TOWARDS RESPONSIVENESS

Objective Setting and Evaluation

ME PENAPENA

Ngā Whāinga atu me ngā hua e Kitea ana

PEN
Government

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Prepared by the Responsiveness Unit of the State Services Commission from Discussions of the Interdepartmental Committee on Responsiveness.
Committee Membership: Doug Bailey (SSC), Robin Hapi (Housing Corporation), Jim Harper (SSC), Parekura Horomia (Department of Labour), Whetu Wereta (Ministry of Maori Affairs)

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QUESTIONS OF RESPONSIVENESS

In its policy document, "**Te Urupare Rangapu**" (Partnership Response), the Government has made plain both an intention and an obligation regarding the handling of matters Maori by public sector agencies. It has required of its organisations a more positive and effective response to Maori issues aspirations and concerns, and with this in mind it has given notice that its chief executives will be held accountable for the implementation of such measures as will bring about greater public sector responsiveness to Maori people and communities.

These requirements not only present us with a significant challenge, they also give rise to a number of critical questions. What, for example, is responsiveness? Does it mean the same thing to all client groups, or is it defined by its context? What are its requirements with respect to Maori people specifically and upon what basis is it reliably evaluated?

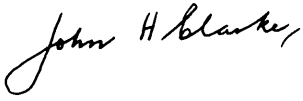
These are the questions addressed in this publication - the third in the series of booklets for senior administrators on responsiveness.

Working from the base provided by "**Te Urupare Rangapu**", the booklet focuses on responsiveness as it relates to the interaction between government agencies and Maori people. The operational dimensions of responsiveness in this particular context are defined, and a link is drawn between those broad dimensions and the provisions and principles of the Treaty of Waitangi.

This linking of operational dimensions with Treaty principles is suggested as a means by which responsive organisational behaviours can be developed, implemented and, ultimately, judged. The merit of such an approach lies not only in its recognition of the special nature of the relationship between Maori people and the Crown, but also in its specification of performance priorities that are ultimately rooted in the Treaty. In this, the booklet attempts to move beyond nebulous acknowledgment of the Treaty to provide signposts for practical implementation of the obligations and duties inherent in it.

On the basis of the operational dimensions generated by this approach, chief executives will be invited to develop appropriate performance objectives. In this way it will be possible to specify indicators and measures of responsiveness which are applicable to the State Sector as a whole.

As with the previous publications, **"Contacts for Consultation"** and **"Partnership Dialogue"**, this booklet does not purport to be the final word. Nor can it be. Instead it attempts to provide a basis for more detailed identification by chief executives of those performance expectations and measures which will define a responsive organisation.



Don Hunn
Chief Commissioner
State Service Commission

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Ministry of Maori Affairs

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but also upon appropriate inquiry and an ongoing appreciation of those environmental changes which impact upon the social, political and economic relationships between Maori and pakeha.

It is important, too, not to lose sight of the imperatives implicated in the Government's seven Maori policy objectives. These, after all, set the parameters of any responsiveness policy.

D. Bailey
Responsiveness Unit

THE GOVERNMENT'S OBJECTIVES RESTATED

The Government's principal Maori policy objectives are set out in **"Te Urupare Rangapu"**. They are to:

- **honour** the principles of the Treaty of Waitangi through exercising its powers of government reasonably and in good faith, so as to actively protect the Maori interests specified in the Treaty
- **eliminate** the gaps which exist between the educational, personal, social, economic and cultural well-being of Maori people and that of the general population, that disadvantage Maori people and that do not result from individual or cultural preferences
- **provide** opportunities for Maori people to develop economic activities as a sound base for realizing their aspirations, and in order to promote self-sufficiency and eliminate attitudes of dependency
- **deal** fairly, justly and expeditiously with breaches of the Treaty of Waitangi and the grievances between the Crown and Maori people which arise out of them
- **provide** for the Maori language and culture to receive an equitable allocation of resources and a fair opportunity to develop, having regard to the contribution being made by Maori language and culture toward the development of a unique New Zealand identity
- **promote** decision making in the machinery of government, in areas of importance to Maori communities, which provide opportunities for Maori people to actively participate, on jointly agreed terms, in such policy formulation and service delivery
- **encourage** Maori participation in the political process.

ISSUES OF RESPONSIVENESS

The reasons why

Why is responsiveness so central a part of the Government's Maori policy? The reasons are numerous. Two factors alone, however, make the need for change in the way State sector organizations handle Maori issues and concerns particularly apparent.

The first of these is the long-standing dissatisfaction and apprehension apparent throughout the Maori community concerning the capacity of State sector agencies to behave in other than a monocultural fashion. As one respondent said of the policy proposals outlined in **"He Tirohanga Rangapu"** (Partnership Perspectives):

"If we [Maori people] accept the lofty sentiments about changing pakeha public service attitudes about the introduction of Maori values into the decision-making process, we will be ignoring the bitter lessons of the last 148 years of our history"

The absence of ownership of government policies and programmes that this suggests, makes any acceptance of, or sharing in, responsibility for outcomes unlikely and calls the relevance of those policies and programmes into doubt.

The need for enhanced participation in policy formulation and service choice is also made apparent by the widening gap that exists between the personal, educational, economic and social well-being of Maori people and that of the general population. Plainly, the policies and practices of the past have been unsuccessful and it is this second factor which most forcefully underscores the need for change. The Government's responsiveness policy is fundamental to it.

The practicalities

Neither Maori disaffection, nor the evident socioeconomic disparities will go away of themselves. In the same way, Maori demands for social equity and calls for greater self-

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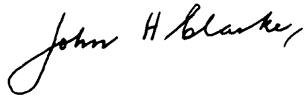

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INTRODUCTION

This booklet is intended to introduce you to the operational dimensions of responsiveness and the broad criteria by which the responsiveness of any government agency can be judged.

Bear in mind as you read that the view of responsiveness outlined here is something quite distinct from the concept as traditionally understood by public administrators. It is not just a tenet of service delivery, universally applicable across client groups. Rather, it is a principle which encompasses policy making, corporate planning and internal administration, as well as service delivery. It is, moreover, something specific to the relationship between government agencies and Maori people. As such, both its dimensions and the criteria by which it is judged should be determined by the special characteristics of that relationship.

Significant among those characteristics, of course, are the reciprocal duties and obligations that flow from the Treaty of Waitangi. A partnership is called for which, perhaps more than anything else, distinguishes the relationship between Maori people and government institutions from the more typical interaction between service provider and client.

It is for this reason that the provisions and principles of the Treaty have been made central to the determination of the operational dimensions of responsiveness. For this reason, too, those principles have been established as the most helpful signposts to what is and what is not responsive in State sector dealings with Maori people and communities.

Guidance concerning the operational elements of the Treaty principles can be readily drawn from the judgment of the Court of Appeal in the state owned enterprises case and the deliberations of the Waitangi Tribunal. But, this must always be balanced by an appreciation of how those principles as perceived by Maori people themselves. Those perceptions will change over time and place, as will the relative importance attributed to individual principles. Thus, responsiveness will depend for its development not just upon the common law and Tribunal recommendations,

but also upon appropriate inquiry and an ongoing appreciation of those environmental changes which impact upon the social, political and economic relationships between Maori and pakeha.

It is important, too, not to lose sight of the imperatives implicated in the Government's seven Maori policy objectives. These, after all, set the parameters of any responsiveness policy.

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The reasons why

Why is responsiveness so central a part of the Government's Maori policy? The reasons are numerous. Two factors alone, however, make the need for change in the way State sector organizations handle Maori issues and concerns particularly apparent.

The first of these is the long-standing dissatisfaction and apprehension apparent throughout the Maori community concerning the capacity of State sector agencies to behave in other than a monocultural fashion. As one respondent said of the policy proposals outlined in **"He Tirohanga Rangapu"** (Partnership Perspectives):

"If we [Maori people] accept the lofty sentiments about changing pakeha public service attitudes about the introduction of Maori values into the decision-making process, we will be ignoring the bitter lessons of the last 148 years of our history"

The absence of ownership of government policies and programmes that this suggests, makes any acceptance of, or sharing in, responsibility for outcomes unlikely and calls the relevance of those policies and programmes into doubt.

The need for enhanced participation in policy formulation and service choice is also made apparent by the widening gap that exists between the personal, educational, economic and social well-being of Maori people and that of the general population. Plainly, the policies and practices of the past have been unsuccessful and it is this second factor which most forcefully underscores the need for change. The Government's responsiveness policy is fundamental to it.

The practicalities

Neither Maori disaffection, nor the evident socioeconomic disparities will go away of themselves. In the same way, Maori demands for social equity and calls for greater self-

determination will not lessen. Thus, for reasons of pragmatism, if not those of actual justice, the why's of responsiveness are very clear. It is an appreciation of these practicalities that have driven the more positive initiatives taken by some Government departments in recent times.

The intent behind the policy

"Te Urupare Rangapu" prescribes a number of organisational behaviours and accountability measures. These range across policy making, corporate planning, service delivery, personnel practices and the allocation of monitoring roles to the State Services Commission and the Ministry of Maori Affairs.

But the definition of responsiveness goes beyond any narrow or exclusive set of prescriptions. Such limitation is inconsistent with the generality of the Government's seven Maori policy objectives, not least that of "honouring the principles of the Treaty of Waitangi". The intent that real change occur in the handling of Maori issues and concerns is express. If, in the present environment, such change is to be meaningful it is plain that a restrictive view of what is meant by responsiveness must not prevail.

It is necessary, therefore, to look away from simple behavioural prescriptions to broader based operational principles for guidance as to what is, and what is not, responsive.

Building on the basics - the client-centered view

The notion of responsiveness takes as its starting point the basic tenets of service delivery defined by the Organisation for Economic Cooperation and Development. Four dimensions are identified:

Comprehensibility i.e.
The intelligibility of administrative systems, whereby the lines of decision-making, accountability and control are transparent to client communities.

Relevance i.e.
Services should meet clients' actual needs within the framework of established policy. The capacity for clients to participate in service design and delivery is fundamental.

Participation i.e.
Active client participation in service choice and provision is seen as the key to fostering ownership of outcomes, while ensuring that service providers are oriented toward clients' needs.

Accessibility i.e.
Services should be delivered in such a way that client access is maximized. Included within this dimension are such elements as office location, the layout of facilities, hours of opening and the availability of personnel.

("Administration as Service.The Public as Client" OECD 1987)

Is this enough?

Certainly, this client-centred view of responsiveness can accommodate much of the Government's policy intent. However, because it is a view which is oriented exclusively towards service delivery, and is intended to have application across a diverse range of client groups, it cannot take into account the special nature of the relationship between Maori people and the Crown. Given the Government's policy intent, that omission must call into question the adequacy of the OECD dimensions as exclusive signposts of responsiveness.

The dimensions of responsiveness need, therefore, to be expanded. Not only should they ensure that the Government's policy objectives are met, they should also ensure that the characteristics of the relationship between Maori people and Government institutions are adequately reflected.

A distinct relationship

Most significant among the characteristics that distinguish the relationship between Maori people and the Crown are the reciprocal rights, duties and obligations that flow from the Treaty of Waitangi. It is against the Treaty that Maori people have consistently measured the performance of pakeha institutions and equally certain is the fact that they will continue to do so. Thus, the imperatives of the Treaty become the ultimate measures of responsiveness and it is to the principles of the Treaty that we must accordingly go if we are to identify operational dimensions that reflect the concept of responsiveness as reflected in **"Te Urupare Rangapu"**.

THE TREATY AS A LIVING DOCUMENT

It must be borne in mind that The Treaty:

"... should be interpreted widely and effectively as a living instrument taking into account the subsequent developments of international human rights norms."
(Sir Robin Cooke, NZMC v AG [1987] 1 NZLR at p586).

The specification of Treaty principles by Court of Appeal and the Waitangi Tribunal has not been exhaustive. Their analyses have been restricted to the matters placed before them, with the result that there is no final and comprehensive list of principles to which public administrators can go for guidance. Those principles will develop according to the needs of the moment and both they and the Treaty will need to be revisited as issues and challenges emerge. Responsiveness, therefore, must entail the establishment and maintenance of structures and systems which will help keep pace with the changing perspectives and imperatives of the Treaty.

It is not intended here, then, to specify a finite list of Treaty principles and related operational dimensions. What is offered is a framework which, as far as possible, reflects the perceptions and imperatives of the moment.

SOME TREATY PRINCIPLES AND THEIR OPERATIONAL DIMENSIONS

From the more significant principles to have been identified to date it is possible to derive some clear operational priorities against which responsiveness can be assessed.

The list of principles is not a full one. Those principles cited, however, are significant for the operational imperatives they yield. They also underscore, or are subsumed within, the five principles recently adopted by Government as guidelines for Crown action [Annex 1]. They have been drawn from the following sources:

(a) The judgment of the Court of Appeal in NZ Maori Council v AG [1987] 1 NZLR (NZMC).

(b) The Briefing Note to incoming members of the Waitangi Tribunal, by G Orr [1989] (Orr).

(c) The Motunui Report [Waitangi Tribunal 1987] (MR).

(d) The Muriwhenua Report [Waitangi Tribunal 1988] (Muriwhenua); and

(e) The "Legal Implications of Treaty Jurisprudence", Shonagh Kenderdine, NZLS Seminar [1989] (Kenderdine).

The principle of "Partnership"

This proposition is perhaps the most central of all of the principles to emerge from the State Owned Enterprises case and it is one which can be expected to have a prominence in future hearings (Orr).

In the words of Sir Robin Cooke

"The Treaty signified a partnership between races and it is in this concept that the answer to the present case must be found." (NZMC at 664).

In that concept, too, is to be found the ultimate objective of the Government's Maori policy, and it is this which presents

us with the obligation to consider what practical steps should be taken by the Crown in fulfillment of its role as partner to the Treaty of Waitangi.

Operational Dimensions

As an objective or outcome, partnership is all-embracing, subsuming the full range of responsive operational behaviours.

In the eyes of the Court of Appeal, however, one particular dimension emerges; namely that obliging the Treaty partners to behave toward one another with the utmost good faith (Cooke P NZMC at 664).

This obligation is not so much a prescription for action as it is of a manner for action. Nonetheless, if we take "good faith" to mean lawfulness and honesty of purpose a number of particular operational priorities are yielded including **honest effort to ascertain facts** (knowledge acquisition) and **recognition** of obligations and entitlements (Richardson J NZMC at 682,683).

The principle of "Reciprocal Obligations"

In the Motunui Report, the Waitangi Tribunal spoke of the Treaty as representing an exchange of gifts - "The gift of the right to make laws and the promise to do so as to accord the Maori interest an appropriate priority" (MR at 61).

Rendered by the Court of Appeal, the principle is expressed as a guarantee of Crown protection in return for the cession of sovereignty (Cooke P NZMC at 682).

Not only does this involve the protection of what remains of Maori land or taonga after sale, it also extends to the maintenance of te Tino Rangatiratanga or the "full authority", of Maori over their lands, their homes and all things important to them (Orr) .

The Crown duty of protection is, therefore, a broad one. In the eyes of the Court of Appeal, moreover it is not merely a passive obligation. Instead it:

"... extends to **active** protection of Maori people in the use of their lands and waters to the fullest extent practical." (Cooke P NZMC at 684).

The Operational Dimensions

The provision and maintenance of **active protection** is, quite clearly, the critical priority flowing from this principle. Because an awareness of what is to be protected and a willingness to extend that protection are fundamental to the extension of protection, the dimensions of **good faith, knowledge acquisition and recognition** are also implicated.

The principle of "Freedom to Govern" (The Kawanatanga Principle)

This flows from the "exchange of gifts" inherent in the cession of sovereignty in return for Crown protection of mana Maori. It is perhaps this interface between kawanatanga - the authority to govern - and rangatiratanga - the rights of Maori with respect to their lands, resources and other "valued possessions" - wherein lies the essence of the Treaty.

Considering what limits there might be on the Crown freedom to govern, the Waitangi Tribunal in its Muriwhenua Report observed that:

"From the Treaty as a whole it is obvious that it does not purport to describe a continuing relationship between sovereign states. Its purpose and effect was the reverse, to provide for the relinquishment by Maori of their sovereign status..." (Muriwhenua).

Extending the principle, Sir Robin Cooke in the Maori Council Case, said:

"The principles of the Treaty do not authorize unreasonable restrictions on the right of a duly elected government to follow its chosen policy. Indeed to try to shackle the Government unreasonably would itself be inconsistent with those principles. The test of reasonableness is necessarily a broad one and necessarily has to be applied by the Court

in the end in a realistic way. The parties owe each other **reasonable cooperation** (NZMC at 665-6).
This is a theme which emerges also in the Muriwhenua claim (1988). Addressing the concepts of Rangatiratanga and Kawanatanga the Tribunal observed:

"....neither partner in our view can demand their own benefits if there is not also an adherence to reasonable State objectives of common benefit" (Muriwhenua at 195).

Operational Dimensions

Cooperation and, necessarily, the identification of ends which are of **mutual benefit** emerge as the critical dimensions of this principle. While mutual benefit is, like partnership, an outcome rather than an action, it requires of government agencies, a **knowledge** of issues, a **recognition** of respective entitlements and obligations and **negotiation** where kawanatanga and rangatiratanga must be balanced.

The principle of "Tribal Self-Regulation" (The Rangatiratanga Principle)

Flowing from the recognition of Tino Rangatiratanga the principle asserts that the traditional mechanisms of tribal control should be recognized and maintained. Thus while the Crown may, for example, make laws for conservation and resource management, that right should not disregard or diminish the right of tribal authorities to exercise control over Maori lands and possessions (Muriwhenua 230-232).

Sovereignty, or the Crown authority to govern is, therefore, constrained by the right of tribal self-regulation. As one of the interests guaranteed under Article II of the Treaty, that right should be the subject of active Crown protection. The notion of Maori consent to the interference with any Maori interest or right is also implicated.

Operational Principles

Where government impinges on the lands, resources and other "valued possessions" of Maori people, **recognition, protection and consultation** become fundamental

operational priorities. Again, where trade-off is required, **negotiation** with a view to the establishment of ends which are of **mutual benefit** is also critical.

The principle of "Right of Redress for Past Breaches"

This was described by Mr Justice Somers (NZMC at 693) as being analogous to a right to such remedies as might flow from a state of legal partnership:

"...a breach by one party of his duty to the other gives rise to a right of redress by the other - a fair and reasonable recognition of and recompense for the wrong that has occurred."

Operational Dimensions

In practical terms the operational priority may be dictated by the form of redress granted by Government. Given the existence of the right, however, it is a reasonable expectation of public administration that further breaches do not occur. Once again, therefore, the dimensions of **knowledge acquisition, recognition and consultation** become the key activities.

The principle of "Equality"

The Court of Appeal has accepted that:

"... the Treaty is a document relating to fundamental rights; that it should be interpreted widely and effectively and as a living instrument taking account of the subsequent developments of international human rights norms..." (NZMC p655-6).

The formal legal equality guaranteed in Article III of the Treaty bestows upon Maori not only the "rights and privileges of British subjects", but also the benefits of subsequent international treaty obligations assumed by the New Zealand Government.

As a result of this, the equality principle is extended beyond legal equality to the equal enjoyment of social benefits. Where persistent imbalances exist between groups (as is the case between Maori and pakeha), Government should look to such special, affirmative, actions as will redress that imbalance. It should be noted in this context that Article 1(4) of the **International Convention on the Elimination of all Forms of Racial Discrimination** 1966, expressly recognises that such affirmative measures "shall not be deemed to be racial discrimination" provided those measures are not continued after the imbalance is remedied.

Operational Dimensions

Closely related to the notion of active protection, the principle of equality establishes the presumption that government departments and agencies will take such actions as will eliminate social, educational and economic imbalances between Maori and pakeha. **Knowledge acquisition, recognition, consultation** and **affirmative action** are the operational imperatives that flow from this.

The Operational Dimensions Summarised

If responsiveness is to be characterized simply, it would be as a corollary of partnership and the exercise of good faith. Like partnership, however, it is an outcome, and if it is to be rendered meaningful its operational dimensions must be both specified and given force.

Clearly, this view of responsiveness is something much more than the notion of responsiveness as a narrowly focused tenet of service delivery. Conceived as a feature of a special relationship between Maori people and the Crown, its ambit is broader and its dimensions consequently more involved.

Thus, **In addition** to the operational dimensions identified by the Organisation for Economic Cooperation and Development - comprehensibility, relevance, participation and access - the following performance areas can be identified:

Knowledge Acquisition

An "honest effort to ascertain the facts" (Richardson J NZMC at 682,683) flows from the honesty of purpose and good faith characteristic of partnership. Not only does this require of government agencies a developed appreciation of the relative entitlements and obligations flowing from the Treaty of Waitangi, it also demands knowledge of those environmental factors which impact upon Maori people and communities. An appreciation of tikanga Maori and of those issues and concerns relevant to Maori, regionally as well as nationally, is also critical.

Recognition

This flows from knowledge acquisition. Having developed an understanding of the issues, rights and obligations that characterize the relationship between Maori people and government institutions, the next step is to acknowledge them. Understanding and acknowledgment of both the fact and the value of differing cultural perspectives and modes of operation are also implicated.

Protection

This is the action priority which flows from the act of recognition. The obligation is not limited to protection of Maori land and resources, but extends to "other properties" which, in the judgment of Mr Justice Bisson, (NZMC at 715) is taken to include the so-called intangibles of Maori language, customs and culture.

