experiences with the RMA appear to be decreasing as councils and resource consent applicants increase their understanding of the importance of tangata whenua interests.

Te Runanga o Te Ati Awa ki Whakarongotai at Waikanae established the Kapakapanui Environment Group in response to increasing pressures on places and resources of significance to tangata whenua on the Kapiti Coast. Kapakapanui cited a number of concerns with environmental management on the coast, including:

- the loss of Tuku Rakau, a pā and settlement area for Te Ati Awa to the late 1840s, and a documented archaeological site listed on the District Plan, destroyed for a non-notified subdivision;
- the proposed new arterial highway, which may affect a wetland and many wāhi tapu, including Takamore, a registered wāhi tapu area;
- the processes and consultation followed by the Kapiti Coast District Council to advance the roading proposals, and the rejection of Kapakapanui's request that the Hearings Commission considering the proposals should include a Māori commissioner with appropriate expertise to assess the impacts on environmental values and resources for tangata whenua;
- the community water supply, with proposals to pipe groundwater from the Otaki Basin to the Kapiti community despite consistent opposition from tangata whenua;
- sewerage disposal issues with strong tangata whenua opposition to an ocean outfall;
- issues with the management of streams and watercourses, wetlands and coastal foredune sites; and
- lack of an integrated and proactive heritage protection strategy, as sought by tangata whenua, which would:
 - develop in conjunction with iwi appropriate mechanisms for identification and monitoring of the important historical, archaeological and sacred sites in the district;
 - provide security for sensitive information relating to wāhi tapu;
 - provide greater certainty in the resource consent application process;
 - fulfil the statutory requirements for heritage protection; and
 - increase appreciation within the council and the wider community of Kapiti's invaluable heritage resources.

There have been difficulties in Kapakapanui's attempts to work with the council to address these issues. Consultation has been uncertain, with tangata whenua and the council having markedly different expectations of what consultation is necessary, how consultation should be undertaken, and who makes such decisions. Te Ati Awa noted their strong concern at policy matters and decisions being made without dialogue or involvement of tangata whenua. There have been difficulties over the provision of resource consent applications to Kapakapanui for assessment of iwi values that might be affected; the council had concerns about Kapakapanui's request for funding to carry out these assessments. Kapakapanui reported that they receive no resourcing from the council for their work on consent applications, although positive relationships are being established with some local developers who are happy to meet a fee for advice, assessments and feasibility study input from the iwi.

The council currently works with a Māori advisory committee, Whakaminenga, which includes nominated representatives from the three iwi on the Kapiti Coast, Ngāti Raukawa, Ngāti Toa and Te Ati Awa, as well

3.5.3 Te Ati Awa ki Whakarongotai

as council members. Kapakapanui expressed strong concern at the role and effectiveness of this committee structure, noting that it has no involvement with resource consent applications. The council questioned the position of Kapakapanui relative to the committee. The council acknowledged that constructive environmental initiatives could be at risk from relationship failures, and recognised the need for careful mediation through areas of tension.

3.5.4 Proposed Māori electoral constituency for the Bay of Plenty

In 1995 the Bay of Plenty Regional Council, Environment Bay of Plenty, in consultation with iwi Māori of the Bay of Plenty, established three Māori Regional Representative Committees, for Eastern, Western and Southern Bay of Plenty. Each committee consists of two appointed regional councillors who work alongside up to 10 appointees from iwi Māori within the sub-region. The committees and the council have established a Charter which details roles and responsibilities, committee goals, and the resources available to the committees. The Charter outlines the primary role of the committees as:

“a forum for information exchange from iwi to the regional council and the regional council to iwi and to develop suitable mechanisms for greater tangata whenua input into resource/environmental management processes and over the longer term, to develop a Treaty based relationship with the regional council.”

The committees are advisory only and not directly involved in council decision-making.

Proposed Māori electoral constituency

In 1996, the three committees set up a working party to investigate the establishment of a Māori electoral constituency for the Bay of Plenty, to provide for more direct participation of Māori. Prior to the working party deliberations, legal opinion was sought as to whether the existing law permitted the establishment of such a constituency. The council obtained legal advice that the current legislation would not permit the creation of effective Māori constituencies within the region, but that the council could seek the enactment of a local Act to authorise the establishment of a Māori constituency. The local Act could be viewed as unique to the region because of the high Māori population and if it was successful, could be followed at a national level with legislative change covering the whole country.

Subsequently, the working party presented detailed proposals to the council, suggesting a restructuring of the elected representation, and promotion of a Māori constituency along the lines of the Māori seats in Parliament.

Details of the proposal include:

- the establishment of a Māori constituency with three wards, covering the same areas as the existing three committees;
- the creation of a Māori roll for each of the wards/constituencies;
- Māori people who qualify as electors in the Bay of Plenty region would choose whether they wished to vote on the Māori roll or the general roll;
- various options are being considered for structures and requirements for the Māori roll;

- only those who have chosen to register on the Māori roll will be able to vote for people in the Māori wards;
- electors registered on the Māori roll will be able to vote for one person in the ward/constituency; and
- a reduction in the number of general seats would be required to accommodate the three Māori seats, although there will be an increase in the overall number of seats on council due to recent population statistics for the Tauranga / Western Bay area.

In May 1997, the council agreed to support the concept of a Māori electoral constituency and to follow the procedure for public consultation as set out in section 716A of the Local Government Act, giving one month for the public to make submissions on the proposal. The council is holding a series of public meetings and hui, and has appointed an independent commissioner to consider submissions. This will ensure a robust and transparent process, and provide a suitable forum for the many requests of submitters to speak to the proposal. If, on receipt of the commissioner's findings, the council decides to proceed with the proposal, the recommendations will be translated into a local Bill to be introduced to Parliament by the MP for Te Tai Rawhiti, Tuariki John Delamare.

There has been some opposition to the proposal including public statements from local MPs and the Chairman of Local Government NZ's Māori Consultation Committee. However there is strong support from tangata whenua in the region. Over 700 written submissions were received from iwi Māori in full support of the proposal; it was noted that this is the largest response the council has ever received on any issue put out for submissions. The strength of this response is interpreted by iwi as a clear indication of the aspirations of tangata whenua in the Bay for more effective participation in environmental management.

4. 1992 AND 1998

Part 2 outlined the legal background for tangata whenua consultation and involvement in environmental management, and the findings of the Courts in key cases. Part 3 looked at the systems and structures operating in the three principal case study areas, and at other selected initiatives. This part of the report considers the experiences, concerns and priorities of the various people interviewed for this investigation, their values, thoughts and ideas, and their views about the current mechanisms and how things might be improved for the future. Part 4.9 looks specifically at some of the effects of contemporary environmental management and development upon natural places, resources and taonga of importance to tangata whenua.

This part of the report follows the structure of the PCE's 1992 *Proposed Guidelines*. The key points from the 1992 report are summarised in a box at the start of each section.

- *The RMA obligation to take into account the principles of the Treaty of Waitangi (section 8).*
- *Balancing kāwanatanga and rangatiratanga under the Treaty.*
- *The role and responsibilities of local government relative to the Crown.*

There is general recognition within the councils studied of their obligations under section 8 of the RMA. This is expressed in formal policy documents and official statements of council position. For example the Hawkes Bay Regional Policy Statement identifies the statutory requirements under the RMA as the basis for Māori involvement in resource management, acknowledges the Treaty's guarantee of tino rangatiratanga and recognises the relationship with kāwanatanga in environmental planning and decision-making.

However there is also a strong sense, amongst both tangata whenua and council personnel, that without council commitment such formal statements could be of limited value. Some tangata whenua are sceptical that councils will actually 'walk the talk'. The challenge has been for councils to give practical attention to the Treaty principles in the context of the RMA and in the everyday business of environmental management.

The extent of understanding, interpretation and acceptance of the Treaty principles amongst councils, tangata whenua, resource consent applicants and the general public, varies considerably. There is general acknowledgement of some principles – such as the requirement to act in good faith, or the duty to have adequate information on which to base decision-making. However there is little agreement on the implications of other Treaty principles that have been recognised by the courts and by the Waitangi Tribunal – such as management of natural resources according to

4.1 Introduction

4.2 Principles of the Treaty of Waitangi

4.2.1 Recognition of section 8 RMA

4.2.2 What are the Treaty principles?

tikanga Māori to provide for the mauri of taonga⁸⁶, or the constraints imposed upon the exercise of kāwanatanga by the Crown's promise to protect the interests of Māori in the exercise of rangatiratanga⁸⁷.

It is important to have a clear appreciation of the different formal status of various statements or definitions of the Treaty principles. Councils are bound to take into account those Treaty principles formally expounded by the Courts in relation to their responsibilities under the RMA. There are also a range of other statements of Treaty principles, including the findings of the Waitangi Tribunal, which while important and influential declarations of principle, do not have the status of the law. Tangata whenua have made statements of their interpretations of the Treaty and its principles. Iwi and hapū resource management plans are based in the Treaty. Various studies and academic papers have also provided useful assessments (refer 7.3).

It was also noted by tangata whenua representatives that some iwi and hapū refer directly to the Treaty itself, standing by the actual guarantees set down in the Treaty rather than the interpretations of principles made by the Courts, the Government and the Waitangi Tribunal.

There were few instances of councils seeking specific consultation with iwi and hapū on their priorities for a set of locally appropriate Treaty principles, or on local implementation of such principles, as was suggested in the 1992 *Proposed Guidelines*. Hawkes Bay Regional Council is considering development of a Treaty policy to draw together current council initiatives, and has addressed Treaty principles in a recent seminar. The Regional Māori Issues Group recently established in Auckland is considering Treaty principles and their implications for councils. Auckland Regional Council has undertaken Treaty workshops with staff, with assistance and facilitation from iwi and Te Puni Kōkiri. Manukau City Council's Treaty team bases its kaupapa on the Treaty.

4.2.3 Concerns about the statutory provisions

Section 8 of the RMA requires that councils are to take into account the principles of the Treaty of Waitangi. (Refer to Chapter 2 for a discussion of the statutory provisions and decisions of the Courts.)

Many tangata whenua identified the current provisions of the RMA as a significant limitation on the effectiveness of their participation in environmental management. They are concerned that the wordings and terms used in key sections of the RMA are not sufficiently precise to provide reliable guarantees of meaningful involvement, or sufficiently robust frameworks within which to challenge councils' actions or decisions in the Environment Court, or adequate recognition of the Treaty relationship. Wordings such as "have regard to" and "take into account" in the important Part II provisions are seen as eroding tangata whenua opportunities to contribute to environmental management. It was felt by some tangata whenua that such wordings could be to the advantage of under-performing councils.

The Waitangi Tribunal, while principally concerned with the rights of tangata whenua under the Treaty and not with environmental management

⁸⁶ *Huakina Development Trust v Waikato Valley Authority* [1987] NZLR 188

⁸⁷ *NZ Māori Council v Attorney-General* [1987] INZLR 641 (CA)

matters, has made important findings on these issues in its reports on various claims including the Manukau claim and the Motunui claim. In the Ngawha Report⁸⁸ the Tribunal addressed the question of whether the RMA, and the management regime established by that Act, ensure appropriate participation of tangata whenua in resource management:

The Crown obligation under article 2 to protect Māori rangatiratanga is a continuing one. It cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local or regional authorities. If the Crown chooses to so delegate, it must do so in terms which ensure that its Treaty duty of protection is fulfilled.

...the Crown has not, in delegating extensive powers to local and regional authorities under the [RMA], ensured that its Treaty duty of protection of Māori interests will be implemented... decision-makers are not required to act in conformity with and apply Treaty principles. They may do so, but they are not obliged to do so. For this reason we believe the 1991 Act to be fatally flawed.

...the Resource Management Act 1991 is inconsistent with the principles of the Treaty in that it omits any provision which ensures that persons exercising functions and powers under the Act are required to act in conformity with the principles of the Treaty of Waitangi.

...[tangata whenua] have been or are likely to be prejudicially affected by the foregoing omission, and in particular by the absence of any provision in the Act giving priority to the protection of their taonga and confirming their Treaty rights, in the exercise of their rangatiratanga and kaitiakitanga, to manage and control it as they wish. The omission of any such statutory provision is inconsistent with the Treaty duty of the Crown, when delegating powers of governance to local and regional authorities, to ensure that it does so in terms which will guarantee that the rangatiratanga of [tangata whenua] in and over their taonga is recognised and protected as required by the Treaty.

Accordingly the Tribunal recommended that:

an appropriate amendment be made to the Resource Management Act 1991 providing that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall act in a manner that is consistent with the principles of the Treaty of Waitangi.⁸⁹

This investigation met intense concern from iwi about the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill, which is currently being considered by the Transport and Environment Select Committee. The amendment may remove the opportunity for tangata

⁸⁸ Waitangi Tribunal, *Ngawha Geothermal Resource Report*, 1993, pp 153-4

⁸⁹ *ibid*, p 155

whenua to become Heritage Protection Authorities under section 188 RMA. The amendment may also remove the potential for Heritage Protection Orders to be established for water bodies, natural taonga of particular importance to tangata whenua. It was felt by tangata whenua that these changes would be counter to the intentions of the RMA, and would undermine its usefulness.

There was also concern from tangata whenua and some council personnel at the potential for more radical amendment to legislation with, for example, the recent 'think-piece' on the RMA prepared by consultant Owen McShane for the Minister for the Environment, or the review of heritage management being undertaken by the Minister of Conservation (refer 1.5.6).

There was however a clear acknowledgement from tangata whenua that the current legislative provisions do establish a bottom line and a basis for recognition and involvement. There was agreement that the RMA provisions are a considerable improvement on the previous legislation.

There was widespread opposition from iwi and hapū to any weakening of the present RMA provisions regarding:

- taking into account the principles of the Treaty;
- recognising tangata whenua interests, values and concerns; and
- consultation and participation.

There was wide support from tangata whenua for strengthening these provisions, and for greater clarification of their meaning for environmental management policies and implementation. Some iwi representatives noted, however, that stronger legislation will not change the attitudes of individuals or groups, or their willingness to recognise tangata whenua priorities or value tangata whenua participation.

There was concern amongst non-Māori council personnel and developers that particular terms and concepts referred to in the RMA, such as 'kaitiaki' and 'taonga', should be more precisely defined. Iwi and hapū also noted concern about the definition of 'tangata whenua'.

4.2.4 The law and the bigger picture

Many council personnel consider the statutory requirements to be a useful baseline, a framework that gives staff and decision-makers some solid ground. The legal position is that councils, as creatures of statute, have the powers, duties and responsibilities imposed on them by statute. It should also be noted that the functions of local authorities under other legislation may also affect their relationships with tangata whenua; relevant statutes include the Local Government Act, Rating Powers Act, Public Works Act, Building Act, Reserves Act and Te Ture Whenua Māori Act.

Councils must act within the statutes, and although in many areas considerable scope and flexibility may be possible, councils can tend to interpret the legislation conservatively in order to avoid acting *ultra vires*. Councils may be wary of making commitments or agreements that may be perceived to be imprecise. Some tangata whenua felt that this can lead to official reliance on the 'letter of the law' and to inflexibility and over-cautiousness. Tangata whenua and some council personnel noted that such

narrow readings of the statutory requirements can be counter-productive in working with Māori for good environmental management solutions.

There are important distinctions between the basic requirements set out in the statutes as a framework within which to develop working relationships, and the actual fostering of a productive and practical relationship. Tangata whenua reported that it can seem that the statutory obligation is the only reason councils deal with them at all. Many tangata whenua expressed scepticism about councils' efforts.

In the recent case taken by Ngāti Tūwharetoa challenging the sale of land by Landcorp to the Taupo District Council⁹⁰ the Court found that, although there was a desire for communication, and '[t]he Council's purpose was clearly to do more than the minimum requirements of the Resource Management Act', there was no evidence in this case that the council was making 'a commitment to consult the tangata whenua on a continuing and invariable basis.' The Court found that a council's willingness to talk with tangata whenua on resource management matters does not necessarily give rise to a legitimate expectation that there would be consultation on all matters affecting their mutual interests.

This investigation found a range of views regarding the status of councils as part of the Crown, and the resulting obligations on councils under the Treaty. Tangata whenua generally view councils as very much a part of the Crown. From the viewpoint of most iwi and hapū, local government agencies derive their role and authority from a kāwanatanga basis under Article I of the Treaty.

4.2.5 Councils and the Crown

As discussed above at 2.1.2, councils are not formally part of the Crown; local authorities are not subject to the direction or control of the Crown or central government, except insofar as Parliament amends the Local Government Act or otherwise legislates in a way affecting local authorities. It was suggested by some tangata whenua representatives that a Treaty clause is needed in the Local Government Act.

Some councils have specified their status as an agency as distinct and separate from the Crown and its Treaty obligations; they have stated that their role is to represent ratepayers and their interests, and to get on with the business of managing the region, city or district. The complexities of the commitments established under the Treaty are seen as political matters for which central government takes responsibility. On this basis some councils have rejected proposals made by tangata whenua for practical involvement in environmental management, and limited the parameters of their relationship with tangata whenua. Differences over the conceptual issues involved have hindered progress on the development of functional relationships between some councils and tangata whenua.

The broader relationships between central and local government also have important consequences for the work of councils in providing for tangata whenua consultation and for the appropriate accommodation of iwi and hapū values and concerns in environmental management. The trends in

⁹⁰ *Te Heu Heu v Attorney-General* CP44/96 High Court, Rotorua, Robertson J, 15 May 1998

recent years towards greater devolution to local levels has resulted in what some perceive as a 'laissez-faire' approach by central government. There are no policy frameworks or standards established at the national level to give guidance for local authorities and ensure efficiency, consistency and reliability. There are no formal accountability processes by which the performance of local authorities in these areas may be audited or assessed. A number of tangata whenua representatives expressed intense frustration at the lack of formal standards for councils, and noted that at present their only option in situations where they wish to challenge the directions or performance of councils is through legal action (see 4.3.6).

4.3 Status of tangata whenua

- *The special place of tangata whenua under the RMA and the principles of the Treaty.*
- *Relationships between tangata whenua and their ancestral lands and other taonga.*
- *Cultural and spiritual values.*
- *Kaitiaki responsibilities.*
- *The Treaty principle of active protection of the Māori interest.*

4.3.1 Recognition and respect

Chapter 2 includes a discussion of the statutory provisions of the RMA and its requirements for practical recognition of the values and concerns of tangata whenua in environmental management. Many tangata whenua groups do not feel they are yet receiving appropriate recognition with respect to RMA processes. Some are included at the same level in council consultation and resource consent processes as non-Māori community groups or taura here. Iwi and hapū felt that this can be a significant hindrance to the development of constructive relationships for local environmental management.

In some cases questions of representation are pertinent. It was noted that councils may accord recognition to one particular tangata whenua group and its spokesperson(s), while other groups – perhaps smaller, less experienced and proficient in official processes, less well-resourced, or perhaps with some conflict or uncertainty about their mandate – are included along with other interest groups in the community (refer 4.4.1).

It was noted by tangata whenua and some developers that the seniority of participants in consultation is an important factor. Developers acknowledged the need to show respect by sending representatives of sufficient rank and status within their organisation to meet with tangata whenua at an appropriate level.

For some people within councils the recognition of tangata whenua values and concerns raises questions about democracy and fundamental egalitarian principles. There are concerns that by giving particular recognition to tangata whenua, other sectors will be disadvantaged. It was noted that councils are required under the Local Government Act to provide for *all* the groups, interests and communities within their territories. The 1992 *Proposed Guidelines* discussed the distinction between the provisions of Article II of the Treaty, which guaranteed and confirmed the rights and rangatiratanga of tribes as the original inhabitants of Aotearoa/New Zealand,

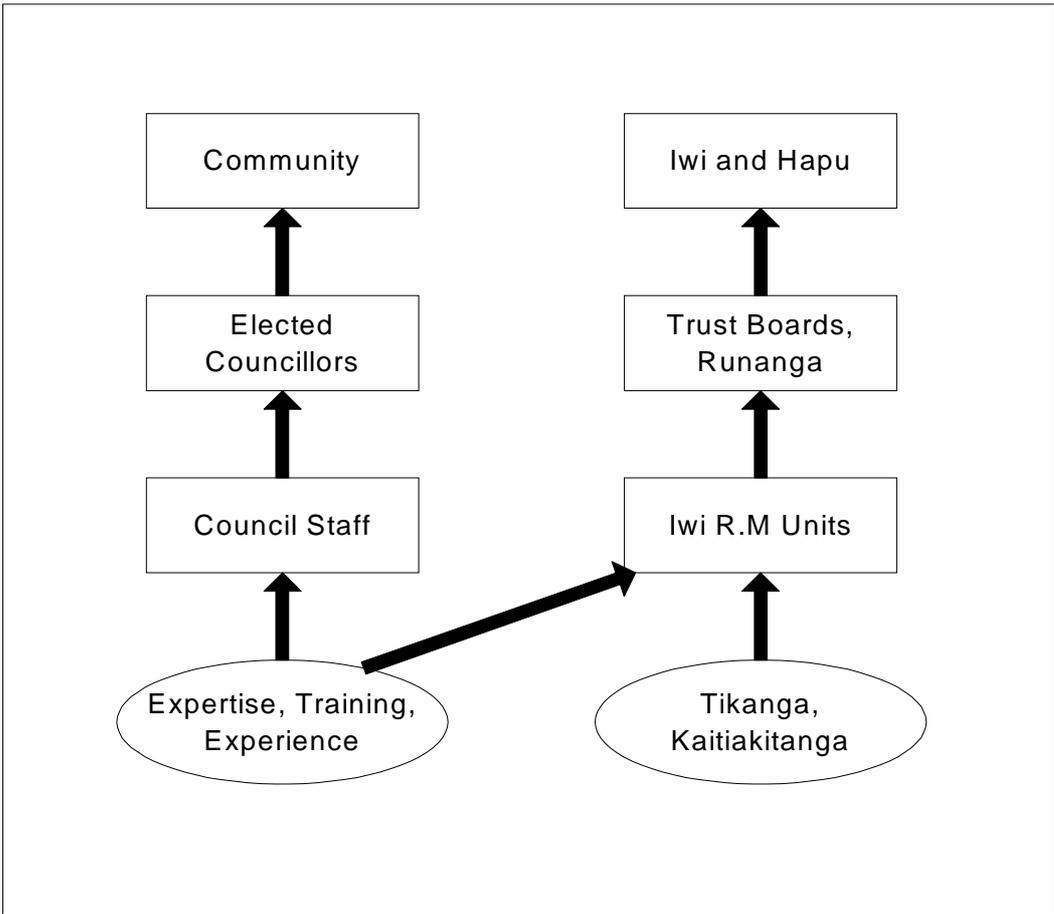
and the Article III provisions of equal rights to all citizens, which are individual rights.

Questions of the recognition of tangata whenua also raise issues of contestability in RMA processes, particularly regarding resource consent applications. It was noted by some developers and council personnel that, once authoritative representation is established, an unavoidable requirement is imposed on councils and consent applicants to deal with those groups. This was contrasted with other processes undertaken by environmental managers and applicants, where there may be a number of suppliers or service providers from which to select, and where competition fosters efficiency, reliability and a well-targeted product. It was suggested that some tangata whenua groups had taken advantage of this situation. There was also some developer concern that recognition of tangata whenua concerns, and the requirement to consult, may in effect equate to a secondary, de facto consent process; there was concern that without agreement from Māori, project proposals cannot be advanced (refer 4.7.4).

A diverse range of accountabilities of the various parties to their respective stakeholders exists and can influence the relationships between the parties. This can be constructive, in giving focus to roles and mandates, but conflicts between different accountabilities can lead to confusion.

4.3.2 Accountability and responsibility

Diagram 1:



Accountability to the people you're working for, based on the necessary skills and knowledge

Issues of accountability include:

- the responsibility of tangata whenua as kaitiaki, both to the ancestors who passed down a rich inheritance of taonga both physical and spiritual, and to future generations;
- the responsibility of Māori spokespersons and representatives to the iwi, hapū and whānau;
- the responsibility of councils under the RMA to undertake and promote sustainable management of the local or regional environment;
- the duties of councils as statutory agencies, to their ratepayers and residents, and to central government under legislation and audit requirements;
- the professionalism of council staff and the requirements on them as employees of councils; and
- the responsibility of junior council staff to refer back to more senior levels for an authoritative decision.

4.3.3 Kaitiaki responsibilities

Tangata whenua reported that there is yet only relatively superficial understanding amongst councils and the general public of kaitiaki responsibilities and what they mean for iwi and hapū. They considered that there is still only a very limited awareness of concepts such as the principle outlined in the 1992 *Proposed Guidelines*, that traditional relationships of tangata whenua with local resources, sites, wāhi tapu and taonga, which must be recognised and provided for under section 6(e) of the RMA, are enduring relationships which continue to be meaningful for tangata whenua regardless of changes in land ownership or management authority.

Wairoa Taiwhenua provided a statement on kaitiakitanga to this investigation, outlining the centrality of mauri as fundamental to the Ngāti Kahungunu ethic for environmental protection, management and development. Mauri is described as the wellspring of life itself, the elemental energy which permeates the whole of created reality. When mauri is absent there is no life. The Taiwhenua explained that of all taonga tuku iho, mauri is the most precious, and therefore kaitiakitanga, as the process by which mauri is protected, has deep spiritual and elemental significance. The Taiwhenua noted that English interpretations of kaitiakitanga in terms of 'guardianship' do not adequately recognise the spiritual dimensions involved. The traditional practices and scientific knowledge are based on centuries of experience, and invoked by those who have the necessary mana, training and discipline to serve as the interface between the spiritual dimensions and ordinary resource users.

Tangata whenua consider that the profound responsibilities of kaitiaki, to the ancestors and to future generations, are not widely understood by decision-makers, council staff, developers and the general public. It was felt that this is a contributing factor in many non-Māori perceptions of tangata whenua efforts to achieve environmental management outcomes consistent with kaitiaki values. Some iwi and hapū reported that their priorities are trivialised or dismissed. However, some initiatives are being undertaken. Waitakere City Council is developing an understanding of kaitiakitanga with tangata whenua guidance, and the Huakina Development Trust has spoken on kaitiakitanga to Franklin District Council. Ngāti Whātua provided a detailed statement on the nature and contemporary implications of kaitiakitanga to the Auckland Regional Growth Forum.

It was noted that the significance of kaitiakitanga in terms of the identity and spiritual well-being of whānau, hapū and iwi is often not appreciated. There is some understanding from non-Māori that tangata whenua may require ritual or ceremonial processes, but often little valuing or comprehension of what might be at stake. Kaumātua involvement in imposing a rāhui, or the work of lifting tapu when a rural landscape is subdivided, for example, may not receive recognition or compensation from landowners or councils. However it will not necessarily be appropriate for tangata whenua to make specific declarations concerning these dimensions of their work as kaitiaki – sensitivity is fundamental.

Tangata whenua reported little recognition by councils of the value and practical usefulness of mātauranga Māori, the knowledge of resources and regional and local environmental conditions held by iwi, hapū and whānau. However Ngātiwai have a formal Memorandum of Understanding with Auckland University School of Biological Sciences, to preview and assess projects relating to Māori environmental management, and to undertake scientific research in the Ngātiwai rohe. The valuing of different kinds of information and expertise is discussed below (refer 4.4.8).

A number of council personnel and developers acknowledged their uncertainty about what is actually meant by kaitiakitanga, tikanga and other Māori concepts. Some were unhappy with their limitations in understanding, and expressed a desire for greater clarification and guidance from tangata whenua in these matters. A 1995 study by the NZ Local Government Association⁹¹ identified clarification of the nature and relevance of key stated values in the legislation, such as 'taonga', 'kaitiakitanga' and Treaty matters under section 8, as needing further attention.

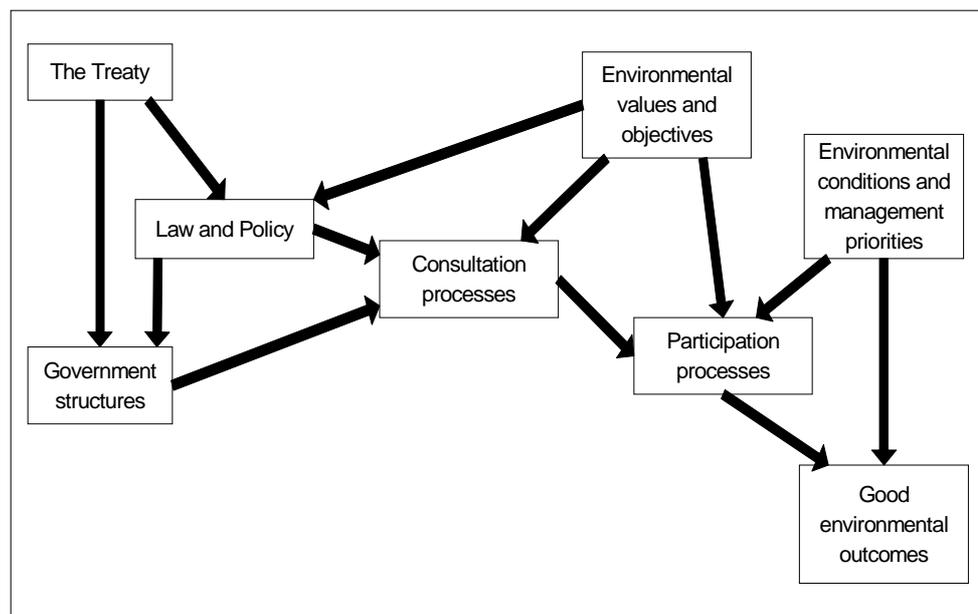
The incorporation of tangata whenua values and approaches in practical environmental management is recognised most consistently at the formal level of councils' policy statements. For example, the Hawkes Bay Regional Policy Statement outlines matters of significance to tangata whenua in resource management for the region, and acknowledges the need to protect the mauri of natural resources and wāhi tapu.

4.3.4 Management according to Māori cultural and spiritual values

There have been some efforts to address the actual implementation of such approaches and criteria in the on-the-ground business of council work. The area of resource consent applications provides opportunities for practical integration of tangata whenua values, through pre-hearing negotiations with developers, or conditions imposed on consents, provided that tangata whenua have effective participation in the consents process.

⁹¹ NZ Local Government Association, *The Resource Management Act 1991: Four Years Down the Track*, October 1995

Diagram 2:



A range of different factors contribute to good environmental outcomes

Tangata whenua identified practical involvement in hands-on environmental management, and in decision-making about management approaches and techniques, as fundamentally important. Even seemingly prosaic matters such as reserves maintenance regimes and the retention of riparian vegetation can have considerable significance for environmental quality and the protection of Māori values. Many tangata whenua reported little awareness within local government of the potentials of their practical involvement at these levels. The specific skills and experience of iwi and hapū members can be an issue, as can available resources. A few creative solutions are being pursued (refer 4.9.10).

One logical option is delegation or contracting to hapū or iwi of council tasks that require particular sensitivity to tangata whenua concerns. This has occurred most frequently for the preparation of plans and policy statements or parts of such documents. Waitakere City Council is looking at management options for wāhi tapu sites on council lands; options include giving management to tangata whenua, or the council managing the area under iwi guidance. It was noted that difficulties can arise with such options when there is more than one iwi with interest in the site.

4.3.5 Section 33 RMA and devolution

Under section 33 the RMA provides for a local authority to transfer any of its functions, powers or duties in environmental management to another public authority, which may include iwi authorities. These opportunities for direct tangata whenua participation have not yet been tested by councils. Tangata whenua reported widespread reluctance within councils to even consider the possibilities under section 33. Applications from tangata whenua for section 33 transfers of resource management activities have never yet been granted.

Tangata whenua generally perceive councils to be fearful and distrustful of the idea of devolution to Māori. Such concepts are seen as falling still into

the 'too-hard basket'. Tangata whenua are impatient with councils' timidity in this area, and keen to demonstrate their practical abilities and commitment. Tangata whenua believe that there would be constructive opportunities, with a more direct tangata whenua role, to determine more culturally sensitive management approaches to avoid or mitigate some of the negative environmental impacts of current methods. It was noted that there would also be employment and training opportunities for hapū and whānau to develop and consolidate skills in environmental management.

The investigation was advised of a recent proposal for consideration of a section 33 transfer, arising from a subdivision development on the shores of Lake Owhareiti beside Pouerua in Taitokerau. The lake and Pouerua mountain are of immense cultural and spiritual significance to Ngātihihine and Ngāpuhi. A proposal was made to the Far North District Council to establish a kaitiaki group for the sustainable management of Owhareiti and its catchment, and that this group might consider promoting a section 33 transfer of resource management powers for the bed, margins and surface of the lake, from the district council and the Northland Regional Council to the Māori Trustees of the lake.

Tangata whenua drew attention to many councils' pursuit of contractual arrangements for various procedural, technical and management tasks with consultants, external providers and semi-privatised agencies. They contrasted this willingness to devolve council activities with the general reluctance to consider such options for tangata whenua involvement.

There is concern amongst iwi and hapū, however, that the provisions of section 33 are significantly constrained, in that councils retain the ultimate responsibility, and can change or withdraw the delegation at any time.

The 1992 *Proposed Guidelines* noted that councils' commitment would be measured by their incorporation of tangata whenua priorities in management decisions, and by tangible results; the *Proposed Guidelines* suggested that councils would be open to legal challenge if they failed to give practical effect to the requirement to take Treaty principles into account.

4.3.6 Active protection of the Māori interest

Proceedings where tangata whenua have challenged councils' decisions and processes include the series of cases brought by Ngāti Te Ata and others against the routing of a sewage pipeline through the Matukuturua stonefields, a wahi taonga of great value both to tangata whenua and in archaeological terms (refer 2.4.2.2 and 3.2.3.8), and Ngāti Tūwharetoa's recent case against Taupo District Council, Landcorp and others, concerning the sale of land which is under a Waitangi Tribunal claim.

Many tangata whenua representatives referred to the costs involved in taking legal action. For many iwi or hapū, the lawyers' fees would make such options impossible. Many people were cautious about the usefulness of pursuing such expensive processes when there is no certainty of legal actions achieving a successful outcome for tangata whenua values and concerns in environmental management.

4.4 Developing a relationship with tangata whenua

- *Authoritative representation and mandating.*
- *Distinctions between tangata whenua and taura here.*
- *Consultation with tangata whenua regarding roles and priorities.*
- *Assistance for tangata whenua to participate in environmental management.*
- *Charters between councils and tangata whenua.*
- *Tangata whenua resource management plans.*

4.4.1 The authority to speak

The single most commonly cited difficulty with consultation and participation of tangata whenua is the question: who should you be dealing with? Councils and developers, and tangata whenua themselves, continue to wrestle with this question.

For the three case study areas assessed in this investigation, the situation is most complex in Auckland, where a number of iwi and hapū groups have overlapping interests and status both geographically and historically. The work of Māori resource management groups has been a challenge for some hapū and marae groups. Several iwi representatives noted the usefulness of working together with other iwi on environmental management matters, when interests overlap. The Ngāti Paoa Resource Management Plan notes that “an amalgamated force wields more influence and can achieve more desirable outcomes of benefit to both individual iwi and Māori as a whole.”

It was also noted that other iwi have important associations with the Auckland region, such as Arawa relationships with particular sites in the Waitemata. Recognition of such connections may often be a complicated matter.

In both the Hawkes Bay and the West Coast, while there is only one principal iwi in each region, there are still representation and mandating difficulties for participation in environmental management. The concerns, energies and priorities of determined whānau and hapū members can be a strong alternative voice from marae and community levels. There is a general trend for tangata whenua to seek direct participation rather than to accept representation of their interests and concerns by other spokespersons in hierarchical official systems.

For tangata whenua, the issue is fundamentally a problem of perceived exclusivity in the processes being run by councils and other agencies, a tension between those seen as 'insiders' and those who feel shut out. Differences or perceived differences in experience and expertise, procedural fluency, funding, professional 'image', and past relationships with councils and other official agencies may all be factors.

Those who felt excluded asserted their authority, their whakapapa and status, in order to establish their right to be included. Some individuals and groups challenged the authority, whakapapa, status and mandate of other participants to participate in council processes. They insisted that officially recognised representatives do not have the right to speak on their behalf, nor the requisite knowledge – either locally specific knowledge of places and resources, or traditional tikanga and spiritual wisdom – to be effective spokespersons or to evaluate and work through environmental management

issues. They felt, with considerable resentment, that representatives were not passing on information and resources, nor seeking advice and feedback from whānau and marae levels as they should.

Some of those tangata whenua representatives who are involved in councils' resource management processes felt it necessary to affirm their authority and mandates, and the processes they followed to refer issues and information to iwi, hapū and whānau levels. They were confident of their knowledge and understanding of the issues, and of their achievements through the work of committees or other processes. A few of these people were dismissive of those in contention with them for status and roles, criticising the challengers' authority, motives, abilities and expertise.