Consultation

The need for consultation has not, as yet, emerged as a universally agreed principle of the Treaty. It is, however, fundamental to knowledge acquisition and the identification of mutual benefit.

Cooperation

Extending the dimension of participation described by the OECD, cooperation is goal-directed, requiring Government departments and Maori people to work together for the furtherance of good Government and the identification of mutually beneficial ends.

Negotiation

Where government impinges on the rights and possessions of Maori people any intrusion upon those rights can occur only on the basis of consent. Something more than consultation is, accordingly, required. The parties must confer, not only for the purposes of information exchange, but also with a view to reaching settlement or compromise.

Affirmative Action

Where clear imbalances exist in the relative social, educational and economic positions of Maori and pakeha departments should adopt such policies and behaviours as will remedy those imbalances. Affirmative recruitment policies and special service provision are among the many aspects of organisational activity implicated.

Mutual Benefit

While the establishment of mutual benefit is an additional operational requirement, it is, like partnership, an outcome which subsumes all of the dimensions described. It yields a critical question:

"Does this policy or behaviour enhance (or minimize adverse impacts upon) the positions of the partners?".

This question in many ways becomes the test of responsiveness.

In the context of the obligation upon departments as agents of the Crown to extend protection to Maori land, possessions, customs and culture, the question becomes: "Do the organisational behaviours or processes enhance rather than take away from mana Maori?"

The Sphere of Action

It has been stressed at various points in this publication that the focus of responsiveness as it relates to Maori people, is not restricted to service provision. This, if nothing else, would be inconsistent with the nature and requirements of partnership.

It is clear that the notion of responsiveness in **"Te Urupare Rangapu"** includes not only service delivery, but extends across the full range of organisational activity. Thus, "knowledge acquisition" carries with it action priorities as much for corporate planning as it does for service provision. In the same way, "participation" has its corollaries not just in service choice, but also in policy development, planning and personnel practice.

A systematic approach to the identification of performance objectives and related measures of achievement is accordingly required. The framework suggested here involves the application of those operational imperatives flowing from the above dimensions within every area of organisational function.

"The Suggested Framework"

	OPERATIONAL DIMENSIONS											
ACTIVITIES	Comprehensibility	Relevance	Participation	Accessibility	Knowledge acquisition	Recognition	Protection	Consultation	Cooperation	Negotiation	Affirmative Action	Mutual Benefit
Corporate Planning												
Policy Development												
Personnel Practices												
Service Delivery												
Evaluation												

The range of organizational activities in which the actions and priorities must be developed to give effect to the dimensions of responsiveness is, therefore, a broad one. The sphere of action is the organisation as whole, rather than isolated elements of its operation.

Examples of the Job to be Done

How, then, can the dimension of "knowledge acquisition" be reflected in the processes of, say, service delivery - to use the most familiar example? What does it require of the organisation?

At the most general level there must be a determination as to what knowledge should be acquired. There are a number of requirements basic to all departments and, indeed, basic to all of the operational dimensions identified in this publication. These include:

(a) Knowledge of the principles and provisions of the Treaty of Waitangi.

(b) Knowledge of the functions and purposes of the organisation.

(c) Knowledge of how those functions and purposes impinge upon, or are relevant to, the rights, duties and obligations of the Treaty partners.

(d) Knowledge of tikanga Maori.

At a more detailed level these yield a number of corollaries:

(e) Knowledge of the organisation's Maori client groups (e.g., Iwi, pan-tribal groups, taura here, individual Maori).

(f) Knowledge of the significant characteristics of those groups (e.g., demography, distribution, needs etc.).

(g) Knowledge of those environmental features) that impact upon Maori. (e.g., economy, employment health, education

(h) Knowledge of how those groups perceive the organisation and what pitfalls there may be to effective relationships.

(i) Knowledge of the ethnic and tribal composition of the organisation.

(j) Knowledge of appropriate contacts (e.g., refer **"Contacts for Consultation"**).

Having identified the basic requirements the performance objectives and measures remain to be specified. Looking again at the example of "knowledge acquisition", all of the knowledge requirements listed suggest a number of objectives. Each of these will be open to measurement.

The identification by managers of tangata whenua and manuhiri groups for each district or region might be one such knowledge objective. The attainment of that objective might in turn be measured by the accuracy of the intelligence obtained and the extent to which it is communicated within the organisation.

In the same way, the acquisition of knowledge as to how the organisation's functions impinge upon, or have relevance to, the Treaty of Waitangi is another readily identifiable objective. Its achievement might be measured, among other things, by the extent to which the organisation consults with iwi and pan-tribal groups, and the nature and quality of the organisation's purpose statement and corporate plan.

Through this process of identifying implications, objectives and measures for each operational dimension the basics of responsiveness can be made explicit. Moreover, as performance objectives are identified for any one operational dimension, they will, in turn, suggest objectives for other areas of organisational activity.

The exercise is, for the most part, a mechanical one. Among its attractions is its potential for giving practical effect not only to responsiveness, but also to the principles and provisions of the Treaty of Waitangi.

Communications and Public Relations

Although not directly related to the establishment of comprehensive indicators for responsiveness, the need to communicate both to staff and to the wider public the imperatives and benefits of responsiveness is crucial. Part of the challenge facing public sector leaders lies in overcoming the often entrenched attitudes and perspectives concerning Maori issues and aspirations. As negative attitudes and resistance to change are frequently attributable to an inadequate appreciation of the issues involved, the rationale and benefits of any responsiveness initiative should accordingly be made clear. The exploration of the operational dimensions of responsiveness and the knowledge developed as a result will greatly assist managers in identifying both those issues and those benefits.

The Next Step - Service-wide Indicators

The specification of performance indicators and measures for each operational dimension, across each organisational activity should not be restricted to single organisations. While there will be "responsive" behaviours which are necessarily peculiar to individual departments or agencies, there will also be others which will have application to the public sector as a whole. The practices of the "good employer" or the requirements of consultation are such examples.

In the case of the "good employer" provisions, progress on the specification of generalisable indicators of responsiveness is relatively advanced. The core operational dimensions identified in this publication are already substantially reflected in the personnel related material already distributed. Although this by no means obviates the need for further development in this particular area, it serves to highlight the extent of the work that is yet to be done in the identification of similar indicators and measures for other areas of organisational activity.

Two things are now, therefore, required:

(a) the translation of the broad operational dimensions of responsiveness into performance objectives and measures by each department or agency; and

(b) the "pooling" of those objectives and measures in order that indicators and measures of responsiveness with applicability to the public sector as a whole can be identified.

Upon these two tasks depend the monitoring and evaluation functions of the State Services Commission and the Ministry of Maori Affairs. If those functions are to be fairly and effectively carried out there must be a consistent and commonly understood baseline against which the responsiveness of public sector organisations can be judged. The indicators used must also be valid and capable of being reliably applied across a range of departments and agencies. They can neither be arbitrary nor imposed.

For these reasons the contribution by individual departments to a central "pool" of responsiveness indicators is advocated. The measures and indicators thus collected can then be categorized, redundancies eliminated and a comprehensive set of measures submitted to chief executives, as a group, for approval. This option can be explored further in the context of the current round of chief executive's meetings on responsiveness.

ANNEX 1

PRINCIPLES FOR CROWN ACTION

1 The Kawanatanga Principle
2 The Rangitiratanga Principle
3 The Principle of Equality
4 The Principle of Co-operation
5 The Principle of Redress

A commentary on these principles, and their implications is in the process of development by the Treaty Unit of the Department of Justice.

ANNEX 2

GLOSSARY

Kawanatanga	Governorship (derived directly from the English word).
Mana	Authority, influence, prestige.
Manuhiri	Those Maori people living outside their rohe or ancestral lands. Guest in the rohe of another iwi.
Rangitiratanga	Chieftainship, or power of tribal self-regulation.
Tangata whenua	Those Maori people living within their own rohe.
Taonga	Treasures or valued possessions. Includes not only physical resources, but also so-called "intangibles" such as social and cultural values.
Taura here	Predominantly urban-based groupings representing the members of a tribe living outside their rohe, taura here are concerned with the maintenance of tribal identity and links.

The Resource Management Act

KIA MATIRATIRA

A Guide for Maori

MINISTRY FOR THE ENVIRONMENT
MANATŪ MŌ TE TAIAO

The Resource Management Act

KIA MATIRATIRA
A Guide for Maori

The Ministry for the Environment, in providing advice on the administration of the Resource Management Act, is not to be taken as defining or providing a definitive interpretation of the relevant Parts, sections or subsections of the Act. Questions of interpretation are matters for the Courts to decide. Any advice given is intended as a guide and you are advised to carefully consider the express provisions of the Act itself.

MINISTRY FOR THE ENVIRONMENT
MANATU MO TE TAIAO

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FOREWORD

The Resource Management Act has significantly changed the statutory framework of natural resource management. It replaces a large number of statutes. These statutes which included the Town and Country Planning Act, Water and Soil Conservation Act, Geothermal Energy Act, Mining Act, etc, did not have uniform processes for participation, consistent objectives or effective provisions for the protection of Maori interests in natural resources.

With the enactment of the Resource Management Act there is now a common purpose to statutory resource management, i.e. sustainable management. There are significant references designed to safeguard Maori heritage interests, consultation between consent agencies and tangata whenua is mandatory, the principles of the Treaty of Waitangi must be taken into account by those decision makers exercising functions and duties under the Act.

The interest of tangata whenua in natural resource management is now more than a matter of "great importance"; these interests are now a part of the statutory framework. Amongst other things this could have the effect of increasing the interaction between iwi and local, regional government (consent authorities), increasing the workload for iwi as they are consulted about resource plans, etc, and improving accountability between consent agencies and iwi.

The Resource Management Act is an enabling statute and, since it focuses on effects, it is important that iwi participate in the planning processes at the earliest possible stage. Such participation will be effective if there is access to resources such as information. This booklet, Kia Matiratira, is designed to provide some of this necessary information. It deals exclusively with those provisions which directly refer to Maori interests. It is designed to enable Maori to use the opportunities afforded by the Resource Management Act to achieve their own objectives, whether they be conservation or development oriented. It is not the first or the last publication for Maori on natural resource management.

The Maori title, Kia Matiratira encompasses notions of alertness and being prepared. Making the Resource Management Act work effectively for Maori requires a preparedness on the part of both Maori and consent authorities.

E te iwi, ka hia ranei te roa tatou e tatari ana kia totoko ake ai te whakaaro i roto i nga kawanatanga a rohe, a takiwa kia tika ai te poipoi i nga taonga a Ranginui me Papatuanuku.

Kua whakatuturutia etahi ture hou i raro i te Resource Management Act kia pai ake to tatou taka i nga taonga. Roa noa o tatou awa me nga wairere e whakapokepokea ana. Tera nga whenua kua pakeka, nga ngaherehere kua poto, te hau tonu e whakaeaea nei tatou kua tukinotia. Ko te ohiatanga ka taea e tatou te whakakaha i a Papatuanuku ki te whakatupu i te tangata.

Tangohia tenei pukapuka, whakamahia atu i ta koutou e pai ai. Tona ingoa, ara Te Matiratira, he mea ata whiriwhiri e matou i Maruwhenua. He kupu kua ahua makerekerea, heoi e uu tonu ana ki te Hiku o te Ika. Tona whakamaoritanga, kia matatau ai te titiro, kia kakama ai te taringa ki te hopu kupu, aa kia matiratira ai te tangata. Haunga ano te tikanga o te kupu nei e pa ana ki te matira e whakamahi ai koe ki te hii ika. Tena pea, ka kitea e koutou he painga kei roto i te pukapuka nei, he rite pea ki te matira, hei whakamahinga ma koutou.

He mana ano to te kupu, he mana ano to te whenua, toitu te mana!

Kia ora

Roger Blakeley
Secretary for the Environment

Shane Jones
Manager Maruwhenua

Other Ministry for the Environment publications

The following publications have been released by the Ministry for the Environment to assist in understanding the Resource Management Act 1991.

Guide to the Act	– August 1991
Regional Policy Statements and Plans	– September 1991
Consultation with Tangata Whenua	– September 1991
Guideline for Subdivision	– October 1991
Transitional Provisions	– November 1991
Guideline for District Plans	– November 1991

These publications can be purchased from Bennetts or GP Bookshops or from:

Publications Officer
Ministry for the Environment
PO Box 10-362
WELLINGTON

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1. THE RESOURCE MANAGEMENT ACT 1991

The Resource Management Act is the result of a three year process of law reform. It is the largest law reform exercise ever undertaken in this country. It puts into one statute most of the laws about how we can use our natural and physical resources.

It repeals the Town and Country Planning Act 1977, the Water and Soil Conservation Act 1967, the Clean Air Act 1974, the Noise Control Act, and large parts of the Soil Conservation and Rivers Control Act 1941 and the Harbours Act. Large parts of the Mining Act 1971, the Coal Mines Act 1979, and the Petroleum Act 1932 are also repealed, as the appropriate provisions are now in the Crown Minerals Act.

Legislation that the Resource Management Act does not replace includes the Conservation Act 1987, the Reserves Act 1977, the fisheries legislation, and wildlife legislation. The Act took effect from 1 October 1991.

However, it may be some years before some matters cease to be a part of the old law and become subject to the Resource Management Act. For example, some consents to use a resource or to carry on a particular activity could be lawful for as much as another 35 years.

It would be wise, therefore, to look at any issue with a preliminary question to the effect of:

"Does the Resource Management Act apply, or is the law prior to the Act still applicable?".

This question is important, because the provisions of the Act apply only to what has happened since 1 October 1991 and not to anything that happened before that date. Therefore, the specific Maori provisions can be applied only to issues occurring after 1 October 1991.

Transitional provisions are provided for in Part XV (section 364 onwards). The Ministry for the Environment has published a guide, Transitional Provisions, which can be purchased from the Ministry or through GP Bookshops and Bennetts.

This guide, Kia Matiratira, explains those parts of the Act that have implications for the development and self determination of Maori people.

It is aimed at assisting Maori development of their resources. One way to assist is to reduce those barriers which prevent Maori from participating in decision making processes. The Act sets out to remove barriers by making it easier for tangata whenua to have access to decision making in resource management issues.

The Act does not deal head on with Maori concerns as to rangatiratanga over resources such as water bodies, the coast, and land. This publication is not the forum for debating the issues of rangatiratanga and kawanatanga. There are avenues such as the Waitangi Tribunal, the Courts, and direct korero with the Crown for grievances felt by tangata whenua.

Terms used in the Resource Management Act

Section 2 of the Resource Management Act contains definitions for many terms used in the Act. They include the following definitions.

- "Bed" (river, lake and sea) means:
  a) in relation to any river, the space of land which the waters of the river cover at its fullest flow without overtopping the banks; and
  b) in relation to a lake, the space of land which the waters of the lake cover at its highest level without exceeding its physical margin; and
  c) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea.
- "Coastal marine area" means that area of the foreshore and seabed:
  a) of which the seaward boundary is the outer limits of the territorial sea;
  b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of–

i) one kilometre upstream from the mouth of the river; or

ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

- "Coastal water" means seawater within the outer limits of the territorial sea and includes:
  a) seawater with a substantial freshwater component; and
  b) seawater in estuaries, fiords, inlets, harbours, or embayments.
- "Controlled activity" means an activity:
  a) which a plan specifies as a controlled activity; and
  b) which is allowed only if a resource consent is obtained in respect of that activity.
- "Foreshore" means any land covered and uncovered by the flow and ebb of the tide at mean spring tides and, in relation to any such land that forms part of the bed of a river, does not include any area that is not part of the coastal marine area.
- "Fresh water" means all water except coastal water and geothermal water.
- "Geothermal energy" means energy derived or derivable from and produced within the earth by natural heat phenomena; and includes all geothermal water.
- "Geothermal water" means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius or more; and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena.
- "Internal waters" has the same meaning as in section 4 of the Territorial Sea and Exclusive Economic Zone Act 1997.
- "Kaitiakitanga" means the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.
- "Iwi authority" means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
- "Lake" means a body of fresh water which is entirely or nearly surrounded by land, and, for the purposes of Part X only, means a lake whose bed has an area of eight hectares or more.
- "Land" includes land covered by water and the air space above land.
- "Maataitai" means food resources from the sea and "mahinga maataitai" means the areas from which these resources are gathered.
- "Mana whenua" means customary authority exercised by an iwi or hapu in an identified area.
- "Mouth", for the purpose of defining the landward boundary of the coastal marine area, means the mouth of the river either:
  a) as agreed and set between the Minister of Conservation, the regional council, and the appropriate territorial authority in the period between consultation on, and notification of, the proposed regional coastal plan; or
  b) as declared by the Planning Tribunal under section 310 upon application made by the Minister of Conservation, the regional council, or the territorial authority prior to the plan becoming operative, – and once so agreed and set or declared shall not be changed in accordance with the First Schedule or otherwise varied, altered, questioned, or reviewed in any way until the next review of the regional coastal plan, unless the Minister of Conservation, the regional council, and the appropriate territorial authority agree.
- "Natural and physical resources" includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.
- "Natural hazard" means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may affect human life, property, or other aspects of the environment.
- "Open coastal water" means coastal water that is remote from estuaries, fiords, inlets, harbours, and embayments.
- "Permitted activity" means an activity that is allowed by a plan without a resource consent if it complies in all ways with any conditions (including any conditions in relation to any matter described in section 108 or section 220) specified in the plan.

- "Tangata whenua" in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area.
- "Taonga raranga" means plants which produce material highly prized for use in weaving.
- "Tauranga waka" means canoe landing sites.
- "Tikanga Maori" means Maori customary values and practices.
- "Treaty of Waitangi (Te Tiriti o Waitangi)" has the same meaning as the word "Treaty" as defined in section 2 of the Treaty of Waitangi Act 1975.
- "Water":
  a) means water in all its physical forms whether flowing or not and whether over or under the ground;
  b) includes fresh water, coastal water, and geothermal water;
  c) does not include water in any form while in any pipe, tank, or cistern.
- "Water body" means freshwater or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.

The Act intentionally leaves waahi tapu undefined. It is too wide a concept to limit by definition. What is intended is that local authorities should consult with tangata whenua in their regions about the scope of what waahi tapu means to tangata whenua. This in itself may require a high level of consultation.

The term waahi tapu is referred to in the Act in sections 6(e) and 58(b). It is also referred to in Part II clause 2(c) of the Second Schedule. The Eighth Schedule amendment to the Maori Affairs Act regarding subdivision of Maori land also refers to parts of land which has implications for the protection of waahi tapu.

Although tangata whenua has been defined in section 2, for the purposes of this publication it can be read to include references to iwi, hapu, and whanau.

When the Act will affect Maori

Some common situations where Maori people will bump into the Resource Management Act include:

- The building of houses or marae.
- Kaumatua or papakainga buildings being added to a piece of land.
- Water (fresh and/or coastal) being taken, used or dammed.
- A haangi being put down and smoke from the fire will drift into the air.
- Maori concerts being held and the level of noise that may be generated.
- The protection and enhancement of tuna habitats and other traditional Maori food resources and their habitats.
- The protection and enhancement of pingao and weaving resources.
- The aspirations of kaitiaki over their land, water and food resources within the rohe.
- The protection of urupa from other activities, such as highways running over the top of them.
- Offensive smells affecting Maori resources.
- The taking of sand and shingle from river beds.
- The protection of waahi tapu.
- Anything to do with protecting the coastal environment (not dealing out fishing quotas, but ensuring the environment the fish are in is a healthy one).
- Subdivisions and/or partitions of land (Maori land and general land).
- Keeping rivers, lakes and other freshwater bodies clean.
- Planning documents produced by local authorities and other agencies which affect the quality of air, land, water, and also the control of noise and smells.
- Erecting any structures on the seabed.

These are not the only matters the Act affects. However, if any of these things are happening it would be wise to contact a runanga, iwi authority, local authority, or any government department which is known to have some interest in these matters. Those who have functions under the Act are listed later in this publication. These people and bodies would certainly be able to clarify what is going on, or what needs to be done.

If there is any problem about who to make contact with, the Ministry for the Environment will be able to assist. It has offices in Auckland, Wellington, Christchurch, and Dunedin.

What is sustainable management

The Resource Management Act affects all Maori in one way or another. Its purpose is to promote the sustainable management of natural and physical resources.

Natural and physical resources include:

- Land.
- Water (fresh and salt).
- Air.
- Soil.
- Minerals.
- Energy.
- All forms of plants and animals (whether native to New Zealand or introduced).
- All structures, including buildings, fences, and flagpoles.

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 (section 5).

It is not easy to say in simple terms what all of this means. There is a general recognition that there are problems with the quality of the environment, including:

- The quality of water, air and soil.
- How land is used (for example, whether land development or high-rise building are a good thing all of the time).
- The protection of the coast.
- The protection of habitats and species of plants and animals.
- The planning requirements in towns and cities for industrial, commercial and residential needs, including better provision for papakainga housing, marae, and kaumatua flats.
- The depletion of the ozone layer.
- The changing climate.

Some of these problems are reaching dangerous levels. Sustaining, or looking after, the resources affected by the Act means there is a need for very careful and sensitive planning so that future generations can enjoy as many of the resources we have today as is possible. It may be impossible to restore some resources to the level of the past, but the Act aims to ensure that the quality of these resources does not get any worse.