For councils and resource consent applicants, the issue is fundamentally a problem of uncertainty and complexity. It was noted that the Māori Land Court may be able to assist with the identification of relevant parties with an interest in particular lands or areas. In areas with more than one iwi or hapū, consultation will require separate processes for each group. A few councils and developers found the prospect of multiple consultation irksome, but the majority accepted the need to respect each group's identity and mana.

Where there are internal conflicts within iwi or hapū over mandating and status, councils and applicants reported often feeling they were in a difficult position. Councils' advice to applicants has been to consult with all groups, but this can create problems if one group takes offence that there have been dealings with the other. Developers also noted the frustration and delays involved with consent applications, when those groups initially identified by councils as tangata whenua have been consulted, but later other representatives declare themselves and their interests, requiring a further round of consultation. The potential for conflict between contending tangata whenua groups can leave developers feeling vulnerable, and councils paralysed.

Some tangata whenua felt that councils were making use of divisions and fragmentation within iwi and hapū as something to weaken the tangata whenua role in environmental management, and as an excuse for avoiding consultation and involvement.

There were references to councils and developers 'shoulder-tapping' individual Māori who were seen to be relatively amenable to proposals. Tangata whenua expressed considerable bitterness at what was seen as collusion and bypassing of proper processes. Iwi and hapū who prided themselves on their commitment to environmental principles could be scathing about other Māori who were judged to have 'sold out' by giving approval for projects. There was a perception that some councils and developers deliberately evaded more principled tangata whenua representatives who would object to a proposal or insist on stringent conditions, going instead to known 'yes-men', even though those individuals might not have the relevant status or authority.

Another fundamental issue derives from the requirement in the legislation that consultation must be undertaken with the iwi authority. It was noted that this may not always be the most appropriate means of consultation.

Although there has been a considerable shift in focus in recent years back to hapū levels, the legislation does not recognise the status and relevance of hapū as a political entity for tangata whenua. The Waitangi Tribunal has noted that there may be uncertainty about the definition of an iwi authority in section 2 of the RMA, and noted concerns regarding representation: 'iwi authorities... could conceivably be limited to only some of the hapū from an iwi for the purposes of exercising authority over ancestral land.'⁹² The Tribunal accordingly has recommended 'that section 2 of the Resource Management Act be amended so that "iwi authorities" include authorities representing hapū that are tangata whenua.'⁹³

The only clear point upon which all tangata whenua are agreed is that differences within iwi, hapū and whānau concerning representation, are for iwi, hapū and whānau to work through and resolve in ways that are appropriate for them. Councils and other parties have no authority to determine such matters or to venture an assessment of any particular claim. The recent undertaking by Auckland City Council attempting to define those groups with mana whenua status in the council's area met with widespread and vehement criticism – although the council declared its honourable intentions, and rationalised its procedure, the initiative has achieved more hostility than clarity. The pressing need to resolve Auckland's chronic representation impasses was overtaken by distrust of the council's purposes, and resentment that the council would attempt to make such determinations for tangata whenua.

4.4.2 Authority within kāwanatanga structures

There is for tangata whenua an equivalent lack of clarity amongst the various component parts of local and central government, and amongst the different levels, departments and procedural systems of each council itself. This bureaucratic complexity can create delays, frustration, and time-wasting duplication for busy tangata whenua participants.

Some tangata whenua reported dealing with as many as seven or eight different councils, a mix of regional, district and city authorities, each of which may have a different system and policies, and work to different processes and timeframes. The jurisdictional territories of respective councils rarely follow similar geographical boundaries to the rohe of tangata whenua. As well as local government, iwi and hapū must deal with a wide diversity of central government agencies, professionals and consultants, and community groups. Consultation fatigue is a very real problem for tangata whenua. There is intense pressure on those individuals who make the commitment to work in environmental management.

Tangata whenua also reported difficulties arising from inconsistencies within each council. There can be considerable variability between elected councillor levels, senior council management and working staff. This can be a factor in perceived lack of clarity for responsibility, and a lack of accountability.

Clear linkages and continuity between the various activities of local government, such as strategic plans, annual business plans and RMA

⁹² Waitangi Tribunal, *Te Whanganui-a-Orotu Report on Remedies*, 1998 p27

⁹³ *ibid.*

processes, are important. Each department or division within larger councils may have established different procedures or criteria; while there may be reasons for such variations they are not always made clear to tangata whenua. Different sections within councils may be working to different priorities and objectives, as was noted in the recent case taken by Ngāti Tūwharetoa challenging the Taupo District Council;⁹⁴ the Court noted that the council had dealt with three different processes quite separately, without attempting to coordinate them, which had resulted in the council pursuing apparently conflicting policies at the same time.

Staff turnover in local government can be high; tangata whenua reported dealing with a series of different officers on a single consent application process. Particular knowledge or awareness of an issue, and important networks of personal contacts can be lost when staff members move on.

The rise of urban Māori groups through the 1990s is a powerful challenge to traditional tangata whenua authority and structures. These groups are a practical response to the situation of the many thousands of Māori who moved from rural homelands to the cities from the 1950s onwards. Many may no longer identify with their iwi or hapū, or even know where their whakapapa lies. Nevertheless they have a strong sense of identity as Māori, and a strong commitment to support urban Māori communities and their interests.

4.4.3 Taura here and urban Māori

The 1992 *Proposed Guidelines* discussed the respective rights of tangata whenua and taura here. The RMA section 6(e) refers to the 'ancestral' lands, waters, sites and other taonga of Māori.

The respective roles of tangata whenua and taura here under the RMA did not at this stage seem to be a particularly contentious issue in the three case study areas. There was some concern that taura here had been included in the now-defunct West Coast Komiti Rangapu. It was noted that the Papakura District Council Māori Standing Committee does not include formal representatives of the tangata whenua for the area.

In Auckland, where urban Māori groups are strongest, there seems reasonably common acceptance of the respective roles. Te Whānau o Waipareira Trust is represented on the Māori Standing Committee of the Waitakere City Council alongside tangata whenua representatives, but the Trust's priorities are presently mostly in community, social and employment areas. The Trust is committed to environmental quality and sustainable management, but the council noted that the concerns of urban Māori groups for the environment are expressed more as general values, such as for the protection of waterways and other natural resources. The Waitakere City Council drew a clear distinction between these interests and the more specific interests of local iwi and hapū.

However Te Whānau o Waipareira is bringing legal challenges such as the WAI 414 claim to the Waitangi Tribunal on matters of the status of the Trust as a Treaty partner, consultation on the development of government plans affecting Māori, and funding for the delivery of services to urban

⁹⁴ *Te Heu Heu v Attorney-General* CP44/96 High Court, Rotorua, Robertson J, 15 May 1998, p6.

Māori. There has been extensive publicity and debate surrounding the Trust's legal cases against the Waitangi Fisheries Commission's allocation of fisheries assets, where questions are raised about the meaning of the term 'iwi' and the status and rights of urban Māori groups relative to Waitangi claims settlements. These legal and constitutional developments may have significant implications for the rights and future participation of Māori in environmental management under the RMA.

4.4.4 A Strategic Approach

Many tangata whenua reported that their efforts to participate in environmental management are constrained because they are always in 'react mode'. Forced to respond to a continual stream of consent applications and papers requiring feedback, often within tight timeframes, tangata whenua feel it is difficult to get above these reactive processes and give sufficient attention to medium- and longer-term goals and strategies. This frustration is compounded when councils develop draft plans, policy proposals or vision statements for the future without early consultation and input from tangata whenua. There is a perception amongst tangata whenua that by the time they become involved, the directions have already been set, and they are being asked to accept a fait accompli. This kind of pattern was clearly identified by the hui called by Ngāti Tūwharetoa at Hirangi Marae, Turangi, in January 1995, to consider the Government's proposals for the settlement of Treaty claims, or the 'fiscal envelope'. The hui report⁹⁵ noted that:

a major concern at the hui was that the proposal was developed without Māori consultation (and) elements of the proposal are clearly beyond discussion... The consultation round prescribes a passive, reactive role for Māori rather than enabling active participation in a climate of mutual trust and respect.

The PCE's 1992 *Proposed Guidelines* advised that identification of priority issues for tangata whenua – the resources and issues for which iwi and hapū have kaitiaki responsibilities, and which they consider are most important for council action – is fundamental to developing a strategic approach. The *Proposed Guidelines* also recommended clarification with tangata whenua of the forms of consultation and participation they feel to be appropriate for them. These aspects of the relationship-building process are being followed by a number of councils, most usually in the development of policy statements and plans, or with specific initiatives, such as the Auckland Regional Council's proposed Strategic Plan, or Environment Bay of Plenty's proposals for a Māori electoral constituency.

Most iwi and hapū feel that they have clearly identified their concerns and priorities to councils, whether in a tangata whenua resource management plan (if they have one) or other formal declarations and contributions to planning processes. However councils' responses to these stated priorities have not generally been at a level which has satisfied tangata whenua expectations for environmental management and policy.

The willingness and open-mindedness of elected councillors and senior managers was cited as a crucial factor in the development of a genuinely

⁹⁵ M. H. Durie and S. Asher, *The Hirangi Hui: A Report concerning the Government's Proposals for the Settlement of Treaty of Waitangi Claims and related constitutional matters*, January 1995

strategic kaupapa. There is a widespread perception amongst iwi and hapū that councillors are severely lacking in awareness of tangata whenua values and priorities, and are predominantly focussed on business, development and commercial advancements. There were strong criticisms of the abilities, motives, backgrounds and knowledge of some councillors. Chief executives and senior council managers were sometimes also perceived to be unsympathetic to Māori values and concerns.

This pattern of perception was less evident on the West Coast, where runanga representatives work regularly with regional councillors on environmental management and planning. Both the runanga representatives and the council commented that this direct contact, and ongoing exposure of councillors to the views and perspectives raised during discussion of cases, had built awareness and acceptance very constructively. In Auckland it was noted that in the past, when the regional council had some Māori elected members, there had been greater openness and acceptance. The experience for other councillors and staff of working alongside Māori members, their visibility within the council, and even small details such as the practice of opening council meetings with a karakia, were seen as invaluable in breaking down stereotyped assumptions and increasing understanding. Waitakere City Council's meeting room features a large copy of the Treaty of Waitangi on the wall; it was acknowledged that this is a useful reminder to council of the wider historical and cultural contexts for their work.

There are currently 39 Māori elected members in local government throughout New Zealand, or 3.5% of the total of 1123 elected members in 86 councils.⁹⁶ It was noted with some bitterness by tangata whenua that any Māori members on a council or a committee would always be out-numbered by non-Māori colleagues, and thus their position or views would not necessarily be carried through.

While there was support for encouraging more Māori to stand for election to councils, the experience suggests that following the current electoral processes is not necessarily effective for increasing Māori participation. Tangata whenua in Hawkes Bay noted the difficulties with district council ward boundaries being drawn through Māori communities, breaking up the Māori vote. When taiwhenua representatives did put themselves forward for election, whānau structures amongst tangata whenua resulted in a number of competing candidates and fragmentation of support, so that none of the Māori candidates gained sufficient votes. In the 1992 local government elections, Māori were only 6.8% of the candidates, compared to 87% Pakeha; of those who stood, 57% of the Pakeha candidates were successful, while 44% of the Māori candidates were successful.⁹⁷

The proposal being considered by Environment Bay of Plenty, for a system where specific Māori wards provide council seats for tangata whenua, aims to provide more genuine representation of the region's population around the council table. Improving tangata whenua participation at decision-making levels would assist in fostering greater awareness of Māori values and

⁹⁶ Statistics provided by Local Government NZ.

⁹⁷ Statistics provided by the Department of Internal Affairs. The remainder of candidates included Polynesian, Asian and other groups.

perspectives for environmental management, and more constructive attitudes generally, amongst other council members and the wider public.

4.4.5 Charters and memoranda of understanding

Many tangata whenua groups had established charters or memoranda of understanding with councils, but such formal documents were often viewed by tangata whenua as fairly limited. Tangata whenua reported that unless there is a wider political willingness for participation and recognition of their values and concerns, even the best charters are effectively little more than words on paper. There were perceptions that councils relied on charters to give themselves and others reassurance that a sound relationship was in place with tangata whenua, yet the practical implementation often fell considerably short of tangata whenua expectations. The common assumption amongst officials in both local and central government, that if a formal written statement is produced, the issue has been resolved, was noted by a number of iwi and hapū.

There can be considerable dissatisfaction amongst tangata whenua with the gaps between formal charters and actual practice, when iwi expectations differ from councils' business plan priorities or work programmes. This can lead to rejection of the agreements. For example, in 1997 the Huakina Development Trust withdrew from its Memoranda of Understanding with Auckland Regional Council and with Manukau City Council. It was suggested that charters should include a review mechanism.

One council manager also noted that the processes of development and negotiation of such documents may distract both parties from more urgent priorities. It was noted that conflict can arise due to disagreement or misunderstanding over matters of philosophy, political issues, abstract ideals or details of wording, which may have little relevance for the day-to-day relationships between the parties, or for the practical imperatives of environmental management.

4.4.6 Iwi and hapū resource management plans

Local authorities are required under the RMA to have regard to relevant planning documents recognised by iwi authorities, in the formulation of regional policy statements and plans. Tangata whenua documents are one among a number of matters that councils must have regard to; the requirement to "have regard to" tangata whenua plans does not impose an obligation on councils to follow or accommodate the concerns or priorities expressed in those plans. This limited statutory requirement was noted by some iwi and hapū as a constraint on the effectiveness of their contribution to sustainable management of the resources in their rohe. Several groups noted that councils had not seemed to heed the iwi management plans that had been provided. Some iwi representatives felt that iwi management plans should have the same status as regional policy statements, regional plans and district plans under the RMA.

The Waitangi Tribunal has considered the question of the extent to which (iwi or) hapū management plans should be taken into account by local authorities when preparing policy statements or plans.⁹⁸ The Tribunal noted the submissions made to it that, since local authorities need only "have regard to" a hapū management plan, this could mean that the provisions in

⁹⁸ Waitangi Tribunal, *Te Whanganui-a-Orotu Report on Remedies*, 1998 p27

that plan might not be considered to outweigh any contrary considerations. The Tribunal recommended that:

the Resource Management Act be amended to ensure that hapū management plans are accorded an appropriate weight by local authorities, given that the plans represent the view of a Treaty partner and not just one sector of the community.⁹⁹

A number of iwi and hapū have completed resource management plans and statements of policy for the natural taonga in their rohe. There is great variability in the level of detail and approach taken (refer 7.3). Some plans are very elaborate and sophisticated productions; others are more modest and direct. Some can be strongly political in their orientation, as well as determining practical environmental kaupapa. Iwi or hapū plans can include:

- statements of tribal identity and ancestral association with the region;
- statements of rangatiratanga and rights, and declarations of sovereignty over particular areas;
- requirements for management of particular resources or areas; and
- requirements for consultation and involvement of tangata whenua.

Some councils are clearly aware of the resource management plans that have been prepared by tangata whenua in their rohe. In some cases council staff reported that provisions established in tangata whenua plans had been taken into account. Particular requirements in tangata whenua plans, such as the policy in Tainui's Manuka Harbour & Catchment plan that there should be no further damming of natural waterways, were cited by council staff as useful because they established a clear definition of tangata whenua priorities.

In other cases difficulties have arisen in councils' attempts to address tangata whenua resource management plans. It was reported by some councils and tangata whenua that iwi plans clearly had not fitted the expectations of some councillors and council staff, who were unable to accept statements about the Treaty and rangatiratanga, or the general style of expression. Other council reasons for not heeding tangata whenua plans included the claim that copies of the iwi plan had not been provided (although the iwi advised that copies had been given to all councils in their rohe), or the council not having been advised by tangata whenua of the operational status of the iwi plan.

Issues had arisen for tangata whenua regarding the status of iwi resource management plans. The Kahungunu Taiwhenua ki Heretaunga reported that they had been advised that if their plan was to be associated with the district plan, it would necessarily be subject to a process of public submissions as is the district plan. The Taiwhenua were also advised that although the council could recognise the content of the iwi plan, that plan would not be legally binding on the council. Accordingly the Taiwhenua decided not to advance their plan within the district plan framework, feeling that such constraints would not reflect mana or rangatiratanga.

⁹⁹ *ibid.*

It was noted by one council iwi liaison officer that attention needs to be paid to the correlation between council plans and iwi or hapū plans, with careful analysis and cross-referencing to determine how the respective policy documents relate to each other.

Many hapū and iwi reported that they are in the process of developing a resource management plan, and were positive about the usefulness of such plans as declarations of tangata whenua principles, priorities and values for environmental management. Tangata whenua were realistic about the work involved in developing their plans, acknowledging that it involves extensive consultation with kaumātua and hapū and whānau members, other research, and debate to determine directions and priorities.

One example is the comprehensive programme being undertaken by Ngāti Porou, to create a inventory of the environment in their rohe, including information on land uses and title, soils, water quality, wāhi tapu and historical sites, vegetation and wildlife, kaimoana, rivers and the seabed, and cultural values. This information is recorded on the Ngāti Porou computer database, a sophisticated Geographic Information Systems (GIS) programme; access to information is protected and restricted where directed by the hapū concerned. Workshops lead to the development of environmental management plans which identify specific projects and hapū priorities.

Some tangata whenua have sought resourcing for the development of environmental management plans from councils. There is no statutory obligation on local government to resource tangata whenua plans; however some councils have made allocations for the development of iwi or hapū resource management plans. Some iwi had applied to other funding sources such as the Lotteries Grants Board, the Ministry for the Environment, or the Public Good Science Fund administered by the Foundation for Research Science and Technology. Ngāti Porou for example has been assisted by the Ministry for the Environment's Sustainable Management Fund in their work on hapū environmental management plans and policies. The Ngāti Paoa resource management policy was prepared by a group of planning students at Auckland University as part of their course credits; a process of intensive consultation with the iwi led to good outcomes including the document itself and a valuable learning experience for the students. However some iwi and hapū saw the process of developing their resource management plan as something which demanded independence, and were committed to resourcing this initiative themselves.

Generally the development of a resource management plan was seen as a constructive and important enterprise for iwi and hapū. The assembling of information and tikanga, the development of protocols for appropriate security for sensitive information, the assessment of issues and objectives, and the development of management guidelines, are processes that can strengthen the confidence of tangata whenua, consolidate important skills, and lead towards better environmental outcomes.

(NB: payment for processing consent applications is discussed below at 4.7.9)

4.4.7 Assistance for Tangata Whenua participation

The 1992 *Proposed Guidelines* outlined the difficulties for tangata whenua participation without an adequate resource base, and suggested that resourcing the development of iwi or hapū resource management plans would be cost-effective for both tangata whenua and councils over the longer term. The 1995 report from the Local Government Association¹⁰⁰ identified as a priority for further attention "addressing the resources available to tangata whenua to enable participation." There is no statutory obligation on local government to provide resources for tangata whenua to participate in environmental management. There have been a range of responses to this issue.

Funding allocations for participation of tangata whenua in councils' policy and strategic work are usually specifically focussed to particular processes and individuals. Payment is made to official participants, such as the two runanga representatives to the West Coast Regional Council, or the members of councils' Māori Advisory Committees in Hawkes Bay, for their attendance at meetings and travel costs. Payment is not generally provided to these representatives for preparation time nor for the necessary consultation with iwi, hapū and whānau. Costs are usually met when councils call a hui or meeting.

Allocations for consultation with Māori in the council's area, may need to be split between a number of iwi, hapū and other groups. It was also noted that allocations can be cut back from year to year, making forward planning difficult for tangata whenua, and reducing capacities to the point where little effective action can be undertaken.

In some cases council unwillingness to provide more broad-based financial support has become a matter of contention. Tangata whenua requests for annual retainer payments – in order to sustain a professional responsiveness to council requirements for environmental management, and to develop proactive strategies – have been refused. Papakura District Council rejected an application for retainer funding from Huakina Development Trust on the basis that financial support for Huakina would disadvantage other sectors in the community. The Ngātiwai Resource Management Unit developed a proposal to the seven councils operating within the Ngātiwai rohe for retainer funding with clear accountability systems and contractual arrangements. Despite support from some council staff, the proposal was rejected by the councils. Ngātiwai believe that regular retainer funding is a more reliable system than ad hoc contracts for particular tasks, and noted the importance of advance payments for ongoing operational requirements of iwi.

It was acknowledged that some smaller councils have limited resources themselves, for example the situation on the West Coast, where an extremely small rating base and past financial difficulties give the council little leeway. One council manager noted that insufficient attention is given to the complex responsibilities of local government, suggesting that many mid-sized and smaller local authorities may not be finding it easy to meet the demands of the RMA and the other various statutory responsibilities passed to them by central government.

¹⁰⁰ NZ Local Government Association, *The Resource Management Act 1991: Four Years Down the Track*, October 1995

A number of people noted that councils are required by central government to undertake a wide range of environmental management duties under the RMA, including consultation and participation of tangata whenua, yet the requisite funding provisions had not been made to local government along with that responsibility. It has also been noted that at the time the RMA was being drafted, the government was proposing to provide funding and structures for tangata whenua under the Runanga Iwi Act 1990. When the government changed later that year, that legislation was repealed.

It was suggested by one council iwi liaison officer that section 26 RMA might offer a useful mechanism for assistance to be provided for tangata whenua participation in environmental management. This general provision has not yet been used, nor have criteria been established for its use. The Ministry for the Environment notes that its Sustainable Management Fund now provides an equivalent mechanism for assisting environmental initiatives.

The opportunities for more lateral solutions to funding issues were not specifically addressed in this investigation. It should be noted however that there is considerable potential for constructive practical arrangements to be developed, in conjunction with tangata whenua and other relevant parties, for delivering improved environmental outcomes. The opportunities with well-targeted incentive schemes have been mentioned in some studies.¹⁰¹ One option could be the development of rating relief programmes or other incentives for landowners and developers with wāhi tapu and other taonga on their properties where appropriate management and protection regimes have been agreed with tangata whenua.

Some non-Māori suggested that settlements for claims to the Waitangi Tribunal should be used by iwi to resource their participation. Tangata whenua note that settlements are made as compensation for past injustices, and not to resource future participation in areas such as environmental management.

The opportunities for councils to provide forms of assistance other than direct funding are being taken up in only minor and ad hoc ways. The loan of council staff, such as a planner, even on a part-time basis for a limited period, was seen as helpful. Advice on technical and scientific matters from council staff was also important. Tangata whenua valued such practical professional assistance. Some councils help with photocopying and provision of papers and technical materials, but it was reported that others charge copying costs. Secretarial or administrative help is usually confined to the operations of councils' Māori advisory committees. One iwi resource management unit was donated an old computer from the local council; the iwi felt that the computer's slowness and limited capacities were both an insult to mana whenua and a constraint on efficiency and project development.

Other tangata whenua took the position that accepting funding or assistance from councils would compromise mana and independence. One runanga

¹⁰¹ For example, the Ministry for the Environment, *Implementing the Resource Management Act: Key Messages for Councillors*, November 1995

representative stated that: 'Sometimes rangatiratanga means you have to put your hand in your own pocket.'

There was an acute consciousness amongst both Māori and non-Māori of the need for clearer understanding of what is required and what is to be provided in any consultation or contracting arrangement:

- general payments from councils to maintain the ongoing consultative relationship;
- questions of equity vis-a-vis non-Māori being assisted to participate, such as community or residents' groups given support; and
- payments for particular advice and expertise provided as a service, such as specialist assessments and input provided on a contract basis (refer 4.7.9).

To summarise, tangata whenua are participating in RMA processes with little or no resourcing. Tangata whenua representatives' environmental management work is often fitted in around other jobs and commitments, taking up late nights and weekends. As several kaumātua emphasised, the playing field is far from level.

Constructive communication and the ability to have access to relevant information in the decision-making process is a fundamental requirement for good environmental outcomes. Often however there are failures in communication, and resulting failures in understanding the environmental issues at stake.

4.4.8 Communication and sharing information

This was linked with the assumptions commonly made about different kinds of expertise, knowledge and professional input. Tangata whenua noted that some councils pay extensive fees for scientific, legal, engineering or planning expertise, yet are unable to accept the value of equivalent iwi or hapū specialist services. Professional training and qualifications of non-Māori experts are readily recognised and identifiable. However tangata whenua are concerned that amongst non-Māori there is little recognition of the lifetime's study and commitment, and the cumulative experience of previous generations, that can be the basis of kaumātua knowledge and advice.

In many cases tangata whenua feel that information they have contributed is not valued or given sufficient weight in councils' evaluation of policy or particular issues. There were complaints that scientific and engineering reports, or economic and financial data, were given priority ahead of tangata whenua information. Iwi and hapū spokespersons feel insulted and frustrated when their contributions of knowledge and specialist understanding are not heeded. Generations of experience may be the basis for information – for example the knowledge of estuarine flows and sedimentation deposits affecting kaimoana beds, explained by Kahungunu kaumātua to council engineers. Tangata whenua also feel insulted when consultants or technical experts take Māori information and appropriate it into their own reports without acknowledgement or payment. More careful attention needs to be given to the worth of different kinds of information.

Councils' mechanisms for communication and information-sharing are often less appropriate and effective than they could be. There was considerable

annoyance amongst tangata whenua at the receipt of policy papers and documents 'cold' in the mail. Many councils continue to rely on written materials, whether reports, draft papers or pamphlets, to communicate with tangata whenua. Some iwi noted that council reports tend to be very long and full of technical jargon, and suggested that documents could be made more accessible. There is some appreciation within councils of the usefulness of alternative methods such as face-to-face discussions, hui and presentations on policy proposals and current issues. However such initiatives seem to be fairly random, resulting in infrequent ventures out to marae or other meetings rather than in any consistent and sustained communication strategy.

Tangata whenua gave a range of judgements on the value of written materials to improve understanding. Some felt that reports, booklets and papers are helpful, others noted that there was simply never enough time to read such materials and that they would only sit on a shelf. Some people suggested that presentations in whatever form on particular local or regional issues would have greater relevance. Others were appreciative of the usefulness of discussions of broader political and legal issues.

Tangata whenua agreed that wānanga sessions on topics of relevance – technical matters such as RMA processes or how to prepare a submission, environmental matters, tikanga and cultural matters, and Treaty issues – were important to share and consolidate information. Tangata whenua were concerned that the development and control of such wānanga should be with tangata whenua. There was scepticism about some council seminars where an issue or proposal had been set out by council spokespersons and perceived by tangata whenua as a *fait accompli* with no opportunity for debate or discussion (refer 4.8.2).

4.4.9 Sensitive Information

The protection of sensitive information is a major concern for tangata whenua. Section 42 of the RMA provides that a local authority may, on its own motion or on the application of any party to proceedings, keep any hearings or information confidential in order to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu. Confidentiality may also be imposed in order to protect commercial information (section 42(1)(b)).

The kaitiaki responsibility to protect spiritually significant dimensions of the environment is a powerful imperative. Information is often valued as a taonga in itself. The location of wāhi tapu sites is an issue of greatest sensitivity. Other kinds of information that may need protection can include the location and uses of traditional natural materials and resources, rongoā techniques and uses, aspects of history and whakapapa, or spiritual and supernatural matters.

It has been suggested by one council representative that such issues with information arise from a fundamental conflict between two diametrically different systems of knowledge and politics. On the one hand there are the democratic, bureaucratic processes of local government, based on recorded, objective knowledge systems, where information resides officially within the system, and the individual person is often irrelevant. On the other hand

there are the tribal, traditional processes of tikanga and mātauranga Māori, based in oral, personal and metaphysical knowledge systems, where mana, whakapapa and ritual will often be essential factors in determining the appropriateness of using information.

Some councils and tangata whenua operate with silent file systems, where varying levels of information and specificity are provided into council processes. Maps may identify general areas within which are sensitive sites; precise locations are not given, nor are the nature and significance of those sites necessarily identified. The information needs only to be indicative, and not necessarily descriptive. If any proposal is put forward for that general area, tangata whenua representatives are to be involved as required.

There is extreme caution amongst tangata whenua about the management of sensitive information. A fundamental principle is that iwi and hapū must retain control. Some have established their own systems for recording and managing data, such as the sophisticated computer systems operated by Ngāi Tahu and Ngāti Porou. Access into different levels of the computer database is controlled by hapū, whānau or particular individuals as appropriate. However others are concerned for the ultimate security of any records of information. One kuia noted that even if secure systems are in place at present, things could be less reliable in the future, beyond the lifetimes of contemporary guarantors.

Such issues are being debated also within the review of heritage management being undertaken by the Minister of Conservation. At hui throughout the country tangata whenua debated questions of identification and formal registration of wāhi tapu and other sites of significance through official mechanisms such as the Historic Places Register system or councils' district plans.

- *Consultation:*
 - *on an ongoing basis;*
 - *as early as possible in the process;*
 - *with clear objectives and a focus on tangible issues;*
 - *with explanations of technical and statutory matters;*
 - *in appropriate venues; and*
 - *coordinated within council and with other agencies.*
- *Iwi liaison officers.*
- *Differences from iwi to iwi.*

4.5 The Consultation Process

Councils, developers and tangata whenua all reported concerns where time was a significant factor affecting the participation of iwi and hapū in environmental management processes.

4.5.1 Timeframes and timeliness

It was acknowledged that the RMA establishes set timeframes for processing resource consent applications; these had caused difficulties for some tangata whenua. There were also concerns about council timeframes for the development of policy or plans. Some tangata whenua representatives acknowledged that time constraints could have an effect on

the quality of their contributions. Others noted the complications that can arise when, because a deadline is missed at one stage of a process, the iwi or hapū is cut out from any opportunity of participation or comment later on.

It was felt by many tangata whenua that there is insufficient time in such processes for adequate consultation with the hapū, whānau and individuals involved, to consider the implications of proposals or policies, and reach a consensus. Site visits, research, and conferring with kaumātua and kuia may be required. Drafting of an appropriate response may require a process of checking back to ensure the hapū and whānau are comfortable with what is being said. There was the feeling that some councils do not fully appreciate the extensive background work that may be necessary for tangata whenua.

Many developers take a practical approach to the requirements for consultation for resource consent applications. Checking a proposal with the iwi or hapū is factored in as a normal and not unreasonable step in the process. There was concern amongst a few developers that tangata whenua consultation could delay projects; however it was also acknowledged that often delays on projects and with formal processes are not due to tangata whenua, but to councils and other parties involved. A 1997 study¹⁰² reported that a majority of the businesses surveyed felt that the statutory timeframes in the RMA had not been effective in improving timeliness for consent processes.

A key factor was the uncertainty that can arise from confusion about whom to consult. Delays had been caused when iwi or hapū groups not identified in the initial round of consultation, seek input at a later stage in the project. In some areas with seasonal construction restrictions, delays at certain times of the year can mean a proposal must be deferred until the next year's construction season. Developers noted the correlation between schedules, costs and project viability; they were concerned to manage their clients' investment as efficiently as possible. There was the view that non-professionals do not greatly appreciate or acknowledge such imperatives of project management.

4.5.2 Early consultation

There was general agreement amongst tangata whenua, councils and developers that early involvement of tangata whenua was most productive. Many people endorsed the principle of consultation at the earliest stages of developing the proposal, rather than further down the track when directions have been set, frameworks and policies established, budgets allocated, sites surveyed and selected, plans and designs drawn up, or even when actual work is already under way. Developers noted that requirements for confidentiality in the early stages of project development should not be used as reasons to avoid timely consultation. The efficiency of early consultation, with the opportunity for tangata whenua concerns to be worked through and accommodated, was often compared to the difficulties of late interventions, duplications of process, changes and back-tracking. Studies of good practice such as the Local Government Forum's 1996 report on the RMA¹⁰³ advise that consultation should be undertaken with the community

¹⁰² Ernst and Young, *Case Study Assessment of the Impact of the RMA on Business*, September 1997

¹⁰³ Local Government Forum, *The Resource Management Act – Best Practices among Local Authorities*, 1996

and interested parties at a very early stage, and note that this "can make an enormous difference. By consulting at an early stage, councils may obtain a range of useful ideas to include."

However, many tangata whenua reported an ongoing pattern of late involvement in processes for consents and for policy and plans. This causes significant frustration for tangata whenua. They, council personnel and developers all felt that late involvement can result in processes and environmental outcomes that are less effective, less focussed and more expensive. There are also effects on the working relationships between tangata whenua, councils and other parties, which can make future participation more complicated.

The proposals for the Hauraki Gulf are one example given by tangata whenua where failures in timeliness in the consultation process have contributed significantly to a situation where opportunities for good environmental outcomes may be jeopardised. Tangata whenua in the Auckland region spoke of their intense frustration with the consultation on the Gulf proposals. They were not opposed to the principle of developing a coherent integrated environmental management kaupapa for the Gulf, but felt that the processes had lacked coherence and sufficiently early involvement of tangata whenua (refer 4.9.8).

The 1992 *Proposed Guidelines* recommended a clear and common-sense focus, and many of the people spoken to in the course of this investigation emphasised the importance of greater clarity in a number of different areas, such as the provisions of the law, Treaty principles and rights, terminology and te reo, procedural details, environmental values, scientific and technical matters, common goals and objectives, and expectations of the respective parties' intentions, roles, rights and obligations.

4.5.3 Clarity of objectives, outcomes and expectations

This emphasis on clarity not surprisingly derived from situations where different perspectives and values came up against each other. Many people both Māori and non-Māori expressed the view that their priorities and rights were not clearly understood by other participants. In the recent case brought by Ngāti Tūwharetoa against the Taupo District Council¹⁰⁴ the Court found a 'gulf in perception' between the iwi and the council as to their respective expectations of the consultation process: 'each party's perception about how this would operate and what it would achieve were markedly at variance.'

Efforts at communication have sometimes been counter-productive, being received as declarations of a fait accompli, or as demands or challenges. Even where common directions or goals have been identified, there can often be a lack of clarity or shared understanding for the implementation requirements. The confusion arising from such misunderstandings can be further complicated when the views, assumptions and expectations of wider communities or publics are taken into account.

The importance of a focus on practical environmental outcomes was widely endorsed. Again, however, most people expressed their concern at the lack

¹⁰⁴ *Te Heu Heu v Attorney-General*, CP44/96 High Court, Rotorua, Robertson J, 15 May 1998, p44.

of such a focus in the actual interface between tangata whenua and local government. Many felt that the difficulties of the various processes deflected attention from the intended outcomes. The effort required to sustain one's place in the system – to keep making sure that papers are sent through and deadlines met, meetings attended, committee structures negotiated, formalities officially recognised – rapidly uses up scarce tangata whenua time and resources. Many people acknowledged how easy it can be to become caught up in bureaucratic systems and lose focus on the environmental objectives.

4.5.4 Willingness to consider change

The principle that genuine consultation requires an openness to the possibility of change being undertaken as a result of the contributions of the other party, as outlined in the 1992 *Proposed Guidelines*, is also widely acknowledged. However many of those interviewed for this investigation reported that policy-developers and decision-makers often do not seem able to change the course of a proposal and accommodate tangata whenua concerns. In many cases iwi and hapū felt that the expression and contribution of their views had made no difference at all. Tangata whenua often felt that their priorities, even when strongly and authoritatively articulated, had not been given due weight in the assessment of proposals and environmental impacts. Alternative options which might have enabled win-win solutions had not been considered. It was reported that in many cases no explanations are offered when councils decide to follow different priorities.

Some tangata whenua also noted their concern and frustration with the pattern observed amongst councils and other official agencies, where a study is undertaken, and a report, often lengthy, prepared and debated, yet the original problem remains as it was. It was suggested that consultation, while often giving the impression of progress, can become an end in itself rather than a means to achieving better environmental outcomes. Some iwi representatives are deeply sceptical about the bureaucratic assumption that writing a report means that the situation is being dealt with. They noted that various papers and reports have been produced over a number of years, clearly identifying key issues and making purposeful recommendations. Their sense that there had been little or no change resulting from these exercises left a feeling of futility and a reluctance about future participation.

4.5.5 Iwi liaison officers

Most councils employ iwi liaison officers, whether on a full-time or part-time basis. Roles and job titles may vary but the fundamental responsibility is to facilitate communication and good working relationships between council and tangata whenua.

There were a number of views and concerns expressed by iwi and hapū regarding these staff positions. Some supported the iwi liaison officers and their work, acknowledging the commitment and long hours that the job demands, and valuing the practical assistance provided. There were expressions of concern at the enormous workload imposed on iwi liaison staff, and the view that any limitations in their achievements and effectiveness were the consequence of frustration by more conservative senior managers or councillors. Some people suggested that the range and intensity of expectations of iwi liaison officers are unrealistic for any individuals to fulfil. It was noted that identification of a person to take up

an iwi liaison position can be complicated by iwi and hapū relationships, and by the need for hapū and whānau to represent their own particular interests.