The Act gives local authorities the major responsibility for the day-to-day measures to ensure sustainable management of resources. This will happen in any of the following major ways:

1	Provision of regional policy	Regional council statements
2	Provision of a regional plan	Regional councils
3	Provision of a district plan	District/city councils
4	Resource consent hearings	Ministers of Conservation or Environment, regional council, or district/city council
5	Provision of a New Zealand coastal policy statement.	Minister of Conservation
6	Provision of a regional coastal plan	Regional councils

It is crucial for tangata whenua to work with local government. **The Act places significant duties on local authorities to listen to and act upon the views of tangata whenua on how resources should be managed.**

A more detailed section on local authorities and what they are is included in chapter 3. The Act envisages that there will be meaningful and effective discussion and interaction between tangata whenua and local authorities. It is clear that consultation can facilitate this dialogue and interaction. The Act deliberately does not prescribe how the discussion or interaction should happen. This is partly because not all iwi, hapu, whanau groups have the same kawa and it would be wrong to impose the kawa of one iwi on another. Further, the Act aims to assist communities and local authorities to have control over management of resources in their area without undue interference by central government.

The Ministry for the Environment publication Consultation with Tangata Whenua provides guidelines for non-Maori groups as to how they might initiate dialogue or interaction with tangata whenua. They are only guidelines. It has been stated very clearly in that publication that tangata whenua may have their own requirements as to what meaningful and effective consultation is.

The Resource Management Act opens the way for participation by tangata whenua. Tangata whenua are defined in section 2 as the iwi or hapu which holds mana whenua over a particular area. Deciding who has manawhenua should be left to iwi, or perhaps the Maori Land Court or Waitangi Tribunal.

Decision makers have also been advised that it is unwise for them to make an arbitrary judgement on who is the tangata whenua of a particular area.

It would be reasonable for tangata whenua to have an expectation that they will be consulted on issues concerning their resources and the plans that decision makers intend to make to deal with resource issues.

The Act does not deal with taiapure – that falls under the supervision of the Ministry of Agriculture and Fisheries. However, regional councils may make provision for protection of such areas in their regional plans; for example, rules that regulate the quality of the water. Regional councils cannot prescribe quota limits.

Who will do the managing

Functions, powers and duties under the Act

Part II of the Act contains the Purpose and Principles. The Act's purpose of sustainable management has absolute priority and has been referred to at the beginning of this guide.

The principles are statements of intent which must be kept in mind by all those who exercise functions and powers under the Act.

There are three principles which all people exercising functions and powers under the Act are obligated by. These are:

1 The duty to take into account the principles of the Treaty of Waitangi (section 8).

2 The duty to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (section 6e).

3 The duty to have particular regard to kaitiakitanga (section 7a).

These principles should always be in the minds of anyone who has a function or a duty under the Resource Management Act whenever they are using powers under the Act.

These principles can be used to signal the right of tangata whenua to be included in any issue affecting them. In any approach to decision makers, these principles can be quoted by tangata whenua as an introduction to whatever the issue is.

In addition there are other enabling provisions in the Act which will assist in tangata whenua being given access to decision makers.

It is important to know just who will exercise functions and powers under the Act so that issues tangata whenua wish to raise should not be unduly delayed.

Functions, powers and duties under the Act can be broadly classified as follows.

Minister for the Environment (section 24)

- Recommends national policy statements (sections 45-55).
- Has a call-in power for projects of national interest (section 140(2)(h).
- Recommends approval of requiring authorities (section 167) or heritage protection authorities (section 188).

- Recommends the making of regulations for national performance standards (section 43).
- Recommends the issue of water conservation orders (section 214).
- Monitors the effect and implementation of the Act, including regulations, national policy statements, and water conservation orders.
- Monitors the relationship between the functions, powers, and duties of central government and local government under Part IV (sections 24-42) and the duties of the Hazards Control Commission under Part XIII (sections 344- 351).
- Has power to replace a local authority where the Minister considers the authority is not exercising or performing its functions under the Act (section 25).
- Consults with Minister of Justice for the appointment of Planning Judges or alternate Planning Judges (section 250) and Planning Commissioners or Deputy Planning Commissioners (section 254).
- May instigate a change to a regional policy statement.

The call-in power referred to in section 140(2)(h) is available to the Minister if there are issues of national significance concerning any proposal to use natural or physical resources. A board will be appointed to decide on the matter. Tangata whenua could expect to be represented on the board, which will also include members of the community.

One of the reasons the Minister may use the power of call in is in respect of anything which is, or is likely to be, significant in terms of the Treaty of Waitangi.

The Minister generally acts through the Ministry for the Environment. There are certain functions that the Minister cannot delegate (section 29).

Minister of Conservation

- Prepares and recommends the New Zealand coastal policy statement (section 52).
- Approves regional coastal plans (section 64).
- Considers coastal permits in situations where the Minister's consent is required (sections 117-119).
- Administers the provisions for coastal tendering under Part VII (sections 151-165).
- Certifies certain activities under section 4 (4)(c)(i) are exempted from the Act.

The Minister generally acts through the Department of Conservation. There are certain functions in section 29 which the Minister cannot delegate.

Minister of Maori Affairs

- May issue a heritage order to territorial authority for protection of any place of special interest, character, intrinsic or amenity value, or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons (section 189).
- Consults with the Ministers of Justice and Environment on appointment of Planning Judges or alternate Planning Judges (section 250) and Planning Commissioners or Deputy Planning Commissioners (section 254).

It is crucial that Planning Judges and Commissioners have a sound knowledge of tikanga Maori. The Minister of Maori Affairs has the right to be consulted over appointments, and in this process the Minister has an important part to play in ensuring the Tribunal has a balance of expertise and knowledge.

Heritage orders can apply to a wide variety of situations.

Minister of Justice (section 247 onwards)

- Recommends the appointment of Planning Judges or alternate Planning Judges after consultation with the Ministers for the Environment and Maori Affairs (section 250).
- Recommends the appointment of the Principal Planning Judge (section 251).
- Recommends the appointment of Planning Commissioners or Deputy Planning Commissioners after consultation with the Ministers for the Environment and Maori Affairs (section 254). The Minister must have regard to the need to ensure that the Tribunal possesses a mixture of knowledge and experience in matters coming before the Tribunal, including knowledge and experience in "... matters relating to the Treaty of Waitangi and kaupapa Maori (section 253(e)).

Regional councils (section 30)

- Control of water.
- Pollution control (the discharge of contaminants into or onto land, air, water, and discharges of water into water)
- The control of the coastal marine area (with the Minister of Conservation), including the taking or using of water and the discharging of contaminants into land, air or water.
- Soil conservation and hazard control.
- Deciding on policies, objectives and/or plans for the management of resources in the region.

Territorial authorities (city/district councils)(section 31)

- The effects of land use, subdivision of land, and noise.
- Policies and/or plans on the use of land and resources in their rohe.

Planning Tribunal (Part XI sections 247-298)

- Has power to hear appeals against decisions made by consent authorities.
- Has similar powers to the District Court in civil matters (section 278)
- May make a declaration on the scope or extent of any function, power, right or duty under the Act (section 310).

The Tribunal is empowered to declare the extent of what the Treaty of Waitangi means (section 8) and how people should deal with it under the Act. It can decide that extent in terms of any Maori issues under the Act. The Tribunal has the power to co-opt people with expertise in tikanga.

The Act envisages that, in hearings before the Tribunal which have implications for tangata whenua, there should be expertise in tikanga Maori available to the Tribunal to provide advice or even to sit as part of the Tribunal. However, section 266(i) does not allow anyone to question the credibility of the Tribunal at the appeal itself or in any higher Court. The Tribunal is trusted to equip itself with all of the expertise it may need in deciding on issues concerning tangata whenua.

There is no provision which excludes tangata whenua from approaching the Ministers of Justice or Maori Affairs if there is concern about the Tribunal's composition in terms of Maori representation.

The Tribunal is required to recognise tikanga Maori where appropriate (section 269(3) and, if it wanted, to it could receive evidence, written or spoken, in Maori (section 276(3)). There is no reason why a witness could not ask for his/her own interpreter.

It is likely that tangata whenua will be dealing with local authorities for the bulk of resource management issues facing them. A broader section on what local authorities are and do is provided in chapter 2. It is very important to note that local authorities have the power to transfer some of their functions powers or duties. This includes the transfer of powers or responsibilities to tangata whenua.

The doors should not be closed to tangata whenua by anyone acting under the authority of the Act.

When a function, power, or duty is held by a Minister, anyone can write to, or approach a Minister with any requests concerning that function, power, or duty.

How management will be done

Policy statements and plans

Policy statements and plans will say all that is needed about what should happen in regions and districts. Figures 1 and 2 show the relationship between them.

National policy statements (section 45-55)

Regional councils and territorial authorities have a wide scope when exercising their functions, powers and duties under the Resource Management Act. However, there will be some issues that will be so important as to affect the whole country rather than having just a district or regional significance. The Minister for the Environment may step in to protect the national interest through a national policy statement. The Minister can hold an enquiry, and if satisfied,

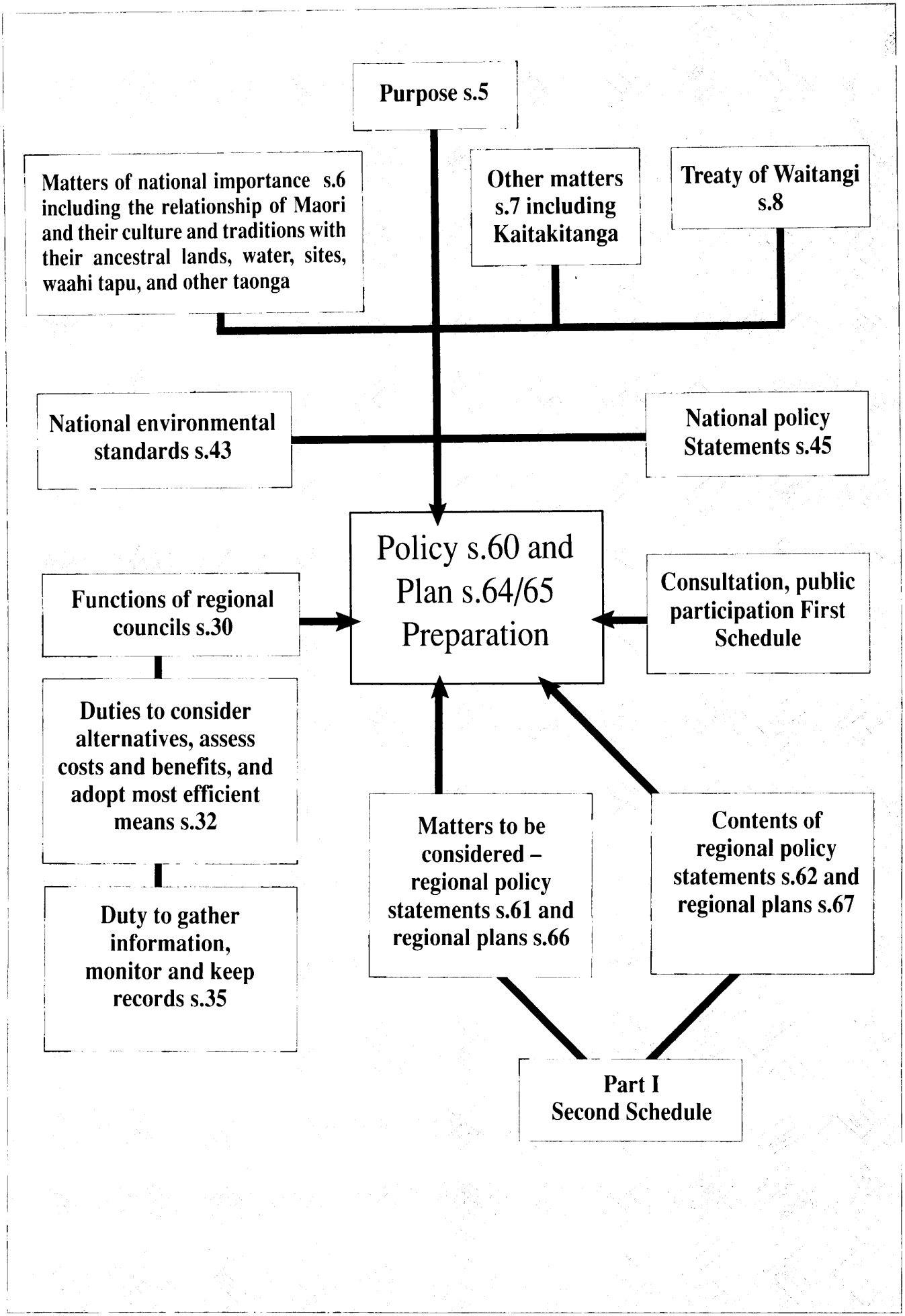


Figure 1: Key sections for local authorities to consider in preparing policy statements and plans.

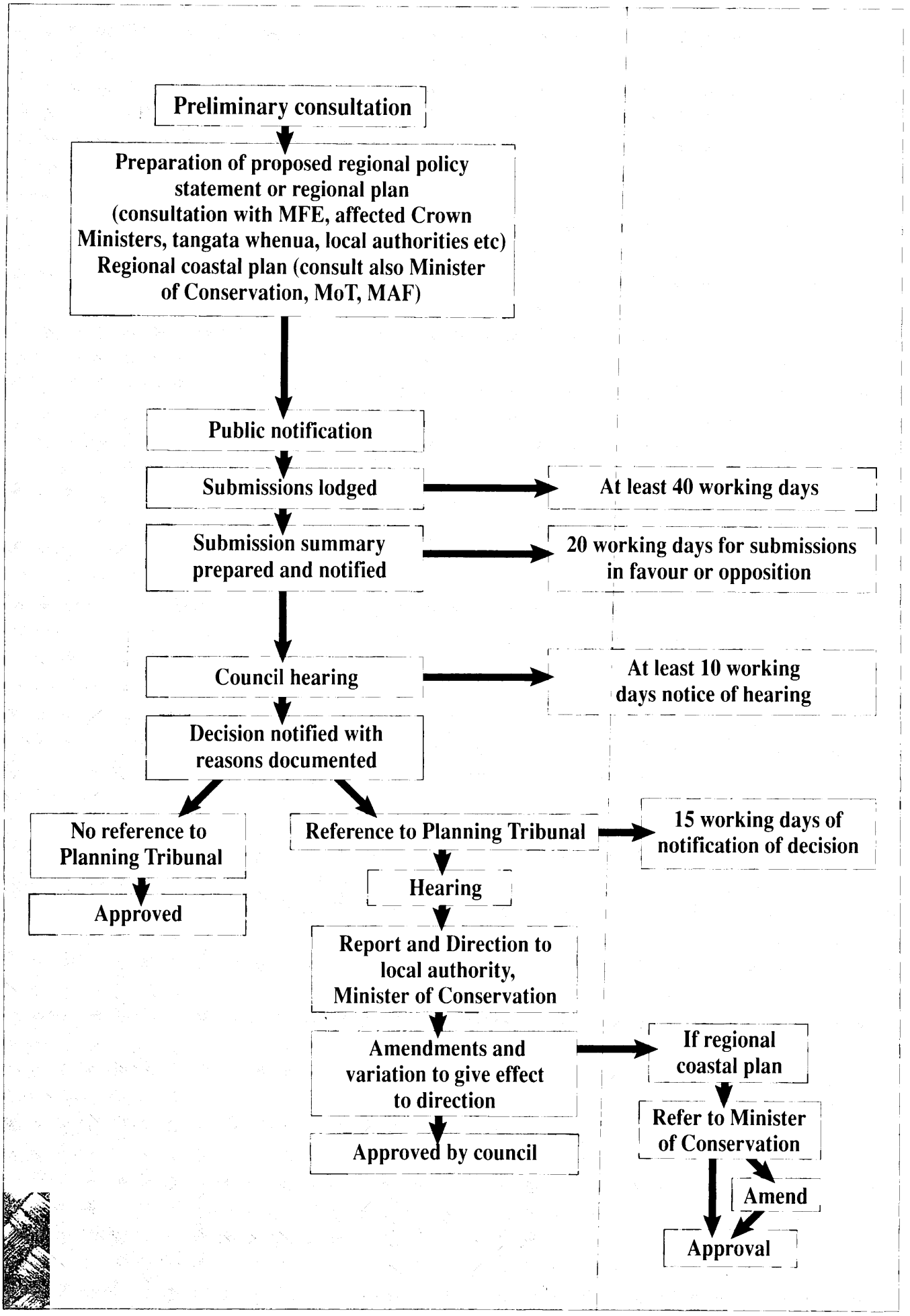


Figure 2: Regional council's likely procedures for statements and plans.

will recommend to the Governor General that a national policy statement be issued. Local authorities cannot go against a national policy statement.

National policy statements could be made for many reasons. One of those reasons could be that matters of national importance to Maori in terms of the Treaty of Waitangi have not been sufficiently provided for.

One example of where a national policy statement could be made is on the subject of papakainga housing. Maori generally view a papakainga-type settlement as one which is fundamental to the culture and wellbeing of Maori people. It is a concept which transcends local authority boundaries and is known throughout the land by Maori people. This makes it a national issue, and one which falls squarely under the umbrella of the Treaty.

If the needs of Maori in this area are not being met, then Government could be approached to make a statement showing some positive signals to people and institutions that papakainga housing should be actively supported.

Before such a statement will be made, the matter must be one which can be demonstrated to have its roots in the Treaty. It is likely that the Crown's duty to actively protect Maori will carry strong weight when the Minister is considering any application for a national policy statement. It must also relate to the purpose of the Act in section 5.

This option might best be kept as a last option, because there are many other protection mechanisms in the Act for Maori which have more simple processes. Absence of a national policy statement does not mean the avenues of redress are closed.

Any person or legally constituted, body including a runanga, a trust, an incorporated society, or iwi authority may make an application to the Minister to exercise this power.

Regional policy statements (sections 59-62)

After a national policy statement, the regional policy statement is the most important document in the hierarchy of policy statements and plans. Every regional council has to have one. The regional policy statements will provide a picture of the resource issues in a region and ways and means by which resources should best be managed.

They must state, among other things, matters of resource management significance to iwi authorities (section 62(i)(b)). This, together with clause 3(i)(d) of the First Schedule of the Act, should mean that regional councils will be consulting with iwi when a regional statement is to be made. If they do not consult, iwi may challenge them through appeal procedures.

The sorts of issues regional councils should become aware of may, amongst many others, include:

- Areas containing waahi tapu.
- Traditional food gathering sources.
- Areas that have a heritage value for Maori.
- Maori view regarding the protection and/or development of geothermal resources.
- The quality of water (fresh and sea).
- Housing needs. These may include iwi visions for papakainga, kaumatua or other housing initiatives.

In this regard, if an iwi management plan has been prepared it should be of great assistance to a regional council. If a regional council is serious about its obligations it might be prepared to provide some support to iwi, financial or otherwise, to complete an iwi management plan. If a regional authority is not interested in supporting such an initiative then, hei aha!

A regional policy statement shall not be inconsistent with a national policy statement, a New Zealand coastal policy statement, or water conservation order (section 62(2)). It should, however, make very clear what iwi consider are important issues to them. Councils are required to consult with tangata whenua.

If Maori have not been involved, or if their stated aims have not been provided for, then a regional council is very much open to challenge in front of the Planning Tribunal or the Courts. Iwi should expect that regional councils will have to provide very sound reasons as to why they chose a particular path.

A regional policy statement, or a change to one, can only be instigated by a Minister of the Crown, the regional council, or any territorial authority within, or partly within, the region (section 60(2)).

Regional plans (section 63)

A regional plan is not mandatory. If a regional council chooses to produce one (or more), it will most likely be for specific resource management issues. It will probably have greater detail than a regional policy statement, but should not be inconsistent with it. It may include rules; for example, prescribing the way water is to be treated in a particular area.

The council can either prepare or change a regional plan itself (section 65(1) and (4)), or any person, or legally constituted body including a runanga, a trust, an incorporated society, or iwi authority may request that a plan be prepared or changed (section 65(4).

A regional plan could be made for "any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources" (section 65 3(e).

For example, a regional plan might be prepared for the geothermal issues of the region, or for the cleaning of waterways.

District plans (section 72-86)

District plans are produced by district councils to assist them in carrying out their functions under section 31. There must always be one district plan for each district (section 73(1)). Plans will generally spell out what activities are regulated and how they are to be regulated. It is important to know what the district plan contains. A district plan could make rules; for example, as to the type of structures or buildings allowed on lands within the district.

Generally, territorial authorities are bound by the same Maori provisions as regional councils. These include sections 8, 6(e), 7, 74(2)(b)(ii) and the First, Second and Eighth Schedules.

District plans must not be inconsistent with a national policy statement, a water conservation order, or a regional policy statement (section 75(2).

Comment

The interrelationship between the functions of regional councils and district councils should mean there will be linkages between regional statements, regional plans and district plans.

An example might be where a regional policy statement document outlines a vision for the way water is enhanced, a regional plan may be made for a particular water body or bodies (river, lake, etc) and a district plan may regulate land use to stop activities which may affect the quality of the water.

New Zealand coastal policy statement (sections 56-58)

The coastal environment is considered to be of such importance to all New Zealanders that the Resource Management Act requires one document to cover the way the coast should be considered. The Minister of Conservation will produce this document, which will be called the New Zealand coastal policy statement. It may state policies about:

> "the protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai and taonga raranga" (section 57).

The Minister has discretion to set the procedure for co-ordinating the draft document. Before 2 October 1992, a draft document must be released for iwi and others to make submissions on (section 431).

Regional policy statements, regional plans and district plans shall not be inconsistent with the New Zealand coastal policy statement once it has been accepted by the Minister.