There were also strong criticisms of the liaison role and the performance of council officers. Some tangata whenua dismissed iwi liaison staff and any efforts they might make, because as council employees they were there to work for council objectives and priorities. There were criticisms of their status, mandate and authority to speak. The feeling that consultation was inadequate, especially through to hapū and whānau levels, was the basis for considerable bitterness. It was felt that in many cases iwi liaison officers simply did not have the knowledge or reliable information to take tangata whenua concerns through into council decision-making processes. Tangata whenua reported that environmental losses and damage had resulted.

It was noted in the 1992 *Proposed Guidelines* that iwi liaison staff should provide councils with early warning of significant issues that will be of concern to tangata whenua. The 1998 investigation team however was told by tangata whenua of situations when iwi liaison officers' advice had been rejected, altered or excluded from consideration, either by senior managers or at political levels. There were concerns that iwi liaison officers typically do not have sufficiently high ranking or status within council hierarchies to be more effective.

The 1992 *Proposed Guidelines* suggested as good practice that councils should consult with tangata whenua in locations such as marae or Trust Board venues. Most councils have had some time on marae in their areas, but the purpose, extent and usefulness of such contact varied widely. Tangata whenua often felt that marae-based meetings or events were too irregular and apparently random to develop real communication; there often seemed to iwi and hapū to be little strategic integration or follow-up connecting various consultation exercises.

4.5.6 Venue and format of consultation

There was also recognition of increasing confidence amongst tangata whenua operating in official and bureaucratic contexts. Far from being intimidated by formal council procedures and meeting rooms, many iwi and hapū members are proficient and fluent participants in official processes. Experience working with other iwi and hapū initiatives and in professional careers is bringing through significant numbers of assertive, articulate spokespersons, at ease in a range of milieux – council committee meetings and seminars, legal and courts procedures, negotiations with developers, project management and design, and the technicalities of environmental monitoring.

It was also noted that in some situations it may be more appropriate to arrange consultation off the marae at a suitably neutral location. This may be helpful in order to enable a broader range of people to feel comfortable about attending, whether non-Māori or representatives from other iwi or hapū.

4.5.7 Assistance with information and with interpretation of technical data

Councils were aware of their responsibility to ensure that decision-making is based in adequate information. Copies of policy and planning papers, reports, and resource consent application materials are routinely provided. Information can be delivered during a marae visit or meeting, mailed to tangata whenua representatives, or made available in council offices. Generally tangata whenua reported relatively open access to information. There were some difficulties with council slowness in responding to requests for materials; there was some acknowledgement of the limited information bases of some councils, and the simple lack of much important environmental data. It was also noted in some cases that information may not be offered by council, but must be specifically sought by tangata whenua.

Most councils advised that if it was necessary council staff assisted tangata whenua with the interpretation of complex technical and scientific data. They did not report on the effectiveness of such assistance. Many tangata whenua are gaining skills and experience in dealing with environmental assessments, engineering reports or laboratory analyses of water quality, computer skills with GIS programmes or statistical monitoring, or legal and advocacy skills.

4.5.8 Efficiency and monitoring

The concept put forward in the 1992 *Proposed Guidelines* – that councils and other official agencies should coordinate processes for consultation and participation with tangata whenua – was most evident with the recent establishment of the Auckland Regional Māori Issues Group. Generally however tangata whenua felt that purposeful coordination of consultation processes with other councils within the rohe of an iwi or hapū, or with the programmes of other agencies, does not seem to be attempted or achieved.

Tangata whenua reported an ongoing proliferation of processes to which they are expected to respond. Most of these processes have very little resourcing attached, many have tight or conflicting deadlines, and many involve different agencies and statutory frameworks. Each initiative establishes its own urgency, although often there are overlapping concerns – for example separate processes for the review of management systems for historic heritage, for possible changes to the RMA, for a Biodiversity Strategy for New Zealand, for indicators to monitor the state of the environment, for complex matters of intellectual, cultural and genetic property rights, and for processes under the Biosecurity Act. Work for Waitangi Tribunal claims, research and negotiation, is another separate process. Consultation overload, with intense pressure at personal, family and whānau levels, is common.

A tangata whenua spokesperson suggested that local authorities should compile inventories of the information that is already held concerning the values and concerns of iwi and hapū, such as information provided through various submissions processes over the years. It was noted that many councils undertake consultation afresh for each process, when checking existing records or archives could be more efficient.

Councils and tangata whenua reported little formal monitoring of processes and relationships, although it was acknowledged that failures to keep up-to-date with developing situations had led to confusion, misunderstandings and

delays. There are some initiatives such as the Manukau City Council's Treaty Team's ongoing monitoring of relationships and the new approaches being developed by that council. Some personnel from other councils advised that no formal complaints had been received from tangata whenua regarding the consultation processes followed by their council; there was an assumption that unless such complaints were made, the situation was satisfactory.

Many people however admitted that the requirements of managing basic processes, and responding to issues as they arise, are a significant commitment of the limited resources of both local government and tangata whenua (refer 4.4.4). Being continually in 'react mode' leaves little time or capacity for relationship monitoring. Development of constructive approaches and relationships can be ad hoc, with good processes often dependent on individual councillors, staff members or tangata whenua representatives.

The research programme being proposed by the Ministry for the Environment (refer 1.5.1) is intended to work through a sample of different councils each year, monitoring systems and structures, outcomes, and the views of participants, building up as time goes on a broader picture of the trends and issues.

A fundamental principle for a successful relationship is acceptance of diversity, flux and change. Although various participants and official reports (including this one) often deal in generic terms ('Māori', 'councillors', 'developers') there is enormous variation amongst all groups and sectors involved in environmental management.

4.5.9 Acceptance of diversity

Within both local government and tangata whenua, different individuals and various subsidiary groupings provide valuable differences of perspective. Individuals change and grow, developing different views or approaches over time. People also come and go, whether councillors subject to elections every three years, council staff, or iwi and hapū members taking up particular roles and tasks as required. Structures such as council committees, iwi resource management units or runanga structures may evolve into new forms. The influence of particular people or groups may wax and wane. While some players in the environmental arena yearn for certainty and simplicity, the reality is inevitably more a process of ongoing evolution.

What is determined and agreed at a particular point in time, with a particular group of stakeholders, may not necessarily satisfy the priorities or expectations of others, nor meet the requirements of changed environmental conditions. Effective participation will require constant monitoring, reassessment and updating.

It was noted that the rohe and mana of iwi, hapū and whānau — like the structures and scope of local government agencies — are not necessarily fixed in the present, but will in many cases have varied over a considerable period of time. Tangata whenua status can also be affected by the processes for advancing Treaty of Waitangi claims, which may have placed particular expectations on hapū and whānau to define their interests. This can lead to differences between groups within tangata whenua that can become evident

in the public arena through RMA processes. Such conflicts can have a corrosive effect on councils' perceptions of the validity of hapū or whānau interests. Settlement of Treaty claims may resolve some of these issues.

The diversity principle also applies to such generic terms as 'consultation' and 'participation', each of which can mean different things in different circumstances. Often confusion has arisen when the parties in a process have different expectations of why they're there, and are working from different assumptions about their roles. What may be appropriate and productive in one set of circumstances may not work at all in another situation. Even in a specific area such as the resource consents process, there are several different ways in which tangata whenua may contribute at different stages in the process (refer 4.7.8). It is important to ensure at the outset that all participants have a clear and common understanding of their respective roles, responsibilities and expected outcomes for the particular process at hand.

4.6 Iwi consultative committees

4.6.1 Current provisions

- *Committees as conduits of information and resources.*
- *Committee charters and review.*

In each of the three case studies in 1992, councils and tangata whenua were working with an iwi consultative committee. In 1998 only the Hawkes Bay Regional Council retains this structure.

The Auckland Regional Council's standing committee, Puna Manawa Korero, and the West Coast Regional Council's Komiti Rangapu have since 1992 been disestablished by their respective councils. Tangata whenua and council personnel cited a range of reasons for the decision to disestablish the committees. These included costs and administration requirements, lack of clarity about representation and membership, and dissatisfaction amongst councils, committee members and iwi and hapū with the role, powers and performance of the committee. However, some iwi representatives in Auckland and the West Coast expressed the view that the committees had been more effective than the present consultation systems.

The investigation was also provided with information on tangata whenua experience with committee structures running with other councils (refer 3.2.2, 3.3.2 and 3.5.4).

The advisory committees currently in operation in councils have a range of functions, interests and roles. Some focus primarily on environmental and resource management issues; others such as the committees advising Papakura and Waitakere councils have wider roles and concerns, including social and community activities.

The range of functions undertaken by the committees includes:

- advice on council policies and plans;
- consideration of resource consents;
- advice on council business plans;
- education and awareness work within councils;
- communication between councils and tangata whenua; and
- assistance with protocols and formalities as required.

The 1992 *Proposed Guidelines* suggested the principle that iwi consultative committees should be considered as an interim mechanism for consultation and participation in environmental management. There was some acknowledgement in the Hawkes Bay that the role of the regional council's standing committee could be likely to change when the proposed Kahungunu Resource Management Unit is set up. The proposal put forward by Environment Bay of Plenty's Māori Committee for direct tangata whenua representation on council is another situation where the committee structure is evolving towards other agreed arrangements between councils and iwi. One Poutini Ngāi Tahu runanga representative suggested developing a broader advisory rōpū concept. Most Māori advisory committees, however, seem to have become fairly solidly established as the principal means of consultation and interaction between councils and tangata whenua.

4.6.2 An interim mechanism

The 1992 suggestion of regular monitoring, feedback and review of committee activities does not seem to be widely followed. Tangata whenua dissatisfied with the role and performance of their council's advisory committees did not feel that their concerns had been heeded or taken into account in any assessment of committee performance.

Many people involved in Māori advisory committees felt that they are a constructive way to achieve a range of practical outcomes. These include:

- environmental outcomes, with committee input into policies, plans or consent application processes;
- relationship outcomes in the sense of stronger and more positive links between tangata whenua and councillors and council staff; and
- increased awareness amongst councillors and council staff of tangata whenua concerns, values and priorities.

4.6.3 Achievements and limitations

Some iwi and hapū, however, do not view the advisory committee system as a useful mechanism for participation in environmental management. Tangata whenua have in some cases made their position clear by withdrawing from participation in councils' Māori advisory committees, seeking instead direct communication between the iwi or hapū and the council. Parallel processes may be required.

Iwi and hapū noted that committee systems often do not provide a regular or reliable flow of information through to hapū and marae levels. Committee members were sometimes seen as gatekeepers rather than facilitators. Tangata whenua expressed considerable frustration that there can often be no reporting back on council decisions, or explanations of the rationale behind decisions, either from the individual committee members or from the council. There was concern that committee representatives made decisions and provided advice to councils on environmental issues without advising the relevant runanga, hapū or whānau and seeking their input and endorsement.

There was concern also that the committees only had advisory status, which was seen as an impediment to effective advancement of iwi and hapū values and concerns for environmental management.

4.7 Resource Consents

- *Consultation between applicants and tangata whenua.*
- *Clear and specific information for decision-makers.*
- *Pre-hearing meetings.*

4.7.1 Efficient and reliable processes

Councils reported a range of systems in place for the participation of tangata whenua in the consideration and processing of resource consent applications. Some councils reported that guidelines for staff had been developed, or are in the process of being developed, setting out procedures and criteria for handling consent applications. It was felt that such guidelines provided greater certainty and consistency.

Developers and applicants, the other major participants in resource consent processes, were also concerned that processes should be efficient and reliable. They reported difficulties with identifying who to consult, and in some cases difficulties in getting a response from iwi or hapū. They noted the diversity amongst tangata whenua groups, and the differences of approach, professionalism and reliability from one group to another. They acknowledged the heavy workloads and commitments of some iwi representatives, and stressed the importance of good organisation on the part of tangata whenua. They also noted a range of viewpoints amongst their clients regarding the need for consultation and input from tangata whenua.

Councils, developers and tangata whenua all acknowledged the sheer volume of consent applications, the importance of working with as efficient a process as possible, and the need to avoid what is seen as unproductive or unnecessary consultation.

There was a common view amongst council personnel that tangata whenua involvement will not be necessary for the majority of consent applications, where it is considered that the environmental impacts will be minor. Many people mentioned garages and driveways as typical examples of such non-notified applications. It was felt that consultation with iwi or hapū over such projects would be a waste of time, for council staff, applicants and for tangata whenua. However some iwi suggested that criteria such as the size of projects could be deceptive as a basis for assessing impacts. They noted that even a modest domestic construction might have major effects if it was located on a wāhi tapu, for example (refer 4.9.2.2). A driveway or seemingly innocuous farm road might cut through an urupā and expose kōiwi.

The proposed Crown settlement offer for the Ngāi Tahu claim includes the statutory acknowledgement by the Crown of Ngāi Tahu's association with specified areas. These statutory acknowledgements are designed to improve the effectiveness of Ngāi Tahu participation under the RMA, and the protection provided under the RMA for areas significant to the iwi. Ngāi Tahu's association with each of 64 special areas throughout their rohe will be recorded in the settlement legislation. Information recording the statutory acknowledgements will be required to be attached to relevant regional and district plans and council policy statements, although such information will not form part of the plan. Resource consent applicants

ought thus to be clearly aware of Ngāi Tahu's interest in those areas. Summaries of any application for a resource consent relating to, or impacting on, any of those areas must be sent to Te Runanga o Ngāi Tahu. Councils, the Environment Court and the Historic Places Trust must have regard to the statutory acknowledgements in their consultation and decision-making for the special areas.

Tangata whenua were keenly aware of consent applications being processed as non-notified applications, where there were significant values at stake. It was reported that non-notified applications had included dwellings and other constructions, roads and paths, forestry and farm projects, even extensive subdivisions, which had impacted on environmental heritage and values important to Māori. Tangata whenua were angry that in many cases there had been no advice or consultation with them.

4.7.2 To notify or not to notify

Many iwi and hapū were concerned at the high proportion of consents applications that are non-notified. There was concern about the criteria used by councils to establish whether or not to notify consents. It was also noted that the decisions can be delegated to a few council staff or even a single officer; sometimes iwi liaison officers or Māori advisory committees can be involved.

A recent study and guidelines, *To Notify or Not to Notify*¹⁰⁵, does not include discussion of tangata whenua issues. No Māori resource management groups or iwi or hapū were consulted in the development of these guidelines.

There was also concern about the environmental effects of activities that are classed as 'permitted activities'. It was noted that some regular council maintenance programmes, such as weed-spraying, or gravel clearance in river channels, can have significant environmental effects. There was concern that such work, not being managed through any resource consent process, is not subject to consultation or opportunity for tangata whenua or other community groups to provide their views. The Whanganui a Orotu Taiwhenua noted that the implications of the system and the categories for permitted activities had not been made clear to tangata whenua, and as a result developments had occurred, including residential developments on sensitive sites, which are of concern to the iwi. Also in the Hawkes Bay, Ngāti Pārau hapū noted their concern that tangata whenua should be involved in the processes for determining criteria for permitted activities.

A closely related area of concern was the identification of tangata whenua as affected parties in regard to consent applications. Many iwi and hapū advised that they had not been so identified, when they considered themselves very much to be affected by proposals. Some felt that tangata whenua will always be affected by all proposals for environmental use or activity, and should therefore automatically be included as having affected party status for every consent application. There was concern at the lack of clarity regarding council processes and criteria, and the lack of precision in councils' identification of who should be consulted, and which groups or

4.7.3 Who is affected?

¹⁰⁵

Ministry for the Environment, *To Notify or Not to Notify under the Resource Management Act: A Good Practice Guide*, October 1997

individuals have an interest and authority to speak in response to particular proposals.

4.7.4 Applicants' experiences

Developers also were strongly concerned at the lack of clarity and direction in the information provided by councils. The case study councils reported various mechanisms for advising applicants on the issues, but there was frustration amongst developers that councils had not established sufficiently clear guidelines on Māori environmental perspectives and values, or on the significance of different kinds of environmental effects. It was felt that with better information, there would be less uncertainty and confusion for applicants.

Developers noted that often they must depend on council advice on who to consult and which iwi or hapū will be affected; they reported that frequently this guidance was insufficiently clear, comprehensive or reliable, and complications had arisen.

A recent study¹⁰⁶ of the business sector's experience with RMA processes found a perceived need for clearer guidelines for resource consent applicants for iwi consultation. The study noted that the Act's implementation could be improved with, amongst other things, more clarity about consultation with iwi, to achieve reduced time and greater certainty for the level and adequacy of the response required. It suggested that businesses could be more proactive about developing networks of iwi contacts so as to overcome uncertainties regarding adequate consultation.

Developers advised they took a precautionary approach by consulting with every group who identified themselves. There were concerns at the impacts of conflicts and personality issues between tangata whenua groups, and some unease about the most appropriate way for developers to work through such situations. It was noted that the inability of conflicting tangata whenua groups to agree or even communicate had frustrated the development of good environmental solutions. There was a suggestion that in some cases jurisdictional and representational conflicts were being used to strengthen the position of particular groups, and that some tangata whenua participants seemed to be finding it advantageous to maintain the tensions. Developers generally emphasised the need for patience, caution, trust and sensitivity, and the importance of distinguishing between environmental issues and other matters.

Many developers have established good practical relationships with tangata whenua representatives through dealing with them on resource consents, and now have their own networks of reliable contacts. Personal relationships with individuals are important. Their experience over the years has led to greater understanding of tangata whenua values and concerns, and no little pride in their abilities and willingness to develop creative and sensitive design solutions to accommodate those concerns within projects.

A number of tangata whenua also reported very positive, productive working relationships with developers. They felt that better relationships and outcomes had been possible in their dealings with developers than with councils.

¹⁰⁶ Ernst and Young, *ibid*

Some councils reported systems for checking whether applicants' consultation with tangata whenua has been adequate. These processes included scrutiny by iwi liaison officers and/or Māori standing committee members, or requirements on consent applications for a signed statement from a recognised tangata whenua representative. A number of tangata whenua, however, expressed concern about the limitations of such checking processes.

4.7.5 Adequacy of consultation

There was widespread support from tangata whenua for pre-application meetings as a constructive way to bring their values and priorities forward at the early stages of a proposal. Developers and some council personnel also endorsed the usefulness and efficiency of pre-hearing processes.