Regional coastal plans

Regional councils will also produce a regional coastal plan which may promote the matters in the New Zealand coastal policy statement at a local level (section 64).

Regional coastal plans have the same role for the coast as regional plans have for inland areas. These plans will cover the "coastal marine area", which is defined in section 2.

Resource consents (Part VI, sections 87-150)

Under the Resource Management Act there are certain activities which cannot be carried out unless a "consent" has been obtained from a local authority or other agency (as the case may be).

Broadly, the consent procedure is required when:

i There are restrictions on the use of land (section 9).

ii There are restrictions on subdivision of land (section 11).

iii There are restrictions on use of the coastal marine area (section 12).

iv There are restrictions on certain uses of beds of lakes and rivers (section 13).

v There are restrictions relating to water (section 14).

vi There are restrictions on the discharge of contaminants into the environment (section 15).

vii A regional plan or district plan provides that an activity will not be allowed without a consent.

Regional, coastal or district plans can include rules which prohibit, regulate or allow activities. The rules can group activities into the following types:

Permitted	These are activities which you are allowed to do as of right, provided you meet the conditions spelled out in the plan.
Controlled	These are similar to discretionary activities, but an application for a consent for a controlled activity does not have to go through the public notification process because the effect of the activity is minor.
Discretionary	These are activities which you are allowed to do only if you get a resource consent. A regional or district plan will set the criteria for when these consents will be granted.
Non-complying	These are activities which contravene a plan but are not prohibited activities.
Prohibited	These are activities which a plan expressly prohibits and describes as an activity for which no resource consent may be given.
Restricted Coastal Activities	These are activities which can be carried out only with the consent of the Minister of Conservation. They are specified in the regional coastal plan as discretionary or non-complying activities.

The consents needed fall into five categories:

- Land use consent (in respect of sections 9 and 13).
- Subdivision consent (in respect of section 11).
- Coastal permit (in respect of sections 12, 14 and 15).
- Water permit (in respect of section 14).
- Discharge permit (in respect of section 15).

There are matters which the Minister for the Environment may choose to take charge of where they are of national significance (section 140). This is when the Minister will "call in" applications that have major consequences.

The process for consents is dealt with in Part VI of the Act.

A consent authority is defined in section 2 as the Minister of Conservation, a regional council, or a territorial authority, whose permission is required to carry out an activity for which a resource consent is required under the Resource Management Act.

Most applications must be publicly notified; that is, published in a local newspaper within 10 days of the consent authority being satisfied it has enough information (section 95).

Sometimes a number of different consents may be required from different authorities (for example, a discharge consent for water from a regional council and a land use consent from a district council). The authorities may get together and hear all the applications at the same time (section 102).

The consent authority or authorities must serve notice about an application on relevant iwi authorities (section 93(f)) if the application is required to be publicly notified.

Once an application is made and notified publicly, any individual, whanau, hapu or iwi may make a written submission to the consent authority (section 96). The submission can be made on any matter. It may support, or it may object to, any or all of the application. It can make any statements they want to make. This must be done within 20 working days of the public

notification (section 97). Any written submissions can be made in Maori. To avoid any undue delay, a translation might accompany the submission.

The applicant is provided with a list of the submissions received (section 98) and the consent authority is required to hold a hearing if either:

i the consent authority considers it necessary; or

ii the applicant or anyone who made a submission has requested to be heard and has not subsequently advised they do not wish to be heard (section 100).

There is a maximum of 25 working days from the closing of submissions to when a hearing must take place (section 101).

In total there is a maximum of 45 working days (nine weeks) from the date an application is notified to when a hearing should take place.

There is an opportunity for a pre-hearing meeting to be held for clarifying, mediating, or facilitating resolution of any matter between parties (section 99). This is not the hearing itself, but may be helpful in clearing up matters that are not contentious.

The information gathered from that meeting will be circulated to all parties before the hearing and can form part of the consideration of the decision. These pre-hearing meetings can be initiated by the consent authority itself, or by any person, hapu, whanau, or iwi. There is nothing to prohibit these meetings being held on marae or in a Maori setting.

Where a coastal permit is sought involving a restricted coastal activity, a representative of the Minister of Conservation will be represented on the consent authority.

There are processes for not notifying an application (section 94) and if there is a hearing, the consent authority will have regard to the matters outlined in section 94.

"Not notifying an application" means the local authority will not publish details of the application, mainly because the effect will be minor or there is unlikely to be any major concern raised. This will include controlled activities. Any iwi, hapu, or whanau which is directly affected will be notified. Even if everyone affected consents to the application, the council can still decide to publicly notify the application if it wants to.

Consents may include conditions (these are outlined in section 108 of the Act).

All applicants and those who made submissions will be notified of the decision, in writing, in the following way:

i within 15 working days of the conclusion of a hearing; or

ii where the application was not notified, then no later than 20 working days after receipt of the application or the approval of all affected persons under section 94 have been obtained; or

iii where applications were notified but no submission was received and no hearing was requested, then no later than 20 working days after the closing date for submissions.

If anyone is dissatisfied with the decision, they may appeal to the Planning Tribunal within 15 working days from when they received the decision. Notice of the appeal must also be served on the consent authority within the same timeframe (section 121).

Applications, making submissions, hearings, decisions, and appeals are strictly bound by the time limits mentioned. There are certain circumstances where time limits can be waived or extended (section 37).

It is very important to note that time limits are very strict.

2. LOCAL AUTHORITIES

What they are

The Resource Management Act 1991 gives most of the responsibility for managing resources and their use to local authorities. Local authorities are regional councils, such as the Auckland Regional Council, and territorial authorities, which are generally city or district councils such as the Christchurch City Council. Another type of council is the unitary authority, which carries out the functions of both regional and district councils. An example of this is the Gisborne District Council.

Local authorities are made up of both politicians and staff. The politicians are voted onto the council by ratepayers and are called councillors or council members. The head of the regional council members is called the chairperson. He or she is appointed to that position by the other members of the council. The head of a territorial authority is the mayor. Mayors are voted into that position by the ratepayers.

Politicians organise themselves into committees, known as standing committees, to deal with the different types of business which they must address. Each authority will have its own way of organising committees, but common examples include a works committee, an environment and planning committee, and a judicial committee. The chairperson or mayor may sit on any of those committees as of right.

The staff of a local authority carry out the day-to-day business of the authority. There is a chief executive officer who is responsible to the authority, and who employs all the staff. Other types of staff, depending on the functions of the authority may be:

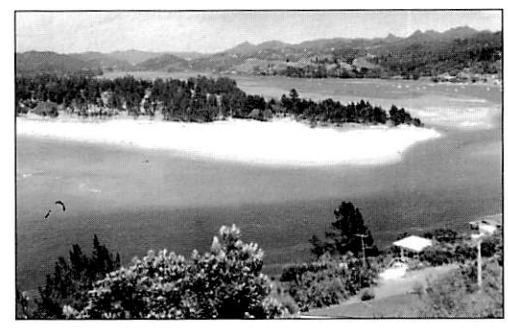
Regulatory or planning. This can include planners, enforcement officers, dog control officers, environmental health officers, building inspectors, and parking meter wardens. They are people who enforce the rules about the things we can and cannot do on certain matters.

Operational or service delivery. This can include rubbish collectors, parks and reserves staff, roading staff, and sewage plant operators. They are people who provide particular services.

Corporate. This includes receptionists, accountants, lawyers, and administration personnel. They are people who keep the authority running on a day-to-day basis. Sometimes the services of lawyers, accountants and other specialised people are contracted from local firms.

What they do

Local authorities get their authority or ability to carry out activities or functions from Acts of Parliament. They do different things under different Acts. In fact, anything they do must be allowed by some legislation. Some Acts apply just to regional councils, some just to territorial authorities, and some to both. Some functions are optional. This list is not comprehensive, but some of the most common functions are:



- **Resource management functions**

  These are the functions which this publication is concerned with. The functions which local authorities have under the Act are dealt with in this chapter.

- **Health (regulatory) functions**

  These are functions under the Health Act 1956, Food Act, and other smaller pieces of legislation such as the Dog Control Act. They include work such as the inspection and licensing of food premises and hydatids control programmes.

- **Roading, waste disposal and water reticulation**

  These activities are carried out in accordance with the Local Government Act 1971. It includes the collection of household rubbish and water supply to residential areas.

- **Promotional functions**

  This is where the authority acts as a promotional agency for the district or region. It can include initiatives to attract business or investment to the area, such as tourism ventures.

If you wish to know more about what your particular local authority does, you should go to their offices. Local authorities are required by law to provide information which tells you who the members of the organisation are, what kinds of committees it has; who is on them; what their terms of reference are; what its management structure is; the names and telephone numbers of the various managers; what the functions and responsibilities of the authority are; the dates and times of the meetings of the authority and its committees; what Acts of Parliament are in force which give authority or jurisdiction to the local authority on particular matters; and a list of all bylaws made by the council which are in force.

Sometimes this information will be in the council's annual plan (see later this section) and sometimes it will be in a separate booklet. Either way, this is important information and can be a valuable resource document.

Local government reform

At the same time that the laws about how we use our resources were being reviewed and changed, the laws about the way local authorities are run and what they have authority over were being reviewed. It is important to understand the changes made after that review, because you can then understand not only why they make some of the decisions they do, but also how they make those decisions.

Local authorities generally have two sides to their work. There is a "doing" side, which carries out activities like maintaining reserves, rubbish collection, sewage disposal, and water distribution: this side is often called the operational arm of the council. There is a "thinking" side, which sorts out what are the important issues facing council, what the priorities are, what should be done about them, and how those policies should be enforced: this side is often called the policy or decision making arm of council.

Before the local government reform those roles were often blurred, and it was sometimes hard to see whether the reasons behind decisions were operational ones or policy ones. For example, councils often operated landfills but were also responsible for dealing with some of the environmental effects of the landfill. The financial interest of the council sometimes meant that the policy side of the council was compromised or dominated by the operational side. For example, the council may have chosen not to prosecute itself for breaches in the conditions on the way in which the landfill was supposed to be run.

Policy decisions should be made for the public good, whereas operational decisions also have economic and efficiency factors which have to be taken into account. Those kinds of factors are important but can sometimes sway politicians away from looking at what is in the public interest.

The reform aimed to get a clear separation between the operational side and the policy side, so that the reasons for decisions and the actions that would result from the decisions were obvious. These are often referred to as principles of transparency and accountability.

Accountability

Corporate and annual plans

Local authorities now have to prepare corporate and annual plans. A corporate plan is prepared every five years, and looks at what council plans do on a long-term basis. Some corporate plans contain strategies, others are a more general statement of objectives. These are important documents for stating what the council's general philosophy or approach is.

Annual plans are more important on a short to medium-term basis. It is in these documents that council decides what it is going to do over the next year (operations) and how much money it is going to spend. It also reviews its performance over the past year, and must explain why it has not done anything that it said it would in the previous annual plan.

Annual plans are prepared once a year, and there is a public participation process. A draft document goes out for public comment, usually about April or May, and the final plan must be prepared and approved by June.

This is an important process. If an activity is not listed in the annual plan it does not have to be done. It is also the best point at which to challenge council expenditure on inappropriate matters.

Since the reform, councils have been through two annual planning rounds. Councils are still learning about this process and are improving each year. However, the response from the general public to the opportunity to participate in the preparation of the plans has generally been poor.

There is the potential for iwi to have significant influence on this process. Council must still meet the needs of all of its constituents and must make decisions in accordance with legal requirements, but a proposal for council initiatives or expenditure in particular areas that is well thought out and strongly articulated could be successful during this process.

The roles of the chief executive officer and politicians

The chief executive officer has an important role. Different councils use different terms for the position - general manager, director, etc – but they all have the same role.

The chief executive officer is the only employee of the council, but employs all the staff of the council. This means that he or she is responsible or accountable to the council for the efficient operation of the council's activities, so that the politicians are then free to get on with the decision making part.

The chief executive officer also ensures that council has all the relevant advice it needs to make its decisions. This can include advice from different parts of the organisation, such as engineering, planning, legal or accounting advice, and these different sources or streams of advice can sometimes come to different conclusions on the same issue. Where there is competing advice, it is the role of politicians to make balanced decisions. Sometimes the politicians may make unpopular decisions. They are, however, trying to do what they think is best for the community as a whole, within the powers they are given by legislation.

Fairness in decision making

Councils can no longer be judge and jury on their own activities. Where council has both an operational interest and a policy making interest in an activity, those interests must be clearly separated. For example, a council member cannot be a member of a committee which deals with an operational matter, such as the operation of a sewage treatment plant, and also be on a committee which deals with policy matters, such as a judicial committee which decides whether or not to prosecute for breaches relating to that plant.

Some councils are setting up the operational side of their activities as LATEs (Local Authority Trading Enterprises), which ensures a complete separation of the decision making and operational sides.

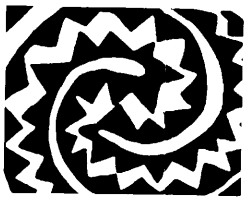
The Local Government Official Information and Meetings Act 1987

This Act provides for public access to official information held by local authorities and requires local authorities to be more open about the way that they conduct their meetings. This is so that the public can be more effective in participating in local government processes, and so that local authorities are more accountable.

The main principle behind the Act is that information should be available unless there is a good reason for withholding it. Reasons for withholding information can include protection of personal privacy, protection of trade secrets, and situations where the release of the information would prejudice legal processes, such as prosecution of an offence.

Any person can make a request to a local authority for official information and the authority is under a legal duty to offer that person assistance to make the request in the proper way or to direct them to the appropriate organisation for that information. The local authority must act on that request within 20 working days, by either releasing the information or declining the request, with reasons. A refusal can be referred to the Ombudsman.

All local authority meetings are open to the public except in circumstances similar to the ones above; for example, protection of personal privacy, etc. Where the public is to be excluded, this must be done by a resolution of the council.



3. LAND

Land is defined as including land with water over it and air space (section 2).

All people performing functions under the Act are bound to recognise and provide for as a matter of national importance, the relationship of Maori with their ancestral lands (section 6e). Court cases say that ancestral land includes more than just lands associated with a marae. Lands can include those which are not within Maori ownership, but which have a spiritual or cultural link with Maori.

These provisions, together with those in section 8 (Treaty of Waitangi) and section 7(a) (kaitiakitanga), should ensure that Maori interests in respect of land are accorded more than just cursory or token regard.

In the past, the law generally said that you could not do anything with your land unless a plan said you could. Often you could not build a kaumatua flat or marae because plans generally did not make any reference to them.

Now, the Resource Management Act says you can do anything with your land unless a plan says you cannot.

A plan will regulate only those activities that are not sustainable and/or have an adverse environmental effect on the land.

Therefore, matters such as papakainga housing and development are allowed under the Act within the environmental rules set by a plan. It will be up to the district council to justify why Maori initiatives on how they use their land will not be allowed. All of the restrictions will be advertised through a district plan.

In essence then, this presumption is intended to make clear that people can use their land for whatever purpose they like, and that this is their right. Regulation should only happen where there are undesirable uses of land going on.

The Minister for the Environment said this in his speech to introduce the Act to Parliament:

> "The law should only restrain the intentions of private land users for clear reasons and through the use of tightly targeted controls that have minimum side effects. The intention is that this Act should reduce intervention to that which is clearly needed and which will achieve the purpose of sustainable management. No longer should people be subject to the often unclear dictates of centralised planning; they should have more freedom to use their land for productive purposes and should be restrained only by the need to ensure their intentions are consistent with the promotion of sustainable management."

The way is open for tangata whenua to look at issues such as the provision of more kaumatua housing or papakainga housing without facing undue planning restrictions.

Partition of Maori land

Esplanade reserves and reserve contributions

The issue of subdividing and partitioning Maori land has attracted strong condemnation from Maori people in terms of the loss of pieces of the land for esplanade reserves or reserve contributions once a partition order is made.

The difference between subdividing and partitioning should be clarified first.

Subdivision or subdividing can be described as dividing any piece of land in a way that changes the original legal boundaries. The effect could be that a piece of land becomes bigger or smaller. Unless there is an exemption under section 11 of the Act all subdivisions are subject to the provisions of the Act.

Partition is a word that applies only to Maori land. It is basically a subdivision of Maori land. However, all partitions of Maori land are dealt with under the provisions of section 432 and 432A of the Maori Affairs Act 1953.

An example might be helpful to clarify how the question of subdivision may work under the Act.

Such an example would involve land which is legally Maori land and therefore is subject to the jurisdiction of the Maori Land Court. It could include a large property which has several miles of sea frontage, a small lake, some rivers and some streams. There is a proposal to partition a piece of the land. The partition will either be sold or gifted to a member of the same hapu. This arrangement is governed by section 432A of the Maori Affairs Act 1953.

Whoever is going to make application to the Maori Land Court for partition may need to consider preliminary matters such as:

- Consent of other owners within the hapu.
- Survey of:
  - i the block to be partitioned; and/or
  - ii the block from which the partition will be taken.

They are matters largely outside the scope of the Resource Management Act. The above example of a partition is not a subdivision as defined in the Act because:

- i It is Maori land as defined under the Maori Affairs Act 1953.
- ii It is to be owned by a member or members of the same hapu to which the land relates.

Because the transaction is not a subdivision there is no requirement to obtain a resource consent from the district council to subdivide.

If this were not Maori land, a resource consent for subdivision would be required from the council. At that stage the territorial authority could take, as a matter of right, a contribution of land for public use. These are called esplanade reserves, marginal strips, or reserve contributions. Territorial authorities have the right to require:

> "a 20-metre strip along the coast, river or any lake margin from the whole of the land intended to be subdivided".

When it is Maori land under the Maori Affairs Act 1953, the rules that councils may have in their district plans as to the taking of esplanade reserves and reserve contributions are not applicable. When partitioned land is to be held by owners who are not members of the same hapu, the provisions of the district plan will apply.

If council did wish to place any conditions on the partition of land to be held within the hapu then it could do so only by making a submission to the Maori Land Court, which would then make a decision.

Section 432A of the Maori Affairs Act 1953 gives sole power to the Maori Land Court to place conditions or to require the setting apart of esplanade reserves or reserve contributions. The Court has already indicated it is likely to refer all partition applications to local authorities for comment and submission. However, the Court will be the final decision maker.

Coastline should not be lost if land is partitioned within the hapu.

When it comes to the taking of esplanade reserves or reserve contributions, the Court will probably look at all the circumstances of the partition application and things such as:

- i The area and lie of the land.
- ii The scenic beauty and value to the general public.
- iii The relationship of the applicant to the land.
- iv The alternatives available.
- v The costs to the applicant and the applicant's personal circumstances.
- vi Conservation values.
- vii The spiritual and cultural significance to iwi.

The Court will try to balance the needs of the public with the circumstances of the applicant. The Court will hold a hearing, and if it decides that an esplanade reserve or reserve contribution

is appropriate it will require a contribution to be made only from the land which is being partitioned and alienated.

The Court will not require any land to be set aside from any part that it deems to be of special historical significance or of spiritual or emotional association to iwi, hapu or whanau. This allows for the protection of waahi tapu. Any owner may apply to the Court for any parts to be designated waahi tapu.

When Maori land is transferred

The situation is different when a partition is made into parcels to be held by owners who are not members of the hapu. This arrangement is governed by section 432 of the Maori Affairs Act 1953.

If it is Maori land under the Maori Affairs Act 1953, the Maori Land Court must still consent to the partition. The partition must still go through the Court.

However, this transaction is now a subdivision in terms of the Resource Management Act 1991. The protection of section 432A is lost because land is transferring outside the hapu.

In addition to the consent of the Maori Land Court, the applicant for a partition order must also apply to the territorial authority (district council) for a subdivision consent (Parts VI and X of the Act).

Partition of Maori land within the hapu for traditional reasons is not a subdivision.

The district council can require land to be set aside and can make other conditions, such as provision for roads or the location of buildings and other conditions. It may also refuse consent if, for example, it considers the land to be erosion prone. If it refuses to consent it should provide reasons.

In this situation any land that may be required for esplanade reserves, lakes, river margin or reserve contributions can be taken only from the land that is to be partitioned, not from the larger parcel of land.

If the land to be partitioned fronts the coast, a 20 metre strip along the mark of mean high water springs could be taken (section 230). Again, this strip can be taken only from that part which is partitioned.

If there are rivers on the land, a 20 metre strip along the bank could be taken from that land which is partitioned.

However, if a district plan makes provision for a wider or lesser width than 20 metres, that will take precedence (section 233).

The esplanade reserve provisions in terms of pakeha land are being reviewed at the moment. Any changes that may happen will be open for public comment.

Comment

Recently, some Maori groups have become concerned that under section 108 a district council can still require a contribution of land in lieu of what is generally called a development levy.

Where Maori land is partitioned and ownership remains within the hapu there is no absolute right for a council to require an esplanade reserve or reserve to be set aside.

Partition will settle any issues surrounding ownership of Maori land. Esplanade reserves and reserve contributions will lie with the discretion of the Maori Land Court.

However, the problem is that there is scope for a district council to require of a Maori landowner a contribution of land where a resource consent in respect of "use" of land is applied for. The law is complex, and there are transitional provisions in the Resource Management Act and Regulations to be considered. Legal advice is needed.

It may be less complicated to deal with the situation under the Resource Management Act.

A "use" of land is defined in section 9 and would include such things as:

- *The building of a marae complex.*
- *The building of papakainga houses.*
- *The building of kaumatua houses.*
- *The reconstruction, placement, alteration, extension, removal, or demolition, of buildings or structures.*

If the district plan makes rules for such things, it is likely a consent will be required from the council – the plan will make that clear. The plan may or may not call these buildings or structures "marae", "papakainga", "kaumatua housing" or may not have any Maori words at all. The plan will probably have words such as "house", "buildings", "structures", etc.

If a resource consent is required, the provisions of the district plan will apply. Most plans will still be operating under the old law and many plans will state whether land is required for a development levy.

Councils should have new plans as required by the Resource Management Act. There are certain procedures surrounding plans which are referred to in other guides issued by the Ministry for the Environment.

A new district plan, or change to or proposal to change a plan, will have to be advertised. Tangata whenua will have to be consulted. Any requirement that a district council may make as to a contribution of land under section 108 is subject to council putting it in the new district plan. The new district plan, or change to or proposal to change a district plan, is one that all district councils at some stage in the next few years will be undertaking.

At the stage of advertising and holding a hearing on the provisions of the plan tangata whenua may lodge submissions to the district council. Maori groups have indicated they may challenge any rules that require land contribution as a condition of consent where Maori land is concerned.

These groups perceive that where Maori land is to stay within the hapu it is contrary to the Treaty to take esplanade reserve or reserve contributions at a resource consent stage.

If such rules are to be put into district plans in accordance with the Act, objectors should be aware that in addition to other provisions of the Act district councils have duties to:

- *Recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (section 6e);*

4. WATER

Generally, Maori issues concerning water fall within the scope of the Treaty provision (section 8), matters of national importance (section 6e), and kaitiakitanga (section 7).

Regional authorities have the responsibility for how water will be regulated, protected and conserved. They will do this through the provision of regional policy statements, regional plans, and regional rules.

They will control water standards, water flows, the taking, using and damming of water.

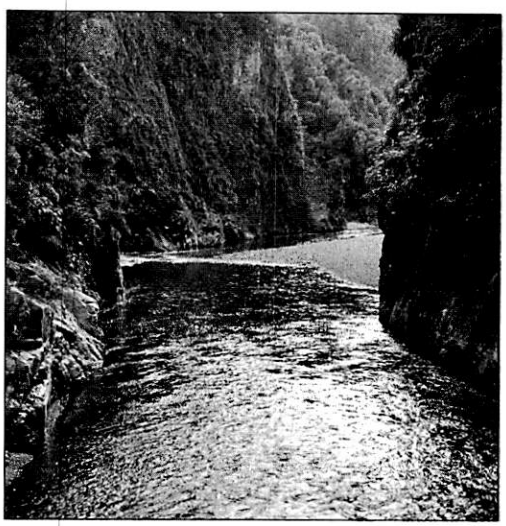
Water also includes seawater and geothermal water.

Geothermal water and energy are both defined in section 2 and section 14(3)(c), which allows a person to take, use, dam or divert any geothermal water, heat or energy if it is taken or used in accordance with tikanga Maori for the communal benefit of tangata whenua and does not have an adverse effect on the environment.

This section is important because normally use of springs (puia, waiwera, waiariki, ngaawhaa and the like) would be subject to the consent procedures.

Water conservation orders (Part IX, section 199-217)

There are, however, provisions for the making of a water conservation order to recognise and sustain amenity values and intrinsic values afforded by waters in their natural and other states. A water conservation order attempts to preserve the quality of a freshwater body. These orders tend to be made for freshwater bodies which have a significance wider than just local interest. For example, a river that flows through the rohe of two, three or more iwi or hapu might be better approached in terms of a water conservation order in some cases.



The quality of water in rivers and lakes is of paramount importance to Maori people.

Further, water conservation orders may provide for the protection of characteristics which any water body has or contributes to, and which are considered to be of outstanding significance in accordance with tikanga Maori (section 199(2)(c)). The quality of water in rivers, streams, brooks, lakes or anything which has freshwater in it can be the subject of a water conservation order if tangata whenua have concerns about it.

The Minister for the Environment makes the final recommendation (if the application is not rejected) after a process which begins with the appointment of a special tribunal. Where appropriate, the Minister will consult with the Minister of Maori Affairs and the Minister of Conservation on the membership of the tribunal.

An order can be made only over a water body. A water body is defined in section 2 of the Act. It basically means fresh water and includes geothermal waters such as puia, waiwera, waiariki, and ngaawhaa.

Notice of an application must be served on all relevant iwi authorities (section 204(1)(c)(iv). Water conservation orders take precedence over a regional policy statement (section 62(2)), regional plan (section 56(2)(b), and district plan (section 75(2)(b)).

Geothermal water and energy are both defined in section 2. Under section 14 (3)(c), geothermal water, water, heat or energy may be taken, used, dammed, or diverted if it is to be used in accordance with tikanga Maori and does not have an adverse effect on the environment.

The water conservation order process is outlined in figure 3.

Taiapure and Maori fishing issues are not covered by this Act except to the extent they should be regarded in the context of regional policy statements (section 61(2)(a)(iii)), regional plans (section 66 (2)(c)(iii)), and district plans (section 74(2)(b)(iii). Local authority planning should, however, allow for the requirements and quality of taiapure.

Regional coastal plans may also show some rules for the conservation of taiapure.

Section 69 provides guidance for certain rules relating to water quality which are more particularly described in the Third Schedule, on pages 297-298 of the Act.

National environmental standards for the quality, level or flow of water (section 43) could be set by the Governor General. Iwi must be consulted prior to any of these standards being set.

It is very important that iwi are included at all the early stages of planning for the protection and enhancement of water. Local authorities are compelled by the Act to be aware of the duty to actively protect Maori interests.

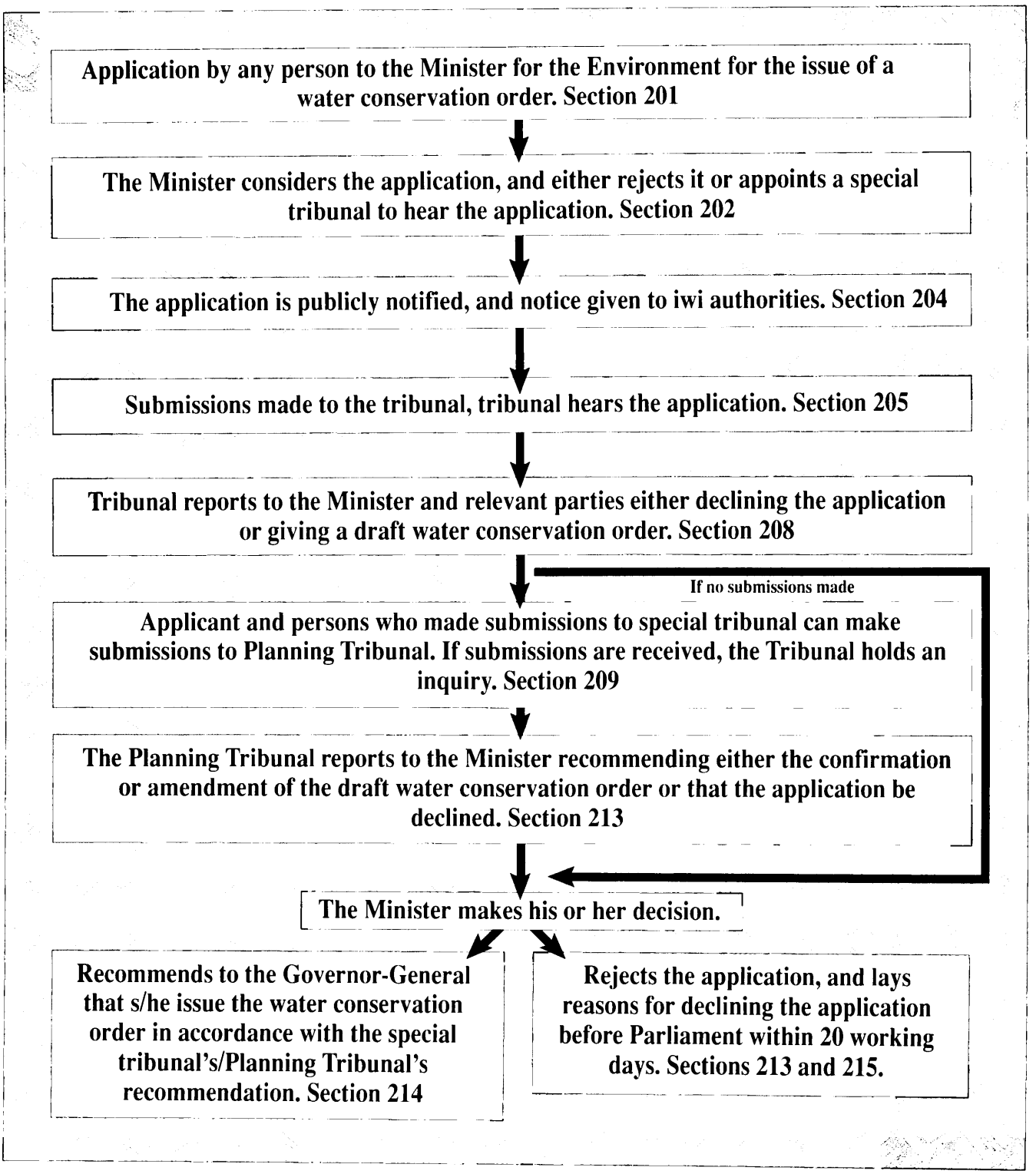
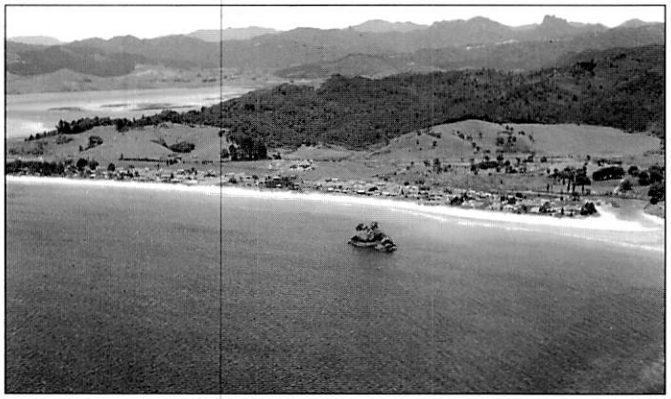


Figure 3. Scheme of water conservation orders

Coastal tendering (sections 151-165)

Part VII establishes a coastal tendering process which enables the Crown to choose between competing applicants for the same coastal space, and to maximise financial return to the Crown for the occupation, use or extraction of material in the coastal marine area.

An Order in Council, made on the advice of the Minister of Conservation, will direct regional councils not to grant coastal permits (that require occupation of the coastal marine area for longer than six months, or are for sand and shingle extraction) in respect of any land in the coastal marine area that is specified in the Order in Council unless the applicant holds an authorisation.



No Order in Council, other than one for sand and shingle extraction, will be issued until there is a proposed regional coastal plan for that region (that is, two years).

Orders in Council can be expressed to apply to all or any part of the coastal marine area of any region. There is no limit to the number that can be made. Each will specify the range of activities and the area to which the authorisation will apply. It can be revoked and replaced by subsequent Orders in Council. It lapses unless renewed, in respect of any region, two years after its approval. Exceptions to this rule where consents are in process are specified in section 164.

Once an Order in Council is in place, the Minister of Conservation will offer authorisations by public tender or, following public tender, by private treaty. The Minister will be free to accept the highest or any tender, or to decline to accept any tender, or to enter into private treaty with any tenderer, but will have to notify his/her decision to all tenderers and give reasons.

The tender is for an "authorisation"; that is, something which an applicant for certain coastal permits within a determined area could be required to hold before the coastal permit application is dealt with. Unless and until any such Order in Council is made, applicants would not be required to hold any authorisation.

The holder of an authorisation does not have any special rights to a coastal permit. The holder must still apply for a coastal permit to carry out the activity and meet all the requirements of the consent authority.

Authorisations are transferrable, but the transfer will not take effect until notice of the transfer has been received by the Minister and the appropriate regional council.

5. IWI MANAGEMENT PLANS

Regional councils and territorial authorities must have regard to relevant planning documents recognised by an iwi authority in the following circumstances:

a Preparation and change of regional policy statements (section 61(2)(a)(ii)).

b Preparation and change of regional plans, including regional coastal plans (section 66(2)(b)(ii).

c Preparation and change of district plan (section 74(2)(6)(ii).

These relevant planning documents have generally come to be known as iwi management plans. Iwi are being encouraged to develop management plans for resources within their rohe. This Act does not prescribe how they might be produced nor what they should include. They could very well be the vehicle for tangata whenua to say what their resource management needs are and how local authorities may help achieve these needs. These plans do not necessarily have to be restricted to natural and physical resources.

The Act says that local authorities cannot ignore planning documents if they are presented by an iwi authority. An iwi authority is defined in section 2 as the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

The extent to which local authorities honour these plans will also need to be read in the light of the Treaty section (section 8), the matters of national importance (section 6(e)), and kaitiakitanga (section 7(a)).

The purpose of an iwi management plan is not just to influence policy and operations of councils in simple advisory terms. It includes informing councils what the expectations of the iwi are.

Te Runanga of Ngatihine, in its plan entitled "Introductory Perspective on Resource Management", states:

> "The roles and functions of the councils, the sympathies and understandings of councillors, and the expertise and support within staff will all be critical in the process. However, the following principles must be assured:
>
> - The plan is accepted as a legitimate policy statement of a well constituted body representing a recognised Treaty partner;
> - That negotiations regarding the plan should be conducted in a manner appropriate for two equal partners;
> - The forums in which debate over the issues arising should be both marae and council chambers; the councils accept marae kaupapa, and operate in its terms".

While the Resource Management Act does not regard advice given by iwi as binding, the statutory requirements under sections 6, 7 and 8 should give weight and prominence to interests of Maori. Iwi planning documents, where available, will be an important source of information which will assist councils to interpret and fulfil their obligations with respect to Maori under sections 6, 7 and 8.

To date only a small number of iwi management plans have been prepared. One was prepared with some financial support from a regional council. There is no obligation for local authorities to provide this support, but some are contributing to the formulation of these plans.

The advantages to local authorities are clear. There would be less likelihood of challenge before the courts or tribunals, and in some cases the iwi management plan might ease the burden of consultation. An iwi management plan could also help with the consistency of the plans which regional and district councils may make for their areas. Iwi are more likely to feel included if their documents are given recognition, and that in itself must show a willingness to acknowledge the principle of partnership.

If local authorities are not willing to help financially then hei aha! Iwi must choose whether to go it alone.

6. WAAHI TAPU AND HERITAGE PROTECTION

Waahi tapu

Waahi tapu have been expressly referred to in section 6(e) and their use, development and protection is a matter of national importance. Regional and district statements and plans should take account of and provide for them where iwi have identified them (see Second Schedule).

Waahi tapu has been deliberately left undefined in the Act. This is because it should be left up to iwi to both define and disclose to resource management agencies what the scope and extent of waahi tapu is in their areas.

The duty of the resource management agencies is to recognise and provide for such places. If this information is produced at any hearing, an application could be made to have it treated as sensitive information (section 42). No unauthorised people will then be allowed to hear what it is.

Reference is specifically made to the protection of waahi tapu in section 58. That is in respect of the New Zealand coastal policy statement.

There are further references in the Eighth Schedule of the Act in respect of subdivision of Maori land (pp 326-331 of the Act). Where the Maori Land Court certifies land to be of particular spiritual or cultural significance, this land or any part of it cannot be taken by territorial authorities for reserves purposes.

Heritage protection (sections 187-198)

Another more formal way of protecting waahi tapu is to follow the heritage order process. A heritage order can be made for the purpose of protecting "any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to tangata whenua" (section 189). There is nothing to prevent such an order covering areas which include water. Although water may flow over it, a heritage order protects the site, not the water itself. It is the significance to iwi that matters. It may be an urupa, or where mauri stones are laid, or where whenua is buried, or other site.

A heritage order means that the special character of the place cannot be disturbed without the consent of the relevant heritage protection authority.

A heritage order becomes a provision in a district plan to give effect to a requirement made by a heritage protection authority (section 187).

Only a heritage protection authority can make a heritage order. These bodies include:

i Any Minister for the Crown.

ii The Minister of Maori Affairs acting on the recommendation of an iwi authority.

iii A local authority acting on the recommendation of an iwi authority.

iv The New Zealand Historic Places Trust.

v Any other approved authority as in section 188.

Territorial authorities or district councils have the power to recommend a change to the district plan and they will hold hearings.

It is important to note that the territorial authority may make a condition that the heritage protection authority reimburse any or all owners of the place for any additional costs of upkeep of the place.

An iwi authority may apply to become a heritage protection authority under section 188, but needs to be aware it may be required to compensate any owner of land, if land has to be acquired. This would be a matter of negotiation with the territorial authority and landowner, or with the landowner (section 191 (3)).

If a heritage order is made, then it is put into the district plan. From that day no person may, without the written consent of the relevant heritage protection authority named in the plan, do anything that would wholly or partly nullify the effect of the heritage order (section 193).

A chart is provided for showing the heritage protection process is shown in figure 4.

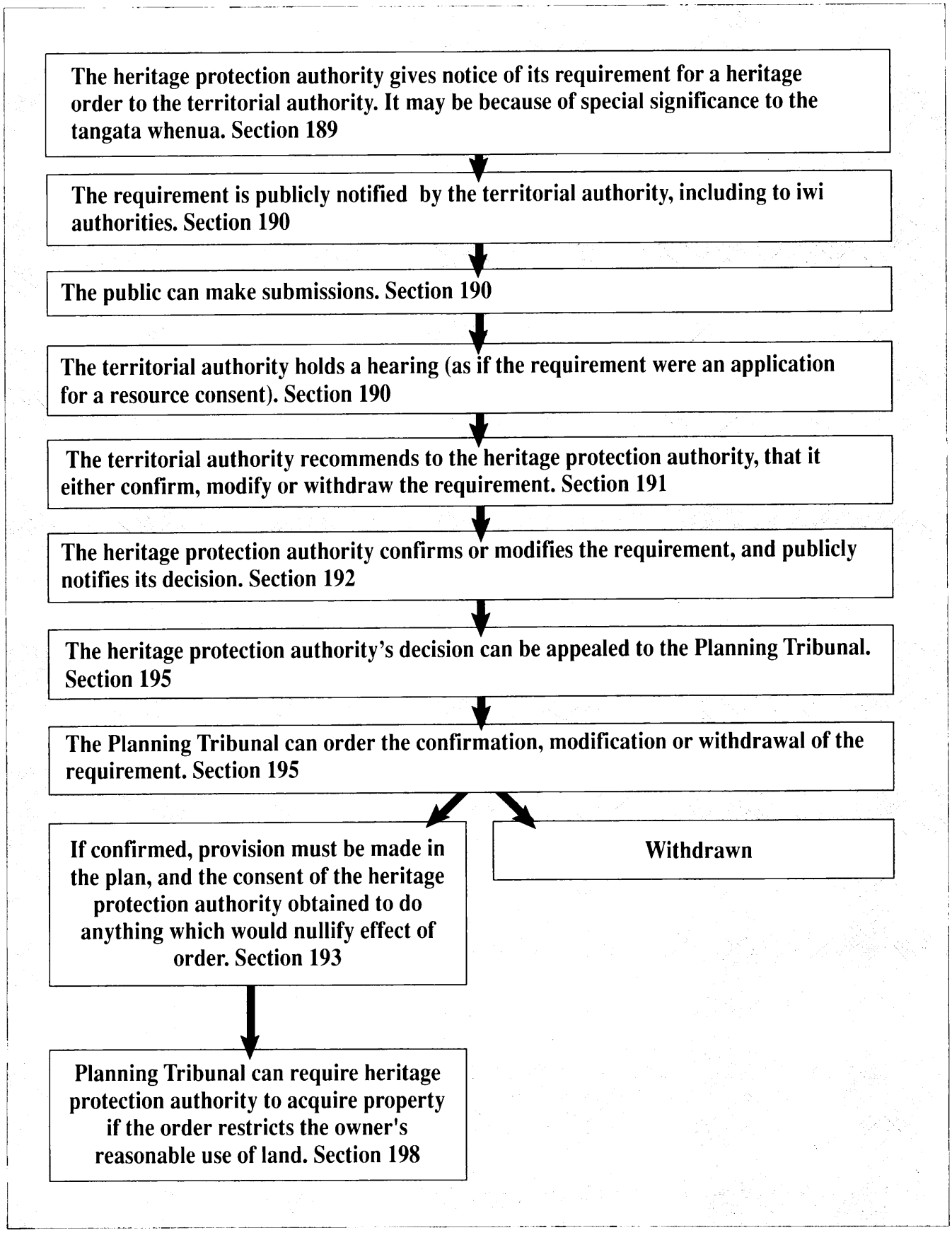


Figure 4: Scheme of heritage orders

APPENDIX A
STRUCTURE OF THE ACT

The structure of the Resource Management Act is as follows:

Part I: This Part sets out matters of interpretation and definition of terms which will assist with the interpretation of the Act. It also establishes the way the Act binds the Crown (section 2-4).

Part II: This Part defines the purpose of the Act as the promotion of sustainable management. It sets out what this concept means. In addition it lists matters of national importance and other matters which will assist those exercising functions and powers to achieve the purpose of the Act. It includes reference to the Treaty of Waitangi, the relationship of Maori to their lands, water, sites, waahi tapu and other taonga, and also kaitiakitanga (sections 6-8).

Part III: This Part forms the basic statement of individual rights and responsibilities relating to resource management, in terms of the use of land, air, water and coastal areas (sections 9-23).