4.7.6 Pre-application processes

There was strong support from tangata whenua for Māori hearings commissioners, although there seem to have been only a few cases where Māori have actually sat as commissioners. There was concern that individuals to take up this role must have the necessary mana, expertise, seniority and authority, both within Māoridom and amongst the wider community. It was noted that difficulties can arise when hearings commissioners lack relevant understanding of tikanga and Māori perspectives, and are therefore unable to assess the values and significance of resources or sites to tangata whenua.

4.7.7 Hearings processes

Tangata whenua were aware of the strategic value of making their input into hearings in ways appropriate to them. The effectiveness of strong whānau support at the hearing venue was noted, as was the principle of delivering evidence or submissions in te reo Māori. It was acknowledged that translators provided by council as legally required could be less than thorough or accurate in their renditions of statements in te reo.

Some tangata whenua were concerned to ensure clarity regarding the different roles they might take at different stages in the resource consent process. It was noted that there can be difficulties arising from confusion in these areas. The key question is: are tangata whenua being consulted as professionals, giving advice to assist with the assessment of the effects of a proposed activity, or are they being consulted as affected persons?

4.7.8 Changing roles

At early stages of a proposal tangata whenua can be contracted to provide a cultural impact assessment or other reports to the developer or applicant. This involvement is on a professional consultancy basis, providing a service required for the proposal just the same as engineers or scientists, and tangata whenua are clear that they should be paid appropriate fees for their expertise and specialist local knowledge. There may be consultation with the developers and technical people, and with hapū or whānau, as necessary.

When the consent application has been lodged, tangata whenua are then involved with council processes in considering the application and providing advice on effects, conditions or mitigation measures as appropriate. Again assistance may be provided by council for this consultation and provision of expertise.

Tangata whenua noted that their status as an objector to a proposal is a different role again. This may be necessary if iwi or hapū feel that the

processes have not adequately taken their concerns and values into account. There was some concern from tangata whenua that payment in earlier stages of the process for consultation or expert contributions might be considered something that would prevent them from making objections later on. Some iwi keep a distinction between different internal levels of their organisation; for example, the iwi resource management unit is seen as the appropriate level for contracting to provide cultural impact assessments, while the relevant hapū or whānau are the correct group to take an objection if that is necessary.

4.7.9 Payments

The question of payments to tangata whenua for their various contributions into the resource consents process was difficult for many people. Some council personnel and a few developers expressed the view that some groups and individuals were taking a mercenary approach to consents work and their participation in environmental management. There were reports of some iwi demands for unrealistically large sums, or for special benefits or exclusive arrangements within the proposed development. However in the majority of cases it was acknowledged that charges and payments are quite undramatic.

Some tangata whenua such as Ngāti Paoa, Ngātiwai, or Te Hao o Ngāti Whātua have well-established systems for their consents processing work, where charges and cost factors such as hourly rates and mileage rates, are clearly set out in advance. The work is precisely accounted for in itemised breakdowns.

Tangata whenua reported that a number of developers are reluctant to pay for their contributions, but that others are open-minded and that good working relationships have been established. In some cases the income earned from consultancy fees may be a significant factor in the ongoing viability of tangata whenua operations, particularly where consultation retainers were not provided by councils. Most tangata whenua were concerned that their expertise and contributions should not be taken for granted.

Developers acknowledged that it is only fair to meet the genuine costs of tangata whenua input, and had no problems with paying a reasonable fee for what is necessary for progressing consents applications, including site visits, meetings and hui. It was noted that with larger projects the charges for tangata whenua advice were not usually very significant within the overall budget.

The question of what is a reasonable fee is fundamental. Rates charged by different iwi vary, but some developers noted that the hourly rates charged by most iwi resource management groups are not high. When a standard fee structure has been set for consideration of consent applications, the feedback received by iwi from many clients is that their rate is very reasonable.

There was also a perception amongst applicants that the value of the service provided varied greatly from iwi to iwi. Some developers felt that some tangata whenua groups' reports had been of limited usefulness. There had been experiences where iwi reports had been very brief and dealt only in generalities; such reports had satisfied the formal project requirements but had contributed little meaningful sense of tangata whenua values or the

issues at stake with the particular project. It was also noted that some tangata whenua reports had revealed inadequate understanding of the scientific and technical dimensions of the environmental impacts. It was acknowledged that this area is an evolving field for tangata whenua, and that skills and expertise are continually increasing.

It was also noted that some tangata whenua groups are seeking payment for work that may be, from the developers' point of view, unnecessary or a duplication. One developer noted that iwi have sought ongoing involvement in monitoring, proposing weekly inspections of environmental impacts, where a comprehensive monitoring programme was already in place.

Developers agreed on the importance of maximum clarity about what was being purchased from tangata whenua in the project development and consents processes. It was noted that developers should not try to impose a narrow expectation upon tangata whenua of what their concerns and contribution might comprise. Most however endorsed the value of clear mutual understanding of the parties' respective roles and obligations, the transaction between them, and the environmental issues at stake.

- *Education for decision-makers, staff and stakeholders on agency obligations to tangata whenua.*
- *Awareness of tangata whenua concerns for resource management.*

4.8 Education

While the 1992 *Proposed Guidelines* focused on educational needs for council decision-makers and staff and the general community, this investigation was advised of a wide range of education needs for the various participant groups in environmental management under the RMA. Although there is increasing confidence amongst many tangata whenua and council personnel, there was also no little concern at ongoing limitations in knowledge, skills and understanding which can constrain the effectiveness of many participants' contributions. A number of people admitted that they had been on very steep learning curves in their involvement in environmental management.

4.8.1 Education needs

Limitations in skills and knowledge were identified in a broad range of areas:

*For councillors and council staff:*¹⁰⁷

- general awareness of tangata whenua perspectives and values in the natural environment, the importance of taonga to iwi and hapū, and the significance of mauri, tapu, whakapapa and other concepts as inherent dimensions of natural places, landforms and resources;
- appreciation of the responsibilities and importance of kaitiakitanga, and its practical expression in contemporary management systems;

¹⁰⁷

It was noted that different kinds and levels of education will be appropriate for elected councillors, senior managers, and staff from different departments. The seniority and particular areas of responsibility of individual staff may require carefully targeted training.

- understanding of the Treaty of Waitangi and its principles, the history of New Zealand, and the relevance of the Treaty principles for environmental management under the RMA;
- legal interpretation of governance and constitutional matters, and the rights and role of tangata whenua relative to local authorities;
- close familiarity with the specific provisions and requirements of the RMA;
- understanding of sustainability and the principles of environmental management;
- information on iwi and hapū structures and history in the region or district;
- practical familiarity and fluency with protocols for meetings and for hui on marae;
- fluency in te reo Māori or at least an understanding of basic terms and pronunciation;
- information on particular sites and resources such as wāhi tapu or kaimoana resources identified by tangata whenua as important to them in the region or district;
- appreciation of the sensitivity of particular kinds of information;
- expert advice on particular matters such as Māori customary use of traditional natural resources, co-management options, or archaeological matters; and
- for councillors, an understanding of the community or communities they represent, and a sense of their role and responsibilities as community leaders.

For tangata whenua:

- sustaining and consolidating amongst hapū and whānau members the traditional knowledge and tikanga, the history and associations of places, landforms and natural resources in the rohe, and ensuring that the wisdom, knowledge and commitment of older generations is not lost but passed on as appropriate;
- safeguarding sensitive information and protecting it within the hapū or whānau as necessary;
- detailed information about the natural resources and values within the rohe, their current condition, significant changes or trends, and threats to the future viability and well-being of those resources;
- environmental monitoring and assessment techniques;
- information about the RMA and other legislation, and the statutory provisions for recognition and participation of tangata whenua;
- information about council structures and systems, and the opportunities for tangata whenua input;
- information about the processes for resource consent applications, and the opportunities for tangata whenua input;
- scientific, ecological and engineering technicalities as relevant, the basic systems of project management for major developments, and the implications of these matters for values and resources of significance to iwi and hapū;
- computer skills including establishing and managing a GIS database, and protecting sensitive information with password systems or other mechanisms;

- writing and presentation skills for the development of effective well-targeted submissions, plans and iwi policy statements; and
- business management skills for running an efficient iwi or hapū resource management unit.

For developers and resource consent applicants:

- general awareness of tangata whenua perspectives and values in the natural environment, of the importance of taonga to iwi and hapū, of the significance of mauri, tapu, whakapapa and other concepts as inherent dimensions of natural places, landforms and resources, and of the responsibilities of kaitiaki;
- understanding of the Treaty of Waitangi and its principles, the history of New Zealand, and the relevance of the Treaty principles for environmental management under the RMA;
- information on iwi and hapū structures and history in the region or district;
- practical familiarity and fluency with protocols for meetings and for hui on marae;
- fluency in te reo Māori or at least an understanding of basic terms and pronunciation;
- appreciation of the sensitivity of particular kinds of information; and
- the practical benefits that are possible when tangata whenua are appropriately involved in the assessment and development of a proposal (refer 4.9.10).

For the general public:

- general awareness of tangata whenua values and perspectives, of the responsibilities and practical expression of kaitiakitanga, and of the relevance of the principles of the Treaty for environmental management under the RMA;
- awareness of iwi and hapū structures and history in the region or district;
- awareness of ecological issues, of the environmental effects of proposals and development options, and of ways to avoid or mitigate adverse effects; and
- information on the roles and responsibilities of local authorities and on the RMA and other relevant statutes.

The ways in which educational and training initiatives are undertaken can be as important as the information itself. There emerged through this investigation a clear sense that the kaupapa and methods employed in past initiatives had often been less than effective, if not completely counter-productive. Many tangata whenua felt that educational and information programmes undertaken by councils or other official agencies had been a waste of time; although the information and messages may have been relevant and useful, the approach taken had been inappropriate.

4.8.2 Education methods

The principal concern was with the reliance on written documents, booklets, pamphlets and papers. Many tangata whenua representatives, and council personnel, simply do not have the time to read all the policy documents and reports that come to them; there was also widespread antipathy to technical and bureaucratic jargon. There was support though for practical, user-friendly, basic-level “how-to” guidelines for various processes, such as

preparing a submission, or the step-by-step stages of a resource consent application, or basic marae protocols. There was a clear sense that such practical advice is more necessary than further analysis of the issues and problems; many tangata whenua and some council staff felt that the issues have already been sufficiently studied, debated and discussed, and noted that a number of reports and papers have been produced over the years (refer Bibliography). There was a sense that the priority now should be constructive, “hands-on” assistance for people trying to participate in environmental management processes under the RMA.

There was a strong feeling amongst iwi and hapū, and some council personnel, that face-to-face communication is crucially important, whether in hui, seminars, workshops, meetings or informal contact. Although most councils have some degree of contact with Māori there was a general feeling that such liaison can be infrequent, ad hoc, lacking a strategic framework or overall direction, and driven by council priorities, formalities and values. It was felt strongly that such characteristic patterns limited the usefulness of such encounters for communication and education. It was noted that in many cases councils rely on their iwi liaison officer, or on members of a Māori advisory committee, to undertake such initiatives. There was strong concern that local hapū and iwi representatives must be closely involved in developing and participating in any such educational programmes for councillors and staff.

Many tangata whenua felt that councillors and senior council managers needed to get out more into their communities and learn by meeting people and listening to their concerns. The developers interviewed for this investigation who had established positive working relationships with tangata whenua representatives endorsed the principle of personal contact in a practical work-focussed situation.

There was strong support from tangata whenua for wānanga sessions for iwi and hapū to consolidate tikanga and traditional knowledge, and to ensure that such information and skills are conveyed in appropriate ways to the younger generations. Iwi and hapū representatives were clear that the development and management of such initiatives is for tangata whenua themselves.

Resourcing for training and wānanga requirements was mentioned by a number of interviewees for this investigation. These requirements are considered under 4.4.7. The NZ Local Government Association’s 1995 report on RMA implementation¹⁰⁸ noted that ‘the task of developing better practice should not - indeed cannot - be left to local authorities alone... (and) a collaborative approach to raising the skill levels of participants is absolutely essential.’

The 1992 *Proposed Guidelines* did not include a section on the environmental effects that were of concern to tangata whenua. That report focussed primarily on the processes and systems for tangata whenua consultation

4.9 Environmental effects

4.9.1 Introduction

¹⁰⁸ NZ Local Government Association, *The Resource Management Act 1991: Four years down the track*, October 1995

and participation in the environmental management activities of councils.

This investigation was advised of a wide range of effects on resources and values of importance to iwi, hapū and whānau. These effects could be the result of policies and environmental management processes, of projects and developments, of industry, agriculture or forestry, suburban expansion, special events, resource extraction or infrastructural developments such as roading, waste management or sewage disposal.

It should be noted that many of the environmental effects identified by tangata whenua are matters also of concern to the general community. Many councils' policies and plans show a close alignment in their stated objectives for environmental management and protection of environmental quality with the concerns of iwi and hapū as kaitiaki.

There was recognition amongst iwi and hapū of the wider context of broader public interest and involvement in environmental issues. Some tangata whenua groups have developed active relationships with environmental groups in their rohe; liaison such as the ongoing communication between Kapakapanui ki Whakarongotai and the Kapiti Environmental Action group are seen as constructive and mutually supportive. Ngāti Whātua is involved with Forest & Bird and local community and business groups with a native plant nursery for restoration plantings in the Kaipara area. Some iwi felt, however, that there is little appreciation amongst the wider public of the particular values and significance inherent in the environment for tangata whenua, or of the nature of the kaitiaki responsibility for natural taonga and heritage.

The range of environmental effects of concern to iwi and hapū are outlined below.

4.9.2.1 Introductory comments

All iwi and hapū consulted in this investigation reported damage to and destruction of heritage sites. These impacts had resulted from council management or operational procedures, or from the approval of consent applications. In some cases tangata whenua reported that the first they had known about these activities or consents was when the work was already under way, or by reading about it in the newspaper.

It was noted by some council personnel that tangata whenua reluctance to identify sites of significance to them, or to identify such sites with sufficient precision, had led to approvals being given for damaging activities (refer 4.4.9).

4.9.2.2 Wāhi tapu

The Historic Places Act 1993 provides for the registration of historic places and wāhi tapu. Registration does not mean that wāhi tapu will be protected, but recognises the importance of the wāhi tapu; the relevant territorial authorities are notified. Wāhi tapu, which were associated with human activity before 1900 or which may yield evidence relating to the history of New Zealand, are treated under the law as archaeological sites. Any person wishing to destroy, damage or modify an archaeological site must obtain an

4.9.2 Destruction and desecration of heritage

authority from the Historic Places Trust.¹⁰⁹ It is an offence to destroy, damage or modify a site without such authority, if one knows or has reasonable cause to suspect that it is an archaeological site.¹¹⁰ On occasion, persons undertaking work may not be aware of the existence of an archaeological site until the work has commenced. At that point those persons are required to apply for an authority under the Historic Places Act before work can continue.

There was wide dissatisfaction amongst tangata whenua with this legislation and its implementation by the Historic Places Trust and by councils; there was general agreement that these provisions and systems do not give effective or reliable protection to wāhi tapu and other important sites. The current review of historic heritage management (refer 1.5) may lead to changes.

Effects on wāhi tapu were of utmost concern for tangata whenua. It was noted that wāhi tapu are a finite resource, and that any damage or loss can not be considered sustainable. It was also noted that wāhi tapu are matters of national importance under s6(e) of the RMA.

The significance of wāhi tapu to tangata whenua is encapsulated in the following statement from Ngāti Paoa:¹¹¹

For us the sacred sites are our history books and education processes, necessary for our spiritual existence and survival, for without them we are nothing. They speak to us of another time, another world, the space and its environs within the universe. Sacred sites are defined as everything or all those happenings that pertain to the ancestors. These are the taonga — our treasures.

Examples of adverse impacts cited to the investigation included destruction and physical disturbance of hills, ridgelines, riverbanks, wetlands, coastal sites, islands and vegetation. The location of dwellings on wāhi tapu was a particular concern in some places. Subdivisions, roads and farm access tracks were reported by a number of tangata whenua groups as having been granted approval by councils although wāhi tapu would be destroyed or adversely affected. Tourism and recreation developments, such as walkways or proposed wildlife viewing facilities in a regional park, were reported as having impacts on wāhi tapu. Forestry, tree felling and sand mining were also cited as activities that had damaged wāhi tapu. The installation of a cellphone tower at Otatara, an important wāhi tapu in Hawkes Bay, was noted by Ngāti Pārau as a matter of concern. Kāti Waewae noted that approval had been given for horse racing on a West Coast beach which would run across a wāhi tapu; the runanga felt that there had not been adequate consultation with kaumātua who knew the full significance of the site. Ngāti Kahungunu recorded their distress at the treatment of a wāhi tapu at Waimarama beach, the landing-place of Takitimu waka. Access arrangements for boaties and beach users to get to the water have cut through this site although tangata whenua identified its significance to council and suggested alternatives for beach access.

¹⁰⁹ Section 11 Historic Places Act 1993 (HPA).

¹¹⁰ Section 10 HPÄ 1993.

¹¹¹ Ngati Paoa Resource Management Plan, May 1996, Part 4.1

The Wairoa Taiwhenua spoke of their concerns about council proposals to realign the Wairoa rivermouth where it cuts through the shinglebank to the sea, noting the importance of appropriate recognition of the two important tūpuna, brothers associated one with each side of the estuary entrance, as well as the potential impacts on ecological and mahinga kai values.

Other less physically disruptive processes may still have major implications for wāhi tapu, and involvement of the relevant tangata whenua groups will be important. For example, one iwi expressed frustration at being excluded from council consultation processes regarding a site where in the early 1800s many from that iwi had been massacred. It was felt strongly that the history of each iwi and hapū, inherent in the physical forms and places of the contemporary landscape, is fundamental to the kaitiaki responsibility.

Tangata whenua made some references to the impacts of disturbances to wāhi tapu on the well-being of present communities. These aspects may not be easy for non-Māori to accept, and many may feel that such things are superstition or coincidence. Yet the consequences of disrespect to wāhi tapu and other taonga are inescapably real for some hapū and whānau. It was also suggested by some iwi representatives that such impacts may also fall on people who are unaware of such dimensions. One example noted was a high number of accidents and fatalities on a particular stretch of road that cut through a wāhi tapu. Another tangata whenua representative told of a family who eventually had to move out of their home, which had been built on top of a wāhi tapu, because of continual disagreements, unhappiness and illness in that house.