Part IV: This Part sets out the resource management functions of territorial, regional and central government and provides guidance on the performance of these functions. (section 24-42).

Part V: This Part provides the framework for policy statements and plans, and links through to the First Schedule (process for plan preparation: section 43-86)

Part VI: This Part establishes the basic features of resource consents, the process for consent consideration and related issues such as transferability and review of consent conditions (sections 87-150).

Part VII: This Part creates special procedures relating to coastal tendering (sections 151-165).

Part VIII: This Part creates special procedures relating to designations and heritage orders (sections 166-198).

Part IX: This Part sets out special procedures for water conservation orders (sections 199-217).

Part X: This Part sets out special procedures relating to subdivision land and reclamations (sections 218-246).

Part XI: This Part carries over and extends a number of the existing powers and functions of the Planning Tribunal (sections 247-308).

Part XII: This Part establishes a variety of means, including declarations, abatement notices and enforcement orders, for the enforcement of regulations, plans and consents (sections 309-343).

Part XIII: This Part provides for the establishment of a Hazards Control Commission (sections 344-351). This part is not in force yet and neither is the Commission.

Part XIV: This Part deals with miscellaneous matters, including the power to make regulations (sections 352-363).

Part XV: This Part provides for the transition from the existing law to the new legislation (sections 364-433).

Schedules: Additional provisions to clarify obligations and repeal or amend legislation.

APPENDIX B
REFERENCE IN THE ACT TO MAORI TERMS

Part I

Section 2	(1)		Definitions including maataitai, mana whenua, tangata whenua, taonga raranga, tauranga waka, tikanga Maori, iwi authority, kaitiakitanga.

Part II

Section 6		(e)	Relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga.
Section 7		(a)	Reference to kaitiakitanga.
Section 8			Duty to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)

Part III

Section 11	(1)	(c)	Reference to Maori Affairs Act re subdivisions and State Owned Enterprises Act 1986 s27D.
	(2)		Reference to Maori Affairs Act 1953.
Section 14	(3)	(c)	Reference to geothermal water and tikanga Maori.

Part IV

Section 33	(1)	(a)	Transfer of functions by local authority to iwi authority.
Section 39	(2)	(b)	Reference to tikanga Maori and receiving evidence in Maori.
Section 42	(1)	(a)	Protection of information to avoid serious offence to tikanga Maori and disclosure of the location of waahi tapu. Part V Section 45
	(2)	(h)	Reference back to Treaty of Waitangi in the context of statements of Government policy.
Section 58		(b)	Refers to protection of waahi tapu, tauranga waka, mahinga mataitai and taonga raranga in New Zealand coastal policy statements.
Section 61	(2)	(a)	(ii) Regional authority to have regard to management plans prepared under any other Act (for example, iwi management plans), and taiapure fisheries when preparing regional policy statements.
Section 62	(1)	(b)	Regional policy statements to state matters of resource management significant to iwi authorities.
Section 65	(3)	(e)	Regional council to consider preparing a regional plan where tangata whenua have concerns about their cultural heritage re natural and physical resources.
Section 66	(2)	(b)	(ii) Regional plans and iwi management plans and management of taiapure fisheries.
Section 64	(2)	(b)	(ii) District plans and iwi management plans and taiapure fisheries.
Section 93	(1)	(f)	Notification of iwi authorities re resource consent applications.
Section 140	(2)	(h)	Treaty reference for Minister's power of call in.

Part VII

Section 187		(a)	(ii) Refers to Minister of Maori Affairs as heritage authority.
		(b)	Refers to iwi authority.
Section 189	(1)	(a)	Preserving or protecting an area of significance to tangata whenua.
Section 199	(2)	(c)	Refers to protection of water body considered to be significant to Maori.
Section 204	(1)	(c)	(iv) Iwi authority to be notified of application to special tribunal.

Part X

Section 249	(2)		Reference to Maori Land Court Judge eligible as alternate Planning Judge
Section 250	(1)		Minister of Maori Affairs may recommend appointment of Planning Judge or alternate Planning Judge.
Section 253		(e)	Planning Tribunal members to have a mix of knowledge and experience, including Treaty of Waitangi and kaupapa Maori matters.
Section 254	(1)		Minister of Maori Affairs may support appointment of Planning Commissioner.
Section 269	(3)		Planning Tribunal to recognise tikanga Maori where appropriate.
Section 276	(3)		Refers to evidence in Maori
Section 353			Notices and consents re Maori land.

SCHEDULES

First Schedule
Part I

Clause 3	(1)	(d)	Local authority to consult with tangata whenua when preparing policy statements.
Clause 5	(4)	(f)	Notification of proposed policy statements to tangata whenua.
Section 20	(4)	(f)	Provision of copy of operative coastal plan to tangata whenua.

Second Schedule
Part I

Clause 4	(c)	Reference to waahi tapu in regional policy statements and plans.

Part II

Clause 2	(c)	Reference to waahi tapu in district policy statements and plans.

Fifth Schedule

Clause 24	(d)	Provisions requiring the Hazards Control Commission to operate a personnel policy that includes provisions which recognise the aspirations of Maori people. This is not yet in force.

Eighth Schedule

Part I	Reference to the Maori Affairs Act 1953.

APPENDIX C
EXAMPLES OF APPLICATIONS AND SUBMISSIONS

Example of a resource consent application

Sections 9, 11, 12, 13, 14, 15 set out all the restrictions on the use of land, subdivisions, the coast, lakes and rivers, water, and discharges into the environment.

It is not possible to go through an example of how processes may work for every restriction, so what may be more helpful is to use some examples of the above in the context of making an application for a resource consent or a submission to a resource consent.

Restrictions on the use of land are prescribed in section 9. Regional and district plans will state what cannot be done with land. It should be remembered these plans will be regulating only the effects of a use. If it is not in a plan then it is allowed as of right.

The plans will also outline activities which require the consent of the local authority. Some communications with the planning departments of the local authorities concerned should assist with any requirements they have.

Our example might focus around a resource consent for a particular use of land. This is guided by section 9 and sections 88 onwards.

At some stage or other an application will to be sent to council if a consent is to be applied for. There is a form which must be followed and it is set out on the following page. Councils will have copies themselves. Other information an applicant may want to include may be added to them.

Application for a Resource Consent under Section 88 of the Resource Management Act 1991

To: [Name of local authority]

I, [Full name and address of applicant] apply for the resource consent(s) described below:

1 The names and addresses of the owner and occupier (other than the applicant) of any land to which the application relates are as follows:

2 The location to which this application relates is:

[Describe the location in a manner which will allow it to be readily identified; for example, the street address, the legal description, the name of any relevant stream, river or other water body to which the application may relate, proximity to any well-known landmark, the grid reference (if known), etc.]

3 The type of resource consent(s) sought is/are:

[For any activity in the coastal marine area, specify coastal permit. Otherwise specify one of the following: land use consent, subdivision consent, water permit, or discharge permit].

4 A description of the activity to which the application relates is:

5 The following additional resource consents are required in relation to this proposal and have or have not been applied for:

6 I attach an assessment of any effects that the proposed activity may have on the environment in accordance with the Fourth Schedule to the Act [In the case of a controlled activity, such an assessment is not required unless otherwise specified in the relevant plan].

7 I attach other information (if any) required to be included in the application by the district or regional plan or regulations.

8 [Where the application is for a subdivision consent] I attach information in accordance with section 219 of the Act sufficient to adequately define -

a The position of all new boundaries:

b The areas of all new allotments [Not required for cross-leases, company leases, or unit plans]:

c The location and areas of new reserves to be created, including any esplanade reserves to be set aside on a survey plan under section 230 of the Act:

d The location and areas of land below mean high water springs of the sea or of any part of the bed of a river or lake which is to be vested in the Crown under section 235 of the Act:

e The location and areas of land to be set aside as new road.

9 [Where the application is for a coastal permit for reclamation] I attach information in accordance with section 88 (7) of the Act to show the area proposed to be reclaimed, including its size and location, and the portion of that area (if any) to be set apart as an esplanade reserve.

_____ _____

[Signature of applicant or person authorised to sign on behalf of applicant] [Date]

Address for service of applicant: _____

_____

Telephone No: _____ Fax No: _____

Annexures:

a An assessment of effects on the environment in accordance with the Fourth Schedule to the Act [If required]:

b Any other information required by the district plan or regional plan or Act or regulations to be included:

c [For subdivision consents only] Other information in accordance with section 219 of the Act:

d [For coastal permits for reclamation only] Other information in accordance with section 88 (7) of the Act.

Example of a resource consent submission

The procedure for making submissions on an application for a resource consent is slightly easier.

Most applications for a resource consent should be advertised in the local paper. Runanga or iwi authorities should expect to get personal notification of all applications that affect them.

The notice will specify a closing date for submissions, which may support or object to the proposal, express reservations about it, or be non-committal.

Talking with the planning departments of the relevant local authorities should help resolve any difficulties with how to make a submission.

A written submission should follow all of the provisions in section 96 and must include the following:

1 The reasons for making the submission and the decision that the person making the submission wishes the consent authority to make (if known), and the general nature of any conditions sought.

2 Whether or not the person making the submission wishes to be heard in respect of the submission. You could give an indication of whether evidence will be given in Maori and if you want to bring your own interpreter.

3 Any other matter prescribed in the regulations made under the Act.

The submission could contain any other matter that the person making it thinks would be relevant; for example, a point-by-point response to all of the matters raised in the application.

A copy of the submission must be delivered to the person who is seeking the resource consent and also the consent authority.

An example of a submission could be similar to the following:

Submission on a Publicly Notified Proposed Policy Statement or Plan under Clause 6 of the First Schedule to the Resource Management Act 1991.

To [Name of local authority] _____

Submission on [Name of proposed policy statement or plan] _____

Name: [Full name] _____

Address: [Full postal address] _____

1 The specific provisions of the proposed policy statement or plan that my submission relates to are as follows:

2 My submission is that:

[State in summary the nature of your submission. Clearly indicate whether you support or oppose the specific provisions or wish to have amendments made. Give reasons].

3 I seek the following decision from the local authority: [Give precise details].

4 I do (or do not) wish to be heard in support of my submission.

5 If others make a similar submission I would (or would not) be prepared to consider presenting a joint case with them at any hearing.

_____ _____

[Signature of person making submission or person authorised to sign on behalf of person making submission] [Date]

Address for service of person making submission: _____

Telephone No: _____ Fax No: _____

Another way of presenting a submission is the following:

In the Matter of the Resource Management Act 1991
A Submission to an Application for Resource Consent

To The Chairperson/Mayor
XY Regional/District Council
Bag XY

Private

1 I/We "AB" and "CD" of "EF, Marae Committee/Trust/Runanga/Runanganui, etc" wish to make the following submission.

2 I/We have received/read a copy of the application by "RJ" of "XY" for a water rights consent and a land use consent.

3 The application for the resource consent concerns the taking of water and discharging into the "TS river" for the purpose of a tourist resort which includes accommodation for 150 persons in a high rise building and includes restaurant, hotel, bars, conference facilities and car parking.

4 I/We object to the granting of the consent on the following grounds:

a We were never properly consulted by the applicant.

b The water they wish to use cuts right across areas we consider are waahi tapu.

c The land they wish to develop contains sites which are culturally important to us.

In support of this objection I/We refer to the following sections in the Resource Management Act.

Section 8 The duty to take into account the principles of the Treaty of Waitangi.

Section 6e The duty to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Section 7a The duty to have particular regard to kaitiakitanga.

5 I/We request the opportunity to be heard. I/We will be represented by "Horace Rumpole", Solicitor whose address for service is .....

6 I/We wish to present evidence by kaumatua and kuia [in Maori, translated by ...] as to the significance this water and land holds to us.

7 I/We may be willing to consider conditions being placed on the consent. These conditions are:

- The applicant to come back and consult with us.
- The applicant to take water in a place downstream from our waahi tapu.
- The significant sites on the land to be protected either by heritage order under section 189 (1)(a) or by covenant from the applicant that these will be preserved.

8 I/We object to the discharge into water as being totally unacceptable. I/We suggest there are other more practicable ways to do this.

9 I/We are willing to disclose those areas of waahi tapu over the water and the land as long as the information is protected under section 42 of the Resource Management Act.

These are only examples of how you could go about making a submission. They can be changed, modified or altered according to what particular issues there are. Nor do they need to be followed at all. Local authorities may have their own requirements, or you may have other ways of writing a submission.

APPENDIX D
EXAMPLE OF A DEVELOPMENT PROPOSAL

The following is a working example of some of the issues that may crop up in a resource management situation. The example is fictitious, but may have similarities to some real situations.

The Ngati Kotahi Runanganui wishes to develop a large complex for the economic and cultural benefit of Ngati Kotahi descendants. The land covers an area of 40 hectares on rural land, with rich soil, not far from a city which has a high tourist throughput. The land fronts on to the coast and its boundary includes a lengthy coastline.

Most of the land is Maori land under the Maori Affairs Act 1953. However, part of the land is held under the pakeha system of freehold title to property. A neighbour has two separate pieces of land which are not Maori land, but have separate freehold titles. There are rivers and streams and an inland lake. On the neighbour's properties there are wetlands and an old pa site. The map is shown in figure 5.

The proposal includes provision for:

- Papakainga housing.
- Marae, toilet and shower blocks, and wharekai.
- Two or three small retail shops.
- Kokiri buildings.
- Prefabs for training facilities such as whare whakairo and access modules.
- Kaumatua and papakainga housing.
- Commercial accommodation.
- Development of an industrial activity that is likely to have negative environmental effects such as noise or smell.
- Tourist groups to make daily visits.
- Domestic animals whose intended destination is the meat works.

The owner of the adjoining "land B" has agreed to sell that land to Ngati Kotahi. They will amalgamate the land with the land that they already hold under freehold title, "land A", (that is, the land held under the pakeha system). The owner of "land C" will not sell that land to Ngati Kotahi. On that land is an old pa which has strong ties to Ngati Kotahi.

The Ngati Kotahi also wish to use the coastal area, by starting an oyster farm and pleasure boat cruises.

There is a part of the Maori land which the Ngati Kotahi wish to allow the public access to, for their enjoyment. This land includes a block of indigenous forest.

The river that runs through the Maori land is considered by Ngati Kotahi as having outstanding significance.

A resource document, the iwi management plan, has already been presented to the relevant regional and territorial authorities. The document includes a commentary on the intentions Ngati Kotahi have about the development of their land. It also identifies general areas of waahi tapu. The pa site on "land C" is specifically identified as being waahi tapu.

The district plan declares the effects of the kinds of land uses envisaged to have an adverse environmental effect. It would be necessary to follow the consent procedures.

A key point is to look at the exact wording of the plan provisions. What is it that is not allowed? The regional plan will state the position regarding the taking, using, damming and discharge into water. The district plan will talk about matters to do with the use of land. The regional coastal plan will state matters that concern the coastal marine area.

The issues that arise from this example are many. It would be useful to isolate as many as possible.

What this example highlights is the need for reduction of barriers that inhibit Maori people from developing and using their resources in a way they can control.

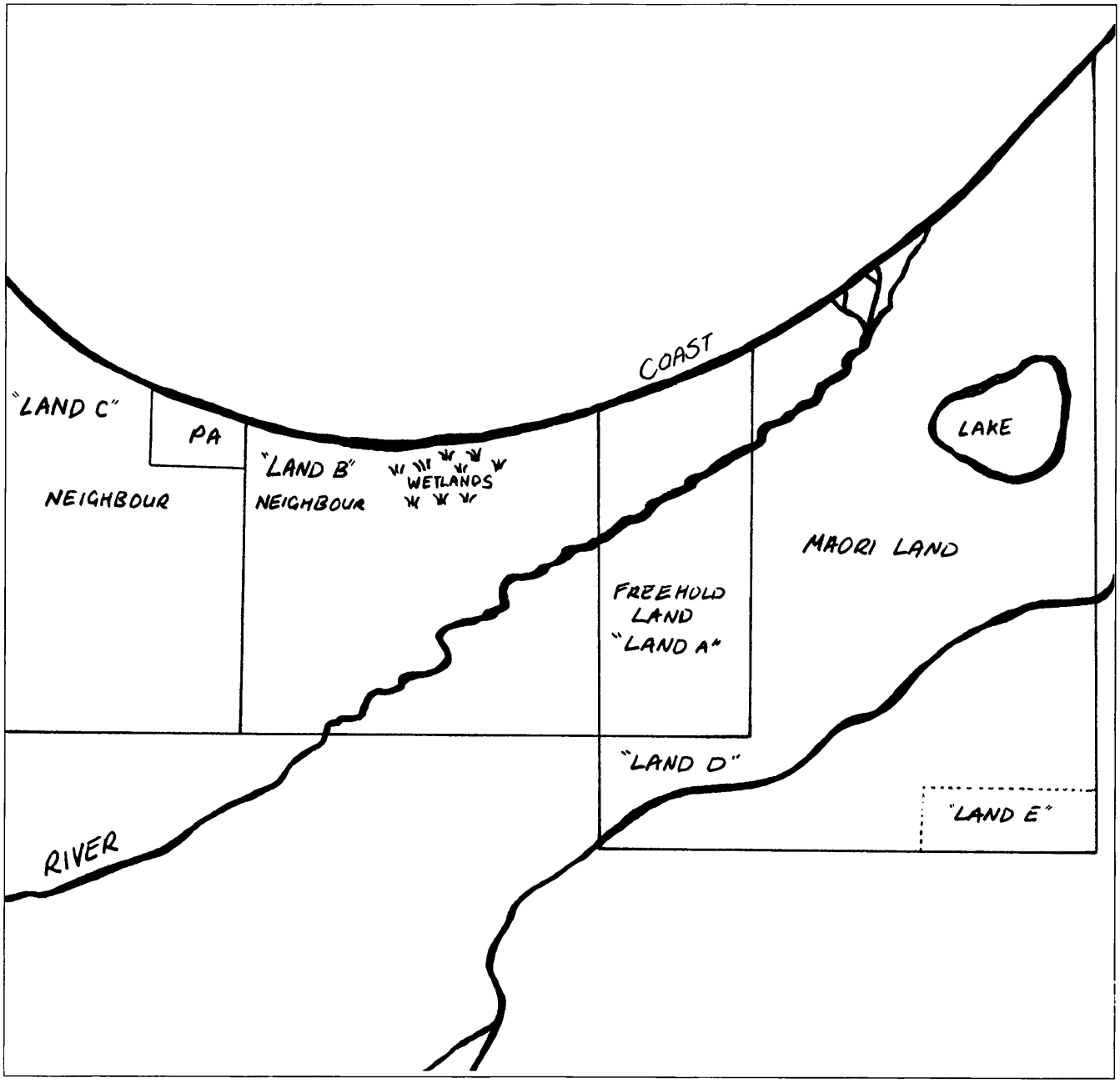


Figure 5: Map of land and properties.

Although the Resource Management Act, for example, does not guarantee papakainga houses, it guarantees a process that requires reasons to be given for not allowing them.

The Treaty of Waitangi (section 8) and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (section 6e) are matters which clearly relate to an example like this.

Some of the issues which can be easily identified from this example are:

- Developments of resources for the benefit of the iwi or hapu or whanau. Treaty issues.
- Sustainability. Are the planned activities sustainable uses of resources? Can resources cope with the uses that are planned?
- The quality of the land which is rural.
- The coastal environment and how it will be affected.
- Maori land and subdivision or partition.
- Esplanade or reserve contributions.
- Amalgamation of freehold land which is not Maori land.
- The protection of wetlands and waahi tapu.
- The protection and enhancement of freshwater.
- Marine farming and fisheries.

Development of resources for the benefit of iwi, hapu, whanau and Treaty issues.

This example is one of iwi development; that is, the progress of iwi towards goals which they set for themselves. Iwi development in these times not only implies progress towards goals but also involves the reduction of barriers which impede that progress. Any unwillingness on the part of consent agencies, such as local authorities, to amend their current planning regimes is a serious barrier to Maori people occupying their whenua in peace, and achieving their goals.

The question is whether the Resource Management Act is a vehicle for reducing barriers in the critical area of use of resources for developments and also the protection of those resources which are important to tangata whenua. While it may not hold all the answers for development, it clearly does reduce barriers by ensuring greater sensitivity to Maori issues and provision for reducing barriers.

There are Treaty obligations, and the Act requires all people acting under it to take account of the principles of the Treaty (section 8). The courts have already identified some principles. These include:

- The duty to actively protect Maori people in the use of their land and waters.
- The principle of partnership.
- The duty to act in the utmost good faith. (*New Zealand Maori Council* case. See Appendix B for reference).

If these matters are ignored by decision makers, then the appeal authorities such as the Planning Tribunal, High Court and Court of Appeal are open to tangata whenua to challenge their responses.

Sustainability

The overall purpose of the Act is sustainable management of natural and physical resources. This will be the overriding thought in decision makers' minds when they look at any situation which is affected by this Act.

They should also address the Treaty issues, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. Kaitiakitanga is also another matter which they should be prepared to address.

Sustainability has been dealt with at the beginning of this publication. The main issues really revolve around whether the environment can cope with all the types of activities that are likely to take place. Sustainability includes the balancing of individual rights and public welfare, eliminating or minimising conflicts between uses, protecting environmental quality, allowing for the needs of future generations and, taking into account economic and social factors.

One possible way of balancing these interests is to look at the likely benefits to people and communities against the detriment to the environment. Clearly this example shows many benefits to Maori development, such as improved employment and training opportunities, housing, tourism, education and economic development.