It should be noted that there has been some scepticism amongst non-Māori regarding the protection of wāhi tapu sites. One recent discussion paper¹¹² is critical of processes for the recognition of wāhi tapu, suggesting that the system is "being abused and used to charge a levy on applicants who rightly or wrongly are quite convinced that these sacred sites are moved according to where the proposed development is most likely to take place." Such perceptions need to be purposefully addressed by tangata whenua to prevent further distrust and misinformation.

4.9.2.3 Urupā

The disturbance of urupā and the exposure of kōiwi were occurrences that had caused particular pain for tangata whenua whose ancestors' resting-places had been violated. In some cases, such as the discovery of bones at Maungarei with a new development, there had been complications regarding the appropriate group who should be called in by the council or the developer to deal with the tapu and the re-interring of the remains.

With many councils however it has become fairly routine practice for conditions to be imposed on consents specifying protocols to be followed in such cases. For example, the West Coast Regional Council required with one consent that a hapū representative be on site for excavation work being

¹¹² Owen McShane, "Our Cultural Heritage: Too Valuable to be Badly Managed", Report commissioned by Pavletich Properties Ltd, Christchurch, April 1998

undertaken in certain sensitive areas. Developers also commented that clear protocols are appreciated.

The appropriate management of the effects of natural processes on urupā was also a deep concern. A Kahungunu spokesperson reported that the iwi were worried about erosion of an urupā at Nuhaka; it was noted that a council project to involve local tangata whenua in restoration planting to hold the soil would have been a simple solution, yet this has not been done.

4.9.2.4 Pā sites

In Hawkes Bay and Auckland tangata whenua told of pā sites being destroyed in developments, for subdivisions and roading developments, for quarrying, and for the construction of farm tracks and dams. It has been recorded that in the Auckland metropolitan area over 50% of pā sites have been extensively modified or destroyed since city development began.¹¹³

Te Taiwhenua o Heretaunga noted their objections to the old Pakowhai marae site being used by the regional council as a dumping site for concrete. The Wairoa Taiwhenua were concerned about approval being given for drilling for gas on a riverside plateau; tangata whenua members knew that the area includes a former pā site although its specific location was not identified. In one Auckland case, it was proposed that a pā site should be removed so that a homestead would have a better view of the harbour; tangata whenua objected to this proposal and the pā site was saved.

4.9.2.5 Archaeological information

Tangata whenua spoke of loss or damage being caused to sites with physical evidence remaining of terraces, food storage pits and hangi pits. The loss of irreplaceable archaeological information was a concern for many tangata whenua.

The effectiveness of council systems for registering such heritage sites was questioned by several iwi. Te Rito o Ngāti Whātua noted that some 800 archaeological sites have been surveyed on the South Kaipara peninsula; details have been provided to the regional council's heritage register, but the iwi reported difficulties getting formal recognition from other councils.

Tangata whenua reported cases where middens and other sites had been destroyed before an assessment could be undertaken of the evidence or its significance. Middens can include important evidence of occupation, and items can be carbon-dated to establish more precise historical understanding. However, it was suggested by one developer that the archaeological value of some middens can be relatively limited, and that a clearer sense was needed of the actual usefulness of different kinds of sites and resources.

Tangata whenua are unanimous in their opposition to the contamination of both physical and spiritual dimensions by discharges into water. The special significance of waterways was noted by many tangata whenua representatives. There was intense concern at the impacts of various

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Parliamentary Commissioner for the Environment, *Historic and Cultural Heritage Management in New Zealand*, 1996, p 29

activities on the full range of values and qualities of rivers, streams, lakes, estuaries, wetlands and underground aquifers.

Poutini Ngäi Tahu noted their concerns with dairymshed effluent being discharged into the Arahura and other rivers. One Ngäi Tahu runanga representative identified the cumulative effects of discharges into rivers as an issue of particular importance. The Wairoa Taiwhenua advised of their ongoing difficulties with effluent from the freezing works being discharged into the river directly across from the township.

Proposals for tourism developments on the West Coast had sought to discharge raw sewage into rivers, but had been challenged by tangata whenua. Ngäti Pārau hapū in the Hawkes Bay also reported a successful outcome to their objection to a proposal to discharge stormwater directly into the Tutaekuri River; an alternative stormwater management option that recognises and protects the mauri of the waterway is now being considered.

The significance to tangata whenua of negative effects on mahinga kai and freshwater fisheries was noted by a number of iwi. Ngäti Whätua o Orakei still grieve the loss of whānau members, poisoned years ago by toxic shellfish from Okahu Bay. Whanganui a Orotu reported their difficulties in getting official recognition of the impacts of dredging operations on important rocks and reefs at Whakaari. Sand is covering over the kaimoana sites, yet the scientific advice accepted by the council does not conform with the evidence of tangata whenua. Whanganui a Orotu are also strongly concerned at pollution of shellfish at Ahuriri, where a Health Department study found high toxin levels. The iwi reported that the council response was to erect a warning sign, but the polluting discharges continue. The Heretaunga Taiwhenua reported pollution of rivers and coastal resources, noting contamination from sewage and food-processing discharges into whitebaiting areas, and tangata whenua being made sick by mussels.

The management of riverbanks and riparian zones was noted by many tangata whenua and some council personnel. In the Hawkes Bay riverbank control is a major issue, with questions of marae access, eeling rights, stock grazing being permitted on the stopbank strips with resulting pollution of the waters, motorbike riding damaging vegetation, and the dumping of rubbish and old cars on the riverbanks. In the South Island there was concern at council riverbank management and maintenance activities, including weed-spraying; tangata whenua noted that these can adversely affect freshwater ecosystems including a rich diversity of eels, galaxiids, bullies, frogs, insects, snails and crustaceans, and the waterweeds and other plants that provide them with food and shelter.

The effects of waste management practices and leachates on water resources and aquifers were of concern in many areas. The potential effects of ballast water discharges into waterways was a concern arising from Okuru Enterprises' projects on the West Coast.

There have also been expressions of concern from tangata whenua regarding the mixing of waters from different catchments, which has significant implications for the spiritual well-being and mauri of the waterway and the wider environment. In Auckland there have been objections to proposals to bring water from the Waikato river to meet the needs of the metropolitan

area. On the Kapiti Coast tangata whenua have objected to the district council's plans to take water from the Otaki River and pipe it south to Waikanae.

4.9.4 Pollution of land sites

Some tangata whenua reported concerns with the dumping of industrial and other waste on land sites of significance to them (refer 4.9.2 above). The location and effects of landfills and councils' policies towards landfills have become controversial in several recent cases including the Gisborne landfill site and the legal challenge by Horowhenua tangata whenua to the proposed extensions of the Levin landfill.

Tangata whenua also noted their unhappiness with sites on public lands being poorly managed by councils. The proliferation of weeds and gorse, rabbits and other pests, and soil erosion were cited as resulting from neglect or insufficient monitoring.

4.9.5 Sewage treatment

There was general acceptance from developers and council personnel of particular tangata whenua sensitivities regarding the treatment and disposal of sewage and other wastes. Some developers understood the importance to tangata whenua of disposal systems to land rather than to water.¹¹⁴ In some developments these priorities have been satisfactorily accommodated. It was reported that with one large project, iwi had identified in early consultation with the developer the significance of the river itself and of a major wāhi tapu, the site of a battle with Te Rauparaha; the project was then designed so that all discharges were to land. The developer noted that the costs were approximately the same as a discharge-to-water option which would have brought high additional screening and treatment costs to meet water quality standards.

Questions of cost were often raised as the reason why more environmentally and culturally appropriate sewage and effluent management options had not been implemented by councils. In Hawkes Bay, the iwi have sought land-based sewage treatment, but noted that councils have opted for milli-screening to minimise costs. It was reported that iwi representatives and local business representatives had sought a more environmentally and culturally appropriate disposal option, but tangata whenua noted councils' concern about the costs involved.

Ngāti Paoa noted that work for a sludge disposal facility on Waiheke Island had damaged archaeological sites, including terracing and hangi pits. The iwi have now addressed the situation with the council and archaeologists.

4.9.6 Mahinga kai, rongoā resources

The draining and development of wetlands was a crucial issue for some iwi. Ngātiwai now insist no more wetlands should be lost in their rohe. In Hawkes Bay the degradation of one of the few remaining local wetlands due to the land management practices of a neighbouring farmer was cited as a significant loss.

The importance of each region having the mahinga kai resources so that tangata whenua can maintain their ability to host visitors with appropriate traditional foods was noted by some iwi. The loss of eels from waterways,

¹¹⁴ It should be noted that there can be difficulties with discharges to land, where soils are porous and contamination of groundwater may result.

and of shellfish, was a concern for many people. The mana of iwi and hapū is closely related to the natural foods provided within their landscape. Pollution or damage to mahinga kai was the cause of intense concern. In Hawkes Bay rivers tangata whenua reported that, as well as pollution of waterways, shingle extraction works had devastated whitebait breeding and nursery habitats.

The importance of rongoā resources is a concern for many iwi and hapū. Increasingly the value of these medicinal resources is being recognised as an alternative or a supplement to expensive pharmaceutical approaches. Some tangata whenua believe that the integrity of the site from which these resources are taken can be a factor in the efficacy of the rongoā.

In some cases the differences in expectations and value systems of Māori and non-Māori were significant in that important resources were not recognised for what they were. One tangata whenua representative noted that in the past hapū members might have described a site as 'a swamp', which to Pakeha would have meant there was little of value there. Accordingly such sites had been modified or destroyed, along with valuable rongoā resources, mahinga kai, breeding habitat for eels, special muds and dyes, special waters or other taonga, resources which tangata whenua felt had not been appreciated or acknowledged by non-Māori decision-makers.

Tangata whenua reported a number of cases where they considered that extraction of natural resources had had negative impacts on the environment. In Hawkes Bay water extraction was a matter of major concern. Effects on the water levels and flows in rivers, streams and lakes were issues of ongoing debate with councils and local farmers and horticulturists. The impacts of forestry developments on water levels were also identified by tangata whenua as a problem. The reliance of the Hawkes Bay on direct extraction of water from underground aquifers was identified as a serious issue for the iwi; in the view of tangata whenua, this extraction is already at unsustainable levels. The iwi noted that the council's Vision 2000 proposals nevertheless pursue extensive expansion for the region.

4.9.7 Extraction

The extraction of shingle from riverbeds, and of sand and gravel from other sites, were reported as causing significant impacts on environmental values. These included loss of wāhi tapu, impacts on waterways, wildlife habitat and mahinga kai, major landscape effects, and the dust and traffic problems arising for local whānau communities from the heavy daily volume of trucks moving sand and gravel from quarry sites. The depositing of sand on Waitemata beaches was also noted as a serious issue; it was considered that the large volumes of sand brought in to Mission Bay and proposed for Kohimarama and St Heliers bays would have significant impacts on the coastal ecology.

On the West Coast it was reported that issues had arisen with a non-notified consent for the extraction of old logs submerged for 50 years at a lakeshore site; the developer had undertaken consultation with tangata whenua to check sensitivities at the site, and had made a donation of carving materials to the local people.

- 4.9.8 Special events and initiatives** The Americas Cup and its potential impacts on environmental values in the Hauraki Gulf was raised by

Auckland tangata whenua as a matter of concern. Iwi are intensely conscious of the large influx of people anticipated, and the extensive developments that will be necessary to provide for the race participants, management and spectators.

Auckland region iwi also reported their dissatisfaction with the consultation processes for the proposals for future management of the Hauraki Gulf. Most felt that recognition of their concerns for the Gulf, and opportunities for tangata whenua input into the decision-making processes, have not yet been adequate. It was agreed that the concept of integrated management for the Gulf would be a positive move for coastal and marine environments, but there were concerns that the Marine Park proposal's emphasis on preservation could foreclose other practical options for sustainability, and impede the exercise of customary rights over traditional mahinga kai areas. It was noted that there are a number of unresolved Treaty claims in relation to the foreshore and the seabed in the Gulf; the implications of the recent Māori Land Court decision regarding tangata whenua coastal rights in the Marlborough Sounds were noted¹¹⁵.

There was intense concern about the processes by which the Gulf proposals have been developed, including the lack of timely involvement, confusions with the proposals being advanced by different official agencies at different stages, and restrictions imposed on the number of tangata whenua representatives who would be allowed to participate. The Auckland Regional Council advised that the Gulf Forum group had developed a proposed strategy for the Gulf, and tangata whenua were invited to advise on the role and input they would require in the process. Questions were raised with the council including the Treaty partnership and the management of sensitive information. The council acknowledged that tangata whenua have a part to play in the evolving process, but staff acknowledged that the situation has not yet been satisfactorily resolved.

Te Hao o Ngāti Whātua reported the development of a constructive opportunity for participation in a special event with the Gulf Harbour development. An annual charity golf day raises both awareness amongst corporate participants of tangata whenua history and values in the landscape, and funds for educational programmes.

4.9.9 Tangata whenua concerns for future issues

Tangata whenua also raised a number of concerns regarding councils' processes and performance where it was felt that there is the potential or probability of negative environmental effects in future. Even if specific problems had not yet occurred, iwi and hapū were acutely aware of the risks and possible future consequences of present policies and decisions.

Most tangata whenua are deeply concerned at what they see as the inadequacies of present environmental monitoring. They discussed their concerns about the lack of sufficient data on which to base decisions and against which to measure ongoing conditions. Tangata whenua are keen to have a meaningful and constructive role in environmental monitoring, and to ensure that the values and knowledge of kaitiaki are appropriately integrated into these processes. Training for iwi and hapū members in the necessary

¹¹⁵ It should be noted that the Crown and the Marlborough District Council are appealing this decision.

technicalities is recognised as a priority. Ngātiwai are one example where iwi are promoting proactive initiatives in research and environmental monitoring, with a comprehensive water quality study of the Whangarei Harbour freshwater catchment.

There was also general concern about councils' reporting on decisions and processes. Many tangata whenua noted that often they are not advised of councils' decisions nor the reasons behind them. There was considerable bitterness at perceived lack of transparency in council processes. Many iwi and hapū representatives noted that they had learned about significant decisions or projects only by reading about it in the newspaper, or when the work was actually begun.

The general potential impacts of current and proposed urban expansion were a concern for tangata whenua in Auckland and Hawkes Bay, as well as in other rapidly developing areas such as the Kapiti Coast. The perceived orientation of many councillors and senior council managers to development and commercial priorities was felt to be jeopardising environmental values and future sustainability. However many tangata whenua were careful to note that they are not opposed to development and growth as such; their concerns are with the ways in which these processes are managed, and the provisions for recognition and accommodation of important environmental qualities within future regional growth.

Many tangata whenua representatives and developers were positive about the good environmental outcomes that could be achieved when consultation and involvement had been purposefully undertaken. There was considerable pride in these people's reports of creative solutions and sensitive designs, and their increasing capacity to accommodate tangata whenua concerns and values in the overall project matrix.

4.9.10 Practical solutions

A wide range of examples were given of situations where good outcomes had been reached as a result of close consultation and interaction with tangata whenua. The question of waste and effluent management was important in a number of cases, where the avoidance of discharging waste to water was seen as a constructive alternative. One developer noted that in the past, stormwater projects would have been designed to discharge direct into estuary ecosystems; now there is greater awareness and such damaging practices are no longer part of the engineer's range of options. Another developer noted that the relative costs of a discharge-to-land option were not appreciably different from the screening and treatment requirements for a discharge-to-water option.

The Waiora land-based stormwater treatment system is an innovative new concept developed by Ngāti Whātua, one outcome of the decades of practical water-management experience of key iwi members. The Waiora system copies nature's own filtering processes in treating stormwater and removing sediments before discharge to the sea. Ngāti Whātua are also exploring the potentials of using recycled plastics for cost-effective, low-maintenance cesspit systems.

The health of waterways had been enhanced in a number of development projects with extensive plantings of wetland species, or riparian zone plantings, although it was acknowledged by one developer that this can

create problems for councils with the requirements for ongoing maintenance of the plantings.

Plantings of native species had also been part of larger landscaping restoration and enhancement work, designed and undertaken in consultation with tangata whenua. Several people noted the possibilities with good landscape plans. Ngāti Whātua have been working with Transit NZ on plans for motorway landscaping and planting, and to identify sites potentially affected by proposed roading programmes so that options for protection can be developed.

Some iwi and hapū are involved in plant propagation projects. Ngātiwai have a native plant nursery at Onerahi, which produces thousands of plants for streamside and dune plantings. Ngāti Whātua are involved with a plant nursery for restoration programmes on the Kaipara.

Specific matters of routing or location of particular features of a proposed project were identified as important aspects in a number of cases. Tangata whenua noted that with many projects, alternative sites, routes or design configurations will be possible. It was felt that often, concerns about effects on a wāhi tapu or pā site, for instance, could, in consultation, be addressed by considering the full range of alternatives and moving the project (or relevant part of it) elsewhere.

The importance of clear protocols in case of any disturbance of kōiwi was noted by a number of tangata whenua and developers. They appreciated having systems in place so that project managers and staff know what to do and who to contact if bones are found. One developer reported working with tangata whenua to re-inter bones found at a project site with appropriate ceremony and respect. Other recognition of previous history and inhabitants of particular places has included commemorative plantings, or a plaque or interpretation designed by tangata whenua.

Several people noted the value of involving iwi or hapū in naming — of places, buildings, or other parts of projects — as a means of giving recognition to the mana of tangata whenua and the particular significance of the place to them. The names chosen by Ngāti Whātua representatives for sites within the Gulf Harbour development each have especial resonance for the specific site and its historical associations. Names were given by the Hawkes Bay Regional Council Māori committee for public walkways along the riverbanks.

Providing for archaeological assessments to be undertaken was mentioned by several people as a condition of resource consents for projects affecting former habitation areas. There have been some productive working partnerships between tangata whenua, council personnel, developers and project managers, and archaeologists. The Ngāti Paoa Protocols for resource consent applicants request that at the planning stages of a development proposal an archaeological inspection be undertaken in conjunction with kaumātua, in order to identify, record and assess the values of the site(s), and to address cultural aspects.

A number of people also mentioned mitigation or compensation arrangements developed between tangata whenua and project developers.

These often involve an agreement to provide an environmental service or benefit identified as a priority to tangata whenua. For example, one negotiation provided for an area of indigenous forest of high significance to be vested into a conservation management regime with the iwi. Another proposed development, which will have effects on sensitive coastal environments, was being associated with a proposal for a commitment of ongoing funding for research into the marine ecology of the area, and to monitor impacts on kaimoana resources. Other developments have made contributions to support tangata whenua training and educational requirements. There was concern that scrupulous care needs to be maintained with such arrangements to ensure transparency, accountability, relevance and good environmental outcomes.