The coastal environment and how it would be affected. Maori land subdivision and partition. Amalgamation of freehold land

Planning instruments affecting the coast will be the New Zealand coastal policy statement (which will be released by October 1992) and regional coastal plans. The Minister of Conservation can make rules providing that certain activities are restricted coastal activities which will require the consent of the Minister before they can take place. This may include things such as what structures can be erected in the coastal marine area. While marine farming, such as the oyster farm, will be the concern of the Ministry of Agriculture and Fisheries, any structures that may be needed would probably be the within the jurisdiction of the Department of Conservation.

The Minister's requirements will be put into regional coastal plans, which can be viewed at regional authority offices.

One of the provisions that may affect Maori is the requirement to protect the coast from inappropriate subdivision (section 5a).

In this example, Ngati Kotahi wish to amalgamate "land A" with "land B". Both are freehold title and that makes it a subdivision under Part X of the Act (sections 218-246).

An esplanade reserve along the coast of "land A" and "land B" can be taken up by the district council under section 230 of the Resource Management Act. Similarly, a marginal strip could be taken from the river. These would vest in the territorial authority for public use.

"Land D" being Maori land, is subject to the jurisdiction of the Maori Land Court.

If Maori land is partitioned into parcels to be held by members of the same hapu, then only the Maori Land Court can make any order for esplanade reserve or marginal strip requirements.

The Maori Land Court can take advice from territorial authorities but the decision as to whether esplanade reserves or marginal strips are taken in respect of Maori land lies with the Maori Land Court. Furthermore if land is to be taken for esplanade or marginal strips, it can be taken only from the Maori land that is partitioned. (For more information, Maori Land Court registries are referred to in Appendix F).

Note that "land A" and "land B" could lose land along all the coastal frontage and river, because they are freehold land, and the territorial authority has the power to acquire it when an amalgamation or other subdivision occurs.

Where Maori land is partitioned to be held by owners outside the hapu, then territorial authorities can require esplanade reserves or reserve contributions as of right. The partition must still go through the Maori Land Court, because "land D" is Maori land (see Figure 5). The territorial authority can require contributions to be made only from "land E" – the partitioned part of "land D".

In all cases involving Maori land, no land can be taken for esplanade reserves or reserve contributions where it is designated as waahi tapu by the Maori Land Court.

The protection of wetlands, enhancement of freshwater and waahi tapu

This example refers to wetlands in "land B". Section 6a makes it a matter of national importance that the wetlands be preserved. There may be something in the plans that protects them. If there is a special interest in having them protected, tangata whenua may apply to the Minister for the Environment to have a water conservation order placed over it.

A water conservation order is a method of protecting the quality of the water by placing conditions over what can be done to it. Some conditions may include the prior consent of tangata whenua. The water conservation order can be a local one which affects just part of the water body. Or it can be an order which covers the whole water body, including all tributaries and all water back to the source.

This example also includes reference to an old pa site on land which is not owned by Maori. That is on "land C". If the owner has no particular interest in preserving that pa site, or indeed any other waahi tapu outside of Maori control, then there are other options available.

Ngati Kotahi could apply to the territorial council to include the pa site in their district plan as a waahi tapu which should be protected. This approach could be made under section 6e. However, there is no real incentive for the owner of "land C" to protect the pa, nor is there any real legal deterrent to not looking after it.

Another option is to ask the territorial authority to make a heritage order which will protect the pa site or any other waahi tapu.

Ngati Kotahi may wish to ask the Minister of Maori Affairs to require a heritage order be placed on the site. The Minister will advise the local authority.

Another option is to apply to the Historic Places Trust to use its legislation to protect the pa site.

A heritage order has advantages in that it has the force of law. There are some situations however, where compensation may have to be paid to the owner of land, such as where the heritage is a large area or involves the purchase of a building or structure.

Marine farming and fisheries

If development of the coast is to include fisheries, then it is important to have knowledge of the Marine Farming Act, the Maori Fisheries Act, the Fisheries Act and regulations administered by the Ministry of Agriculture and Fisheries.

The regional coastal plan produced by each regional council will also affect the various responsibilities held by the Ministry of Agriculture and Fisheries, the Department of Conservation, and other agencies involved in the fisheries field.

APPENDIX E
APPLICATION AND SUBMISSION PROCESSES

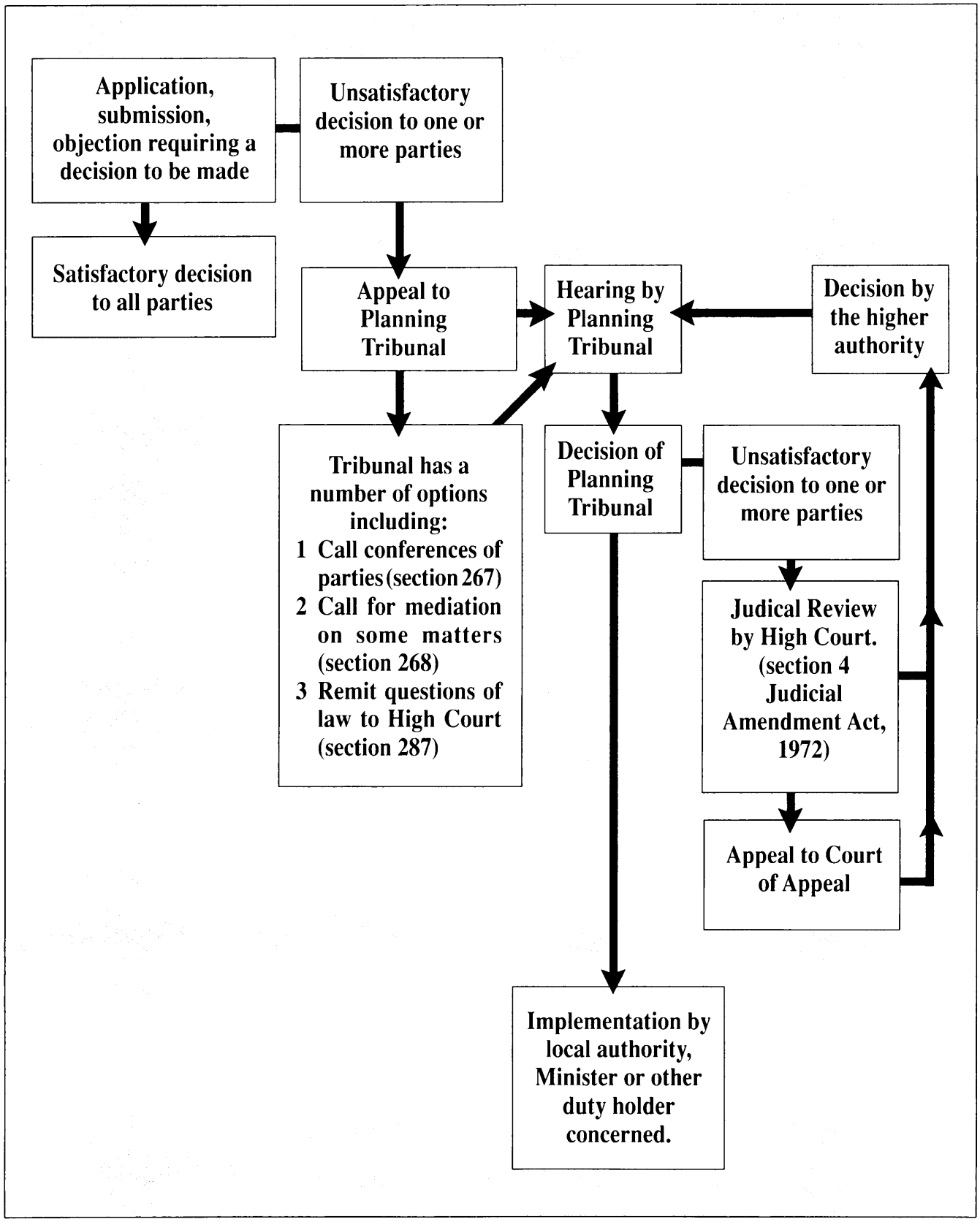


Figure 6: Possible application and submision processes of seeing through an issue under the Resource Management Act.

APPENDIX F
STATEMENT BY SURVEYOR-GENERAL

The following statement has been issued by the Department of Survey and Land Information in the interest of assisting iwi under the Resource Management Act and other related issues.

> "...I should perhaps mention that my department has had many years of involvement in Maori land information and development issues, support to the Maori Land Court, and in land subdivision and development activity generally, and would like to think that these resources and expertise could be made available to iwi. I have accordingly included a statement at the end, that we consider to be relevant and beneficial to iwi, on general sources and accessing of land information
>
> A J Bevin
> for Director-General/Surveyor-General"

The source of land information

"In seeking to develop their land and other resources, iwi authorities and Maori in general, should be aware of whom to consult and from whence to obtain the necessary information. The Act puts the onus on the local authority to gather information and to monitor and keep records and information at its principal and/or district offices.

The Department of Survey and Land Information, the Department of Justice (through its land registries and the Maori Land Court, Valuation New Zealand and territorial local authorities are the principal sources of land and title information which is vital for the efficient management of any resource.

The information held is both current and historic and includes plans, maps, aerial photographs, district planning data and valuation assessments as well as the land registration documents.

In the first instance Maori and/or iwi may consult any district office of the Department of Survey and Land Information to ascertain what information is available from that office or whether it may be obtainable from another district office or head office. An early approach or consultation may point out or clarify issues or problems of land title or boundary definition. The likely costs of obtaining the required information can be indicated and therefore budgeted for if necessary.

Many records held by iwi authorities appear to be manually produced and have not necessarily been recorded in the context for the cadastral system or the topography of the land. The Department of Survey and Land Information is able to provide the linkage between these informal records and the more formal documentation required by the Act for policy statements or regional/district plans.

An early referral by Maori and/or iwi to the basic topographic and cadastral information of the area to be examined will assist the owners and their consultants to identify the basic characteristics of the land and incorporate the other information that may be required, such as soil, types, land use and slopes, vegetation, buildings and services, and access."

APPENDIX G
AGENCIES

There are agencies which have indicated they are willing to assist iwi in whatever way they can to understand the Act. The following names and addresses are supplied as further contacts. Some may not be more directly relevant to resource management but can certainly assist in wider issues. An (M) indicates there is a Maori unit or secretariat within the office. An (S) indicates there are also satellite offices or offices which are based outside Wellington.

Agency	Role
Ministry for the Environment (M) (S) PO Box 10-362 Wellington Phone (04) 473 4090	Advice on the Act generally
Department of Conservation (M) (S) 59 Boulcott Street PO Box 10-420 Wellington Phone (04) 471 0726	Advice on coastal policy and Minister of Conservation's responsibilities.
Waitangi Tribunal Division The Registrar PO Box 10-044 Wellington Phone (04) 472 1709	Advice on claims by Maori to the Tribunal
Ministry of Agriculture and Fisheries Private Bag Wellington Phone (04) 472 0367	Maori fisheries matters
Parliamentary Commissioner for the Environment PO Box 10-241 Wellington Phone (04) 471 1669	A Crown body whose responsibilities include monitoring the response of government agencies to Maori resource issues.

Maori Land Court offices

For advice on subdivision of Maori land and designation of waahi tapu on Maori land.

Head Office		Kemara Tukukino	PO Box 180 Wellington Charles Fergusson Bldg 4th Floor, Bowen Street	(04) 472 5980 (04) 499 4410 fax
955	Whangarei	Tina Ngatai	PO Box 1764 5-7 Walton Street	(09) 438 1088 (09) 438 9583 fax
956	Hamilton	Lindsay Wilson, Peter Bradley	PO Box 620 Cnr Knox & Anglesea St Hamilton	(07) 838 0970 (07) 839 0990 fax
957	Rotorua	Henry Colbert, Roy Hunt	PO Box 3012 Hauora House Annex	(07) 348 9509 (07) 839 0990 fax

958	Gisborne	Mike Fryer, Godfrey Pohatu	PO Box 849 Lowe Street	(06) 867 8200 (06) 867 8811 fax
959	Hastings	Mike Fromont, Peter Bloor	PO Box 134 Cnr Lyndon Road & Warren Streets	(06) 876 2962 (06) 876 2962 fax
960	Wanganui	Eddie Moses, Caroline Green	PO Box 7178 Cnr Ingestre & Hiss Streets Wanganui	(06) 345 8188 (06) 345 8174 fax
961	Christchurch	Mana Te Kanawa, Simon Hadfield	PO Box 2200 76 Peterborough Street Christchurch	(03) 654 182 (03) 662 834 fax
962	Turangi	Eddie Moses, Rebecca Biddle	Turangitukua House Atirau Road PO Box 273 Turangi	(074) 60 183

APPENDIX H
BIBLIOGRAPHY

Boast, R P 1989: **The Treaty of Waitangi – A Framework for Resource Management Law,** New Zealand Planning Council, Wellington.

Brooker and Friend 1990: **The Impact of the Treaty of Waitangi on Government Agencies,** Brooker and Friend Limited for the Ministry of Agriculture and Fisheries, Wellington.

Department of Justice 1989: **Principles for Crown Action on the Treaty of Waitangi,** Department of Justice, Wellington.

James, B 1991: **Organisational Responses to the Treaty of Waitangi – The Wellington Regional Council's Iwi Participation Process.** Presented at the Regional Resources Futures Conference in Hamilton – 27-29 1991, Wellington Regional Council, Wellington – unpublished report.

Kelsey, E J 1989: **The Principles of the Treaty of Waitangi,** Unpublished Report for Ministry for the Environment, Centre For Resource Management, Lincoln University, Canterbury.

Kelsey, E J 1990: **A Question of Honour – Labour and the Treaty,** Allen and Unwin, Wellington.

Minhinnick, N K 1989: **Establishing Kaitiaki,** The Print Centre, Auckland.

Minister of Maori Affairs 1988: **A Discussion Paper on Proposals for a New Partnership,** Minister of Maori Affairs, Wellington – "Te Urupare Rangapu".

Ministry for the Environment 1991: **Resource Management: Consultation with Tangata Whenua,** Ministry for the Environment, Wellington.

Parliamentary Commissioner for the Environment 1988: **Environmental Management and the Principles of the Treaty of Waitangi – Report on Crown Response to the Recommendations of the Waitangi Tribunal 1983-1988,** Parliamentary Commissioner for the Environment, Wellington.

Renwick, W Royal Commission on Social Policy: 1990 **The Treaty Now,** Government Print, Wellington.

1988: **The Royal Commission on Social Policy,** The Royal Commission on Social Policy, Wellington.

Te Runanga o Ngatihine 1990: **An Introductory Perspective to Resource Management Planning**

Tau, M T et al 1990: **Te Whakatau Kaupapa – Ngai Tahu Resource Management Strategy for the Canterbury Region,** Aoraki Press, Wellington.

Waitangi Tribunal 1984: **Kaituna River Report,** The Waitangi Tribunal, Department of Justice, Wellington.

Waitangi Tribunal 1985: **Manukau Report,** The Waitangi Tribunal, Department of Justice, Wellington.

Waitangi Tribunal 1988: **Mangonui Sewerage Report,** The Waitangi Tribunal, Department of Justice, Wellington

In addition the following cases from Court decisions are cited for further reference:

New Zealand Maori Council v. **Attorney General** [1987] NZLR 642 (Court of Appeal).

Huakina Development Trust v. **Waikato Valley Authority and Bowater** (1986) 12 NZTPA 129 (High Court).

Royal Forest and Bird Protection Society (Inc) v. **W. A. Habgood Ltd.** (1987) 12 NZTPA (High Court) 76.

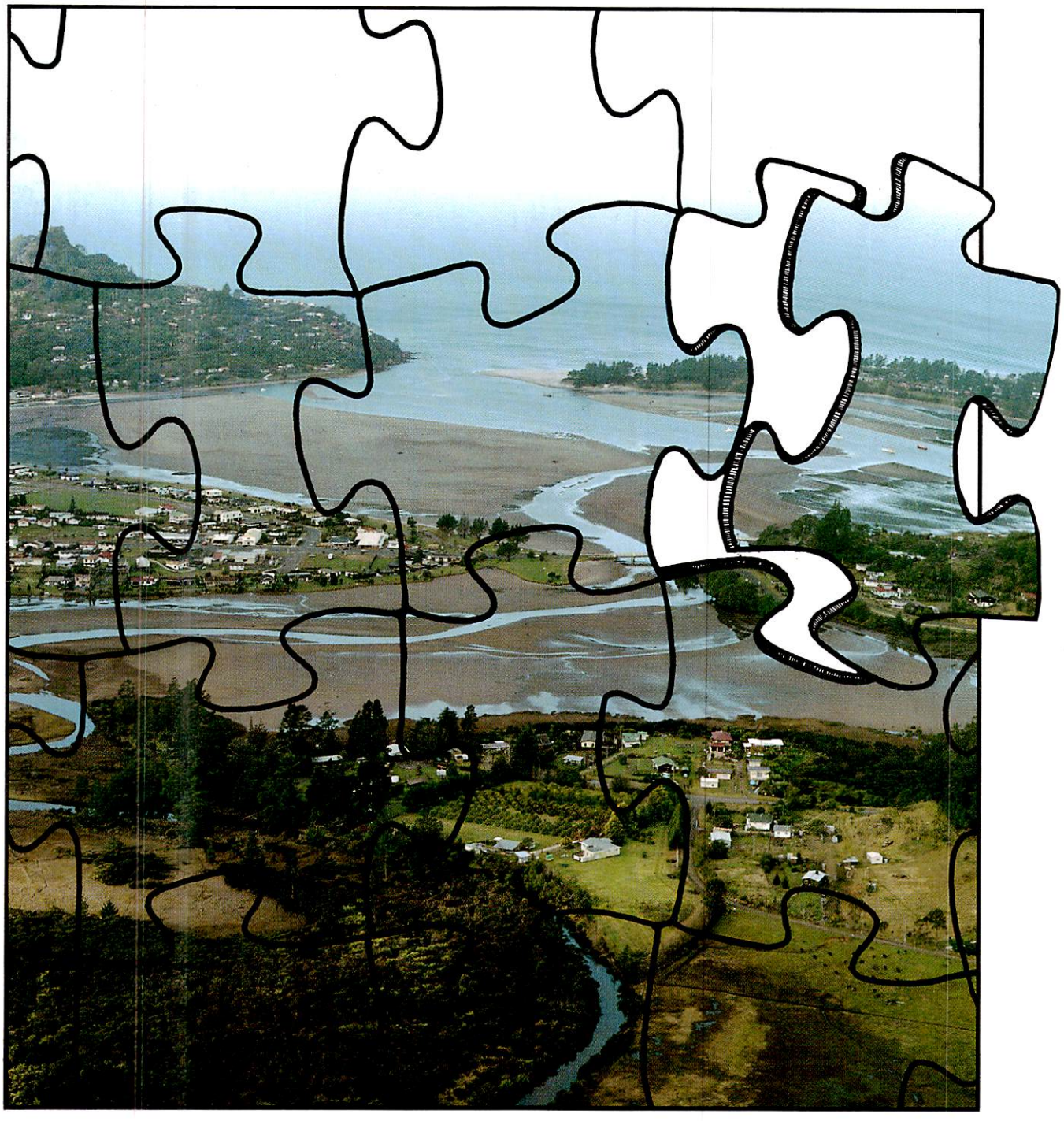
Air New Zealand Ltd. & Others. v. **Wellington International Airport Ltd & Others.** (1992) as yet unreported. A decision of the High Court in Wellington (6 Jan 1992) McGechan J on the meaning of consultation.

Waitangi Tribunal 1991: **Ngai Tahu Report,** The Waitangi Tribunal, Department of Justice, Wellington.

Waitangi Tribunal 1992: **Te Roroa Report,** The Waitangi Tribunal, Department of Justice, Wellington.

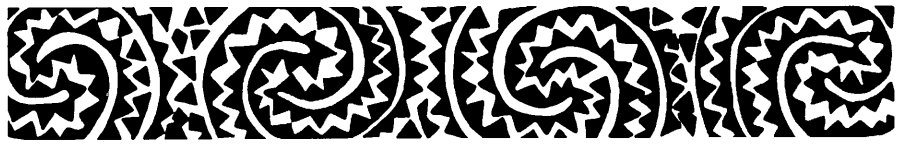
RESOURCE MANAGEMENT

Consultation with Tangata Whenua



MINISTRY FOR THE ENVIRONMENT
MANATU MŌ TE TAIAO

Consultation with Tangata Whenua



A guide to assist local authorities in meeting the consultation requirements of the Resource Management Act 1991.

The Ministry for the Environment, in providing advice on the administration of the Resource Management Act, is not to be taken as defining or providing a definitive interpretation of the relevant parts, sections or subsections of the Act. Questions of interpretation are matters for the Courts to decide. Any advice given is intended as a guide and you are advised to carefully consider the express provisions of the Act itself.

MINISTRY FOR THE ENVIRONMENT
MANATŪ MŌ TE TAIAO

Acknowledgement

The information in this report was compiled by Tony Whareaitu, of Maruwhenua.

Consultation with Tangata Whenua

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1 INTRODUCTION

This publication has been prepared as a guide to consultation with tangata whenua. It is designed to assist local authorities in meeting the consultation requirements of the Resource Management Act 1991.

This publication is not intended as the definitive outline of consultation with tangata whenua and should not be regarded as a prescriptive or exhaustive document.

Neither is this publication a legal analysis of the provisions of the Resource Management Act. Comments on the Act in this document are Ministry views and are not to be read as a legal interpretation. Such matters must be left to the Courts. Legal queries should be directed to a solicitor.