Tangata whenua noted the importance of being able to negotiate conditions on resource consents in order to avoid or mitigate negative effects and ensure restoration of environmental values. For example, the Ngāti Paoa Protocols set out specific conditions for earthworks being undertaken in areas with wāhi tapu or archaeological values, including the identification of 'no-machinery' zones, buffer zones, restoration, covenanting arrangements, karakia, and briefings for project managers.

Generally the view was that with good open dialogue, initiated with developers and tangata whenua at the early stages of the design of a project, positive environmental results could usually be achieved. Council facilitation of these processes was noted by some tangata whenua and council personnel.

5. CONCLUSIONS

5.1 The situation in 1998

This investigation has used the PCE's 1992 *Proposed Guidelines* as a framework within which to assess present approaches of councils and tangata whenua to consultation and involvement in RMA matters and environmental management. A number of basic themes have emerged through this assessment. Some of these were specifically addressed in the 1992 report; other patterns and trends have become priorities over the last six years.

They include:

- The natural environment and natural resources of an area have particular meaning and significance for those iwi and hapū who are tangata whenua of that place. These inherent values are based in ancestry and history, in spiritual dimensions and through many generations of use, interactions and associations. Such values and the management priorities that derive from them can only be authoritatively determined by tangata whenua. Such values and priorities must be recognised and provided for in councils' environmental management under the RMA (s6(e)).
- Better and more effective environmental outcomes are more likely to be achieved, more efficiently, when there are better processes in place between tangata whenua, councils and developers. The interviews conducted for this investigation showed wide dissatisfaction with current arrangements for consultation and participation, and with the environmental results.
- There are important differences between the formal requirements of the statutes and findings of the Courts with regard to consultation, and other factors which may affect people's and agencies' abilities to achieve sustainable environmental management such as:
 - the expectations and assumptions of different people and groups about roles, objectives, participation and processes; and
 - the actual fostering of constructive, effective working relationships between particular groups or parties.
- There is considerable diversity and variability in the skills and experience of iwi and hapū, local authorities, and various sectors and groups, with significant differences in approaches, in levels of understanding and expectations, and in their capacities to participate and to undertake their responsibilities under the RMA.

This diversity is not necessarily a bad thing; however it is often a contributing factor in unnecessary confusions and complications.

- There is an increasing trend for tangata whenua to seek more direct participation and partnership in environmental management, and to move beyond consultation systems and reactive processes to more meaningful and strategic involvement.
- Questions of representation, and the authority from which tangata whenua representatives may speak and contribute to decision-making, can lead to uncertainty and tension. Resolution of such uncertainties is a fundamental priority. Such issues are for tangata whenua to resolve in ways appropriate to them.
- Lack of clear understanding is often a constraint on the efforts of both Māori and non-Māori to reach good environmental outcomes. Many participants in environmental and resource management seek greater clarity and certainty regarding:
 - processes and systems for consultation and participation, and
 - matters of principle, values and the direction or kaupapa for the future.

Many iwi and hapū, councils and developers have established positive, practical systems which are working well. The key factors are:

- there is a genuine willingness within council to recognise and deal with tangata whenua concerns;
- tangata whenua are well-organised, with robust administration systems, and expertise in environmental policy and advocacy processes;
- developers and resource consent applicants are willing to recognise and work with tangata whenua;
- consultation with tangata whenua is undertaken at the earliest possible stage in the development of policies, plans or projects;
- there is mutual agreement on the processes and criteria to be followed;
- processes are efficient, consistent and reliable, and there is sufficient resourcing available for relevant groups to participate with maximum usefulness;
- there is a clear focus on the environmental objectives and outcomes – processes are the means to an end and not an end in themselves; and
- there is a clear sense of the longer-term horizons, and the ongoing imperative of sustainable management of natural taonga, places and resources.

5.2 Working together

5.3 Conclusions

The following conclusions are drawn within the three key areas identified in the Terms of Reference for this investigation.

1: to identify factors currently affecting tangata whenua participation in environmental planning and resource management

5.3.1 Law and Policy

The current legislation provides a strong basis for tangata whenua participation in policy development and management for the natural environment. Consultation, traditional values and relationships, the principles of the Treaty, and the ongoing duties of kaitiakitanga are all given recognition under the RMA.

Local authorities have separate legal status from the Crown generally, and with regard to the Treaty of Waitangi. The Local Government Act makes no reference to the Treaty of Waitangi or its principles. The duties and obligations of local authorities under the Treaty and its principles derive only from the incorporation of the principles into statute, as in s8 RMA.

There is widespread opposition amongst tangata whenua to any amendments to the RMA that would be seen to weaken the current provisions.

There is widespread support from tangata whenua for amendments to bring a sharper and more practical focus to critical sections of the RMA. Tangata whenua are concerned that the current statutory provisions do not establish sufficiently reliable frameworks for them to participate in councils' processes and contribute to environmental management. There are a range of views concerning the most effective ways to make improvements to the legislation. The Waitangi Tribunal has made specific recommendations for amendment to certain provisions of the Act concerning consistency with the principles of the Treaty of Waitangi, the definition of iwi authorities, and tangata whenua resource management plans.

There are no national policy frameworks or standards to ensure efficient, consistent and reliable systems for tangata whenua participation in environmental management or the appropriate accommodation of the values and concerns of tangata whenua as required under the RMA. There is a lack of formal accountability processes to audit and assess the performance of local authorities in these areas.

A number of central government legislative and policy reviews are currently being conducted in the area of environmental and heritage management. Communication and co-ordination between these

processes has not been apparent to tangata whenua and other stakeholders. Tangata whenua are strongly concerned about these reviews' delivery either of improved opportunities for tangata whenua to contribute, or of improved environmental outcomes.

Each local authority has its own policies, and has developed systems, structures and processes to promote the sustainable management of the natural environment in its area.

5.3.2 Organisational structures

Each iwi and hapū has its own identity and status, and has developed systems, structures and processes to fulfil the kaitiaki responsibilities for the taonga within its rohe.

There are ongoing uncertainties and differences within many iwi and hapū regarding representation and mandating of spokespersons. There is often confusion and conflict over who has the authority to speak and to be involved in decision-making. This has undermined the effectiveness of tangata whenua participation in council processes, and can make it harder to ensure good environmental outcomes.

There is often poor consultation and communication between local authorities and tangata whenua. There may be great goodwill and commitment, and extensive efforts may be made, but in too many cases good outcomes do not result. Lack of efficient, timely processes, the different expectations and assumptions of different parties, and an emphasis on process rather than on the desired environmental outcomes, can all be contributing factors in the failure of consultation.

5.3.3 RMA consultation processes

The processes currently operating are often overly complex, cumbersome and inefficient. Councils, tangata whenua and resource consent applicants all desire more strategic, straightforward and reliable processes, to ensure more efficient and well-targeted utilisation of people's time and resources, and better environmental outcomes.

There is limited resourcing available for tangata whenua involvement in environmental management. Funding constraints are a major impediment to the development of effective tangata whenua responses, to the implementation of robust council systems, and to the achievement of good consultation.

There is great variability in skills, experience and knowledge in many aspects of environmental management – amongst councillors and council personnel, resource consent applicants, and tangata whenua. Increasing the capacities of all participants in environmental management, across a range of necessary skills and expertise, is a major priority.

In many cases bad experiences between councils and tangata whenua have soured relationships, eroded trust and fostered hostile assumptions and attitudes. Negative perceptions have become entrenched as expectations. Situations can rapidly become adversarial and contentious, leaving little opportunity for constructive communication or for the development of good environmental solutions. A number of factors continue to reinforce these patterns for many people, both Māori and non-Māori, including:

- statements in formal policies not resulting in the kinds of implementation and outcomes that were expected or hoped for;
- failures of accountability and transparency, whether perceived or demonstrated;
- change only happening very slowly; and
- official studies being undertaken and reports produced which are not seen to have resulted in constructive change and improved environmental results.

2: to identify principal points of change and continuity since the 1992 assessment

5.3.4 Changes

There is greater and more widespread awareness amongst some councils and developers of the requirements on them under the RMA to recognise and provide for the values and concerns of tangata whenua in environmental management. There is also increasing awareness amongst some councillors, council personnel and developers of the practical benefits that can derive from more effective involvement of tangata whenua. Many are making positive efforts to improve their abilities to meet the statutory requirements and achieve good environmental outcomes.

There is also greater awareness amongst iwi and hapū of the opportunities and processes for their involvement and for the practical expression of kaitiakitanga in sustainable resource management. Many iwi have established specialised resource management units to advance the environmental priorities of the iwi in council and other processes, to undertake research and monitoring, and to ensure appropriate consultation with hapū and whānau. Many iwi and hapū have developed or are in the process of developing their own resource management plans for the appropriate management of natural taonga in their rohe.

There is increasing pressure at political levels on the RMA and environmental concerns generally. The priorities of some parts of the business sector for greater efficiency and certainty for investment, and for the removal of what are perceived as unreasonable impediments to the development of commercial opportunities, are being strongly voiced. Much of the impatience from business interests is not based

on a sufficiently clear distinction between councils' implementation of the RMA, and the overall objectives of the Act in terms of sustainable environmental management. This type of applicant concern demonstrates severely limited understanding of the environmental values and perspectives of tangata whenua, of the statutory requirements to recognise and provide for those values and to consult with iwi, and of the constructive outcomes that may be achieved.

The increasing strength and confidence of urban Māori groups, particularly in Auckland, and the legal proceedings currently being pursued to determine the status and Treaty rights of these groups, are a significant challenge to traditional iwi and hapū authority and structures. The outcomes of the WAI 414 claim to the Waitangi Tribunal will have wide implications. There will be opportunities to utilise the energies and commitment of the new urban Māori groups as they seek greater recognition and involvement in environmental and resource management matters.

The multiplicity, complexity and fragmentation of systems, organisations, structures and processes, both within local government and within tangata whenua, are matters of ongoing difficulty for many participants in environmental management. Clarification of the roles and responsibilities of regional councils and territorial local authorities may be advanced through formal reviews of local government structures, and by councils providing information to tangata whenua, communities and stakeholder groups. It is for tangata whenua to provide clarification of the status, relationships and responsibilities of the different groups comprising iwi and hapū, in order to assist the official agencies and other groups with whom they interact.

5.3.5 Continuity

The general emphasis on RMA consultation processes, rather than on the environmental outcomes those processes are intended to achieve, is a continuing pattern. This is often associated with tensions regarding status and authority to speak, and constraints on the resources available for tangata whenua involvement. It results in inefficiencies, in frustration for many participants, and in a chronic fudging of the actual purposes of environmental management and the values at stake.

Destruction, damage and degradation of places and natural resources of importance to tangata whenua is ongoing. As councils are required to consider a number of factors in deciding resource consent applications, and in the development and practical implementation of policies and plans, those places and resources of importance to tangata whenua may not receive the protection or management that the iwi or hapū believe appropriate. Losses and damage to wāhi tapu and other taonga are acutely felt by tangata whenua, and severely hamper the development of constructive opportunities for the future.

There is no change or diminution in the commitment of tangata whenua as kaitiaki, or in their determination to have a meaningful, practical and respected role in the sustainable management of the natural resources and places in their rohe, and to contribute to good environmental outcomes. There is also little change in the dissatisfaction of many iwi and hapū with the performance of many councils, and with the opportunities available for the practical fulfilment of kaitiaki responsibilities under the present legislation and council processes.

3: to identify a range of approaches for achieving positive environmental outcomes

5.3.6 Getting good results

Some of the trends and practical approaches identified below are currently occurring in some places, as discussed above in the case studies. Others are at present only in the proposal stages and are included as options with constructive potentials for future improvements.

The development of iwi or hapū resource management plans is a constructive approach. Iwi or hapū plans identify resources and places of importance to tangata whenua, objectives and priorities for their management, and processes for consultation and participation. Iwi or hapū plans are valuable in that they give a clear statement to councils, developers and the wider community of tangata whenua values and goals in environmental management.

The establishment of iwi or hapū resource management units is also enormously valuable. These units or groups, bringing together and building on the skills, expertise and commitment of iwi or hapū members, are proving very effective in advancing the concerns of tangata whenua in councils' and developers' environmental management processes, in identifying local and regional issues and priorities, and in working for practical environmental solutions.

Direct negotiations between tangata whenua and resource consent applicants, particularly when undertaken as early as possible in the stages of developing a project proposal, give strong opportunities for good environmental outcomes to be achieved where sensitive and creative design approaches ensure that tangata whenua concerns are accommodated. Awareness of tangata whenua values is increased for developers; awareness of project management and technical aspects is increased for tangata whenua. There is greater certainty and efficiency in the consent application process, as applications go forward to councils with tangata whenua support.

The transfer of councils' functions to tangata whenua under section 33 of the RMA has important potential for improved facilitation of the

requirements of sections 6(e) and 7(a) and (e) of that Act. Other options for contracting, devolution and co-management with tangata whenua have yet to be explored or tried by most councils. There are significant benefits and efficiencies to be gained by involving iwi and hapū, or their specialist resource management units, more directly in work where the values and priorities of tangata whenua are concerned.

Monitoring and research programmes undertaken by tangata whenua are fundamental to identify and assess the condition of resources and sites of particular significance. Many iwi and hapū are purposefully developing skills and expertise in these areas. Some have established their own computer databases to record information about wāhi tapu and other taonga in their rohe and to manage that information with appropriate care and sensitivity.

Effective tangata whenua input into councils' policies and plans is still variable. In many cases councils' processes, systems, methods and attitudes hinder rather than assist in the communication of tangata whenua values and concerns, and in the participation of iwi and hapū as kaitiaki in the environmental management of natural taonga. More consistent and constructive approaches need to be actively promoted amongst councils. Particular priorities include:

- the involvement of tangata whenua as early as possible in the processes;
- the appointment of Māori hearings commissioners to be included on a hearing panel when matters being heard are of concern to tangata whenua or may have particular impact on tangata whenua values and interests;
- coordination and consistency between different councils operating within the rohe of iwi or hapū; and
- investment in the future with funding and other support.

The proposal being advanced by Environment Bay of Plenty for a proportional representation system to more accurately reflect the region's population in the council membership is a positive, forward-looking initiative in practical democracy. There are significant opportunities for more effective integration of the concerns of iwi and hapū in councils' resource management work to ensure good environmental outcomes.

6. RECOMMENDATIONS

To the Minister for the Environment:

Prepare a National Policy Statement under the Resource Management Act, for:

- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga,
- kaitiakitanga, and
- the principles of the Treaty of Waitangi,

to ensure efficiency, consistency, reliability and accountability in the achievement by local authorities and other persons of the purpose of the Act, the sustainable management of natural and physical resources.

To the Ministers for the Environment and Conservation:

Ensure purposeful co-ordination and integration of the various review processes being undertaken of the statutes and systems for environmental and heritage management. Ensure that such integration, and its outcomes in the revised provisions and systems, are communicated to tangata whenua and other key stakeholders.

To the Ministers for the Environment, Local Government and Māori Affairs:

Establish and resource a combined initiative to monitor and report on:

- the environmental outcomes achieved through improved tangata whenua participation in environmental management;
- practical opportunities and models for local government initiatives to improve tangata whenua participation in environmental management; and
- the proposals being advanced by Environment Bay of Plenty to establish a proportional representation system for council membership.

Work with local authorities and Local Government NZ to facilitate strategic training programmes to improve skills and understanding amongst elected councillors, council personnel, resource consent applicants, and tangata whenua.

To all local authorities:

Encourage and invest in appropriate initiatives to improve tangata whenua participation in environmental management, including:

- strategic training programmes and practical guidelines to improve skills and understanding amongst elected councillors, council personnel, resource consent applicants, and tangata whenua;
- establishment grants or other assistance for the establishment of iwi and hapū resource management units and for the development of iwi and hapū resource management plans; and
- identification and facilitation of opportunities for the transfer of council functions to tangata whenua under section 33 of the RMA.

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7.3 Glossary

Hapū	family or district groups, communities
Hui	gatherings, discussions, meetings, usually on marae
Iwi	tribal groups
Kaimoana	food from the sea, shellfish
Kaitakawaenga	liaison coordinator
Kaitiaki	iwi, hapu or whānau group with the responsibilities of kaitiakitanga
Kaitiakitanga	the responsibilities and kaupapa, passed down from the ancestors, for tangata whenua to take care of the places, natural resources and other taonga in their rohe, and the mauri of those places, resources and taonga
Karakia	prayer, incantation, expression of respect
Kaumātua	elders, decision-makers for the iwi or hapu
Kaupapa	plan, strategy, tactics, methods, fundamental principles
Kawanatanga	government, the right of the Crown under the Treaty of Waitangi to govern and make laws
Koiwi	human remains, bones
Komiti	committee
Kuia	respected older women in the hapu or whānau
Mahinga kai	places where food and other resources are traditionally gathered, and the gathering and management of those resources
Mana	respect, dignity, status, influence, power
Mana whenua	traditional status, rights and responsibilities of hapū as residents in the rohe
Marae	local community and its meeting-places and buildings
Mātauranga	traditional knowledge
Mauri	essential life force, the spiritual power and distinctiveness that enables each thing to exist as itself
Pā	occupation site, often in a strategic location such as a hilltop
Papatipu runanga	Ngāi Tahu regional collective bodies
Rāhui	protection of a place or resources by forbidding access or harvest
Rangatahi	younger generations
Rangatiratanga	rights of autonomous self-regulation, the authority of the iwi or hapū to make decisions and control resources
Rohe	geographical territory of an iwi or hapū
Taiwhenua	Ngāti Kahungunu regional collective bodies
Tangata whenua	people of the land, Māori people

Taonga	valued resources, assets, prized possessions both material and non-material
Tapu	sacredness, spiritual power or protective force
Taura here	Māori people who live in an area other than their tribal area
Te reo	the Māori language
Tikanga	customary correct ways of doing things, traditions
Tuku iho	passed down from the ancestors
Tupuna	ancestors
Upoko	head, leader
Urupā	burial place
Wāhi tapu	special and sacred places
Wairua	spirit, soul
Waka	canoe
Wānanga	place of education, university
Whakapapa	genealogy, ancestry, identity with place, hapū and iwi
Whānau	family groups
Whanaungatanga	relationship, kinship, bonds