In using this guide, the following points should be noted:

- Tangata whenua is the term most commonly used in this guide and has the same meaning as in section 2 of the Resource Management Act: that is, the iwi or hapu that holds mana whenua over an area. Mana whenua is also defined as the customary authority exercised by an iwi or hapu in an identified area.
- There are local authorities which already have a dynamic and mutually satisfying consultative network with tangata whenua in their area. Therefore this guide, or parts of it, may not be appropriate for every local authority.
- Effective consultation with tangata whenua depends on the issues and circumstances particular to regions and districts. There are no hard-and-fast rules. There are general principles, however, which can be stated with a fair degree of certainty.
- Tangata whenua within each area are likely to have their own requirements for effective consultation.
- The mana of tangata whenua should be respected according to the rules of tikanga Maori. Rigid formality is unlikely to endear the resource management practitioner to Maori people.
- If consultation is impracticable for any reason then this should be stated plainly to the tangata whenua, with accompanying reasons, as early as possible.
- The intention of this guide is to assist local authorities to get together with tangata whenua and to start the consultation ball rolling. The importance of consultation should not be underestimated. The Act clearly sets out a duty to consult. The Act also provides an opportunity to challenge whether or not a council has met this duty. This can be done by seeking a declaration from the Planning Tribunal.
- This publication talks about equity and fairness. If that is not accepted this guide will be of little use.
- As a rule of thumb, all resource management issues should be presumed to be of interest to tangata whenua. The extent to which consultation ensues then depends on the importance of the issue to the parties concerned.
- Situations may arise where tangata whenua feel aggrieved about certain issues, such as the ownership of a resource. They may feel a council has no right to dictate rules. The process for dealing with this may not be one of consultation but rather mediation, negotiation, or litigation. These areas are outside the scope of this publication. Consultation should, however, be pursued as far as possible for the benefits are worth achieving.
- There may be some situations in which tangata whenua may choose to have nothing to do with consultation. There is no one response in this situation. It may be that any interaction must be by another means; for example, mediation, negotiation, or litigation. Again, these fields are outside the scope of this publication.

Finally, comments on the effectiveness of the advice in this guide are welcome and should be directed to the Manager, Maruwhenua, Ministry for the Environment, PO Box 10-362, Wellington

2

WHY IS CONSULTATION NECESSARY?

There are three areas of focus which help answer this question:

1. Historical.
2. Recognition of the Treaty of Waitangi.
3. Legislative.

Historical

Before the 1970s little consultation with Maori took place and scant legislative attention was paid to Treaty of Waitangi issues.

During the 1970s and particularly in the 1980s, Maori issues burst to the forefront – the result of lengthy dissatisfaction by Maori people over many issues. Maori leaders would not be denied their cries for self- determination and greater Maori participation in decision making.

These issues maintained momentum through the 1980s and are unlikely to abate until satisfaction is achieved. The issues are based on justiciable cause for redress as alluded to by Justice Chilwell of the High Court and the Judges of the Court of Appeal in recent landmark cases. Furthermore, the Crown is showing its willingness to negotiate with Maori people over Treaty related matters.

In a relatively short period of time there has been a resurgence of Maori culture. The number of Maori and non-Maori learning Maori language has grown. Maori words such as "hui" and "tangi" have become part of the regular vocabulary of many New Zealanders.

Te Kohanga Reo began the rejuvenation of the Maori language with an emphasis on pre-schoolers. The concept of bilingual schools began to thrive. Polytechnics and universities offered courses in te reo and tikanga. Outside mainstream education, te reo and tikanga were picked up by training and employment initiatives such as Access and its forerunners.

This activity has resulted in Maori interests, and particularly those that are Treaty based, becoming a far more significant part of New Zealand's development than ever before.

Tangata whenua now have an expectation that they will be consulted on issues. In some cases, tangata whenua say consultation is not enough. The historical struggle for recognition by Maori is, therefore, likely to continue, at least until their aspirations are met.

Recognition of the Treaty of Waitangi

For many Maori the answer to the question "why consult" lies first and foremost in the Treaty of Waitangi. Many Maori say, in fact, that consultation itself does not go far enough to implement the Treaty – it is shared decision making and/or tribal autonomy that was contemplated by at least the Maori Treaty partner.

One of the intentions of the Resource Management Act is to recognise the Treaty of Waitangi or the partnership between the Crown and Maori. Sections 6 and 5 (e), particularly, acknowledge that intention. These sections bind the agencies which have powers and functions under the Act.

Numerous other statutes also refer either to the Treaty of Waitangi and the principles of the Treaty and there is an increasing body of law pronounced by the Courts which supports a compelling argument in favour of consultation.

The Court of Appeal in the New Zealand Maori Council case acknowledged that it was unworkable to lay down a duty to consult in an unqualified sense. However, it was noted good faith does not require consultation although it is an obvious way of demonstrating its significance. ((1987) NZCR 641 at p693 per Somers J.)

Furthermore, in many cases where it seems there may be Treaty implications the responsibility to make informed decisions will require some consultation. The Court suggests in some cases extensive consultation will be required. In others, one partner may have sufficient information in its possession for it to act consistently with the principles of the Treaty without any specific consultation. (ibid; at p683 per Cooke P).

The Waitangi Tribunal, in the Ngai Tahu report, stated that consultation is perhaps the most important way to ensure Maori have input into decision making processes (1991 at p915).

Local authorities should be looking to the requirements of the Resource Management Act under section 8 and also the decisions of the Court of Appeal and Waitangi Tribunal to assist in deciding how far consultation should go.

Legislative

The Resource Management Act clearly expects consultation to be undertaken by those exercising responsibilities under the Act. Only with an effective process of consultation can local authorities and the Crown meet their obligations as detailed in the Act. The Resource Management Act (section 8) states:

> "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 Treaty of Waitangi (Te Tiriti O Waitangi) is defined in section 2 to mean the Treaty as defined by the Treaty of Waitangi Act 1975.

In interpreting this section the words "the *principles* of the Treaty..." have been deliberately chosen because the determinations and decisions of the Waitangi Tribunal, the High Court and Court of Appeal have largely been made in respect of the "principles" of the Treaty of Waitangi.

The Treaty is a living document and accordingly the principles will develop and evolve over time. Sir Robin Cooke referred to this when he stated in the New Zealand Maori Council case [1987] 1 NZLR 641 at p663:

> "The Treaty has to be seen as an embryo rather than a fully developed and integrated set of ideas".

One of the principles enunciated in the New Zealand Maori Council case was that of active protection. Many tangata whenua groups interpret that principle to include consultation. Indeed it is difficult to understand how appropriate protection can be given if people are not consulted.

The Resource Management Act contains other important sections which make provision for Maori interests. Some are highlighted in the following paragraphs to indicate why consultation should be an integral part of local authority processes.

Section 6(e) – matters of national importance

This section is a recognition that there are certain matters which New Zealanders have long regarded as important elements in the physical, social, and cultural environment which ought to be particularly protected.

Section 5(1) states that the purpose of this Act is to promote the sustainable management of natural and physical resources. "Sustainable management" is defined by section 5(2). The purpose in section 5 is the linchpin to all responsibilities, actions and duties under the Act.

However, matters of national importance are recognised more emphatically in section 6.

All functionaries and decision-makers under section 6 of this Act, when managing the use, development and protection of national and physical resources, must recognise and provide for a number of matters of national importance.

One of the matters provided for is:

> "The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga" (section 6(e).

Comment: Section 6(e) does not override the purpose of the Act. This section acknowledges that there are certain matters which should be particularly recognised and provided for. In order to determine the nature of the relationship specified by 6(e), consultation should be a basic feature of interaction with tangata whenua.

Section 7(a) – Kaitiakitanga

A "principles" section was considered which, while having importance and relevance to the purpose and matters of national importance, served more to emphasise and explain the concept of sustainability and its biophysical dimensions. Section 7 outlines the provisions.

The provisions in section 7 identify matters which have sufficient importance to be regarded. They emphasise and elaborate the concept of sustainability. One of those matters is kaitiakitanga. Kaitiakitanga is defined as:

"the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself" (section 2).

Comment: The exercise of kaitiakitanga is a concept that could be described very broadly as a Maori view of sustainable management. Kaitiakitanga embraces the notion of stewardship and has further connotations of guardianship and trusteeship. However, it is too important a concept to be limited to these words alone.

Iwi may have their own particular ideas about the extent and meaning of the concept, so it is important that they be checked out first. It may be that some iwi do not use the term kaitiakitanga, but it is certain that all iwi will have a sustainable management philosophy that compares with the pure spirit of the term kaitiakitanga.

Sections 61 2(a)(ii); 66 (2)(c)(ii) and 74 2(b)(ii) – iwi management plans

During extensive consultation with tangata whenua over what should be built into the Act to protect Maori interests, it was suggested that a way of putting Maori views to decision makers and functionaries under the Act could be to provide some statutory recognition of an instrument or document, if Maori chose to produce such, which would indicate Maori planning requirements.

Therefore, in preparing or amending regional policy statements and district plans, local authorities are required to have regard to any relevant planning document recognised by an iwi authority affected by the plans.

Comment: The "relevant planning document" is sometimes referred to by tangata whenua as an iwi management plan. For the purposes of this publication, "iwi management plans" is the term which will be used in this context.

Tangata whenua may, if they choose to, produce an iwi management plan. Any such plan is likely to provide definitive statements on tangata whenua aspirations. If such a plan is produced it should serve as a valuable source of information in the consultation process.

Some iwi have already prepared and published iwi management plans which deal with such matters as waahi tapu - how to identify and protect them; mahinga kai; iwi proposals for management or development of Maori land and other resources.

It may be sensible to enquire of tangata whenua whether they have such a plan; whether it is publicly available (and at what cost); or whether a plan is actively contemplated. Iwi management plans could include information on issues other than resource management, such as health, welfare, education, housing or employment. This is a holistic approach and is common amongst tangata whenua.

If tangata whenua choose not to produce iwi management plans this will not necessarily mean they are not interested in resource management issues.

Although the wording of the sections in the Act suggest the documents are not binding, it may save much time if they are acknowledged in a meaningful way.

Section 58 (b) – coastal policy statements

The Act recognises that Maori have a special relationship with the coast that encompasses both spiritual and physical needs.

Section 58 (b) makes provision for Maori values concerning the coast in the national coastal policy statement issued by the Minister of Conservation.

Comment: This binding policy statement can cover the protection of waahi tapu, tauranga waka, mahinga maataaitai, taonga raranga and other issues special to the tangata whenua. When dealing with such matters it may be necessary for tangata whenua to provide confidential information, for instance about the general nature of waahi tapu or mahinga kai. This would be a matter for the Crown and local authority to discuss with the tangata whenua concerned.

These sections underscore the need to consult. If a local authority wishes to know what the needs of the tangata whenua within its area are, then consultation is an essential step.

3

WHEN IS CONSULTATION APPROPRIATE?

Consultation is appropriate:

- When matters relating to section 6 or section 5 (e) of the Resource Management Act are involved. It is likely that there will be relatively few instances where consultation is not needed.
- When there is a legal obligation to do so.
- When it is fair or courteous to do so.
- When it feels right to do so.

Consultation should not be delayed.

There are particular instances where Maori people, almost without exception, will have some interest in how the issues are dealt with.

Water

The discharge of waste into any water body is unacceptable in the Maori world view for spiritual and cultural reasons. Applications of such nature should immediately alert a local authority that there is likely to be tangata whenua interest in those issues.

Water bodies that are still relatively pollutant free are always likely to have significance to Maori for the wealth of food resources that may supplement Maori diet either regularly or seasonally; for example, tuna or koura. One iwi has a saying to encapsulate such reverence for water:

Ko Whanganui te awa	Whanganui is the river
Ko au te awa	I am the river.

Land

There is a spiritual attachment to land by Maori that transcends use of it as a mere tradeable commodity. It has a life force of its own. Land is treated not with an ownership perspective so much as with a sense of being kaitiaki (protector, guardian) for future generations. Thus Maori would be very interested in how local authorities regulate external effects of resource use and inappropriate subdivision.

Waahi tapu

Whether the issue involves land or water, waahi tapu (sites with special spiritual significance) and their protection will be foremost in the minds of Maori. These sites may involve traditional burial sites, places where significant battles have been fought, food resource sites or ancestral lands. These examples are not exhaustive, but are included to indicate some of the matters Maori consider to have particular importance. Waahi tapu should invariably be treated with sensitivity if local authorities intend to provide for the wishes of tangata whenua.

Policy statements and plans

When the time arrives for a local authority to prepare or change a policy statement and/or plan tangata whenua should be involved from the outset. Time and effort will be saved by including tangata whenua as early as possible.

Consents

When hearings are due it does not hurt to invite all parties together on marae to discuss the issues. This has already happened on occasions. The hui is not a judicial hearing of the case. It falls, at most, within section 99 as a pre-hearing meeting. As long as the Court-pronounced rules of natural justice are followed, these pre-hearing meetings have great potential to reduce time at the actual hearings.

4

WHAT SHOULD CONSULTATION INVOLVE?

To restate an earlier point, there are no hard-and-fast rules as to what effective consultation should involve. However, there are certain principles which can be relied on to avoid offending tikanga Maori.

There should be a long term basis to the relationship between the parties. The following principles may not seem exclusive to Maori society. Many are common sense and quite applicable to all consultation.

However, it is evident that Maori have been consulted inappropriately or not at all in the past, and these points are raised to emphasise how important they are now.

Honesty of intention

Consultation should be aimed at giving tangata whenua effective input to resource management matters. Consultation should not be carried out just for the sake of being seen to be doing "the right thing".

What is meant here by "honesty of intention" is that the practitioner can say honestly to him or herself that tangata whenua have been given all the necessary information and a reasonable time to respond.

Tangata whenua should be given the right to decide themselves what they should be consulted upon. All issues, as far as is reasonable, should have a consultation element unless tangata whenua have given other indications.

Consultation is not a vehicle for the weakening of Maori values, nor should it be used to pit Maori against Maori. There is no honesty of intention if such objectives are pursued.

Local authority councillors and/or staff may feel hesitant or unsure of themselves in taking their first steps towards contact. Often the concern is with making mistakes in another cultural setting, especially mistakes that may offend. It is acceptable to make mistakes if the intention is honest. Practitioners must be prepared to listen.

Fear of offending is understandable; the important thing is to be prepared. Being prepared involves finding out about the correct local protocol, and researching the bicultural aspects of the issue in advance. There must also be a commitment to the process, and a non-judgemental attitude is essential. Humility and sensitivity will almost always earn positive regard from tangata whenua.

A fundamental question for local authorities to address is how far the institution is prepared to go to set up an effective interaction with tangata whenua. The answer to that question will have a great bearing on honesty of intention. Objectives should be clearly defined.

A little caveat should be raised at this stage. If the resource management practitioner has some knowledge of tikanga Maori, gained perhaps from reading or te reo courses, it should never be assumed that this is all that is needed.

A little knowledge can be a dangerous thing – it will never substitute for a lifetime of tikanga Maori. The ultimate insult is to offend kaumatua and kuia by what will be seen as "showing off". Tangata whenua are unlikely to accept being told by outsiders what their culture is.

In other words, the practitioner should not presume to be an expert, but should accept that generally there is much more to learn.

Certainty of purpose

There should be a clear understanding of why the resource management practitioner is consulting with tangata whenua and what Maori can reasonably expect to achieve from the process.

Valid purposes include to inform, to share with, to seek the opinion of, or to seek information from tangata whenua.

"Fishing exercises" which undermine tangata whenua are not within the scope of consultation; i.e. exercises in which one party embarks on information gathering from another party for their own purposes. It also shows a lack of honesty of intention.

Clarity of information

It is incorrect to assume that by forwarding copious bundles of literature, or by talking over people's heads, that the requirements of consultation have been met.

Information should be clear, concise and involve only as much as is necessary to make the point.

If written information is used it should be provided in such a way that it can be understood by the most uninformed lay person. It could be expanded upon orally. Tangata whenua respond better to a face than to a paper.

Statement of what is required

If the resource management practitioner is sure that honesty of intention, certainty of purpose and clarity of information have been satisfied then tangata whenua will generally appreciate a statement of what is sought from them. Be clear with what you want. If it is considered inappropriate you will be told.

It could be that what is wanted is a comment, a decision, or just to have the information noted. Tangata whenua should not have to guess what is required, as time may very well be of the essence.

Provision of resources

It is unwise to assume tangata whenua are adequately resourced.

When asking tangata whenua for their input into issues, enquiry should be made about any need for assistance/resources to facilitate a response.

There are many precedents already of local authorities providing assistance. Some examples are:

- Photocopying and telephone assistance.
- Clerical assistance.
- Meeting rooms to discuss issues.
- Travel assistance.
- Accommodation assistance.
- Liaison people.
- Setting up of standing committees with tangata whenua representation.

These examples have not had a significantly adverse effect on the budgets of the local authorities concerned and they have generated a lot of goodwill.

5
WHO SHOULD BE CONSULTED?

This can be a tricky and frustrating question, because it is not always clear from the outset who has the mandate to talk on behalf of tangata whenua.

Maori society is extremely diverse, and the question of who is to be consulted is best left to tangata whenua to advise. Do not be afraid to keep asking. The right person or people may be at the flax roots level or at a national level. Diligent and sensitive investigation should always help. It requires a strong commitment but the results should be worthwhile. Think about the sorts of questions to be asked. It may be useful to know the major tangata whenua groups in the area. Appendix A contains a map which shows tribal districts and major tribes.

In many areas it will be clear who the person is who speaks for the tangata whenua on issues. An example of a clear line of authority is Sir Hepi Te Heu Heu of Ngati Tuwharetoa. He may choose to pronounce on policy himself for Tuwharetoa, or he may choose to delegate this through the Ngati Tuwharetoa Maori Trust Board. It is a brave warrior who challenges his authority. That authority is gained and legitimised through traditional Maori concepts of whakapapa and mana.

It is generally not for the resource management practitioner to question who has the authority to speak. Questions of whakapapa and mana are more appropriately confined to the marae forum. It may be appropriate for local authorities to travel to marae to hear debate by tangata whenua as to who holds the rights to talk on issues.

Some iwi have, through marae processes, elected bodies that have the mandate of the tribe. These bodies may be charitable trusts, incorporated societies, trust boards, trusts or bodies set up under other statutes. These bodies will be more noticeable because of their active participation in issues. However, the lack of a high profile does not necessarily mean a Maori group does not have that authority.

Who should be consulted may turn out to be an individual, a group of people, or a number of corporate bodies representing two or three iwi.

The first moves to establish consultation processes could begin with recognised iwi authorities, Maori trust boards and runanga. Community organisations such as the District Maori Council, Maori Women's Welfare League and other government organisations such as the Ministry of Maori Development may be able to assist with facilitating consultation processes. In some instances there may be organisations of this nature which do have the mandate of the tangata whenua and there may be no need to search further.

It will be clear in some areas that there are traditional rangatira. As in the example of Sir Hepi Te Heu Heu and Ngati Tuwharetoa, these rangatira may prefer to take an overview stance and delegate their authority. The Kahui Ariki of Tainui is another example.

There is a relatively new group of people emerging who speak for iwi and who have gained the acknowledgement of their people. They tend to have acquired their rights through having organisational ability, communication skills or high educational qualifications. These will not necessarily be the same people who drive the ceremonial occasions on marae.

Their value lies in providing an immediate source of contact and understanding of what the issues are and how to canvass the appropriate people for a tangata whenua view. Their area of expertise may even extend to them being the only appropriate source of contact.

There are some general areas where spokespeople are readily recognisable. These include:

- National figures (e.g. chairperson New Zealand Maori Council.
- Office holders (e.g. chief executives of Te Tira Ahu Iwi and Manatu Maori).
- Elected representatives (e.g. Members of Parliament, local authority councillors).
- Academics (e.g. university lecturers).
- Local marae figures (e.g. rangatira and ariki).
- Group leaders (e.g. prominent people making claims to the Waitangi Tribunal on behalf of tangata whenua).

Trust boards

There are tribal trust boards in existence, which are usually set up by legislation. Many are based on traditional tribal territory.

Examples are Tainui Maori Board, Te Arawa Maori Trust Board, Tuwharetoa Maori Trust Board and Ngai Tahu Maori Trust Board. These boards have been set up in some instances to administer compensation monies given by Government for land unjustly confiscated or promises not honoured, or in return for ownership of tribal territory formerly taken by the Crown. The boards are administered by elected representatives on behalf of the tribe.

Depending on the reasons for which they have been established, the boards disburse funds for initiatives that enhance the well-being of the tangata whenua. Sometimes a trust board may speak for the tangata whenua as a whole.

There are other organisations or institutions within which there is a strong Maori component. These bodies, if not directly relevant, will have networks that are likely to be of assistance.

Runanga

Some iwi, hapu and whanau groups have elected a collective body of persons who are authorised to speak on behalf of the tangata whenua. They may be registered as incorporated societies, charitable trusts, or other legal entities.

The Runanga Iwi Act 1990 was also intended to be a vehicle for registering the authoritative voices of tangata whenua as legal entities. The Runanga Iwi Act has been repealed and no runanga were registered under it. However, some bodies still use the word "runanga" in their title.

Runanga were in existence prior to the Runanga Iwi Act and if established as corporate bodies this would be pursuant to other legislation; e.g. Charitable Trusts Act.

It should be noted the term "runanga" may be used in the name of an organisation that is in fact governed by other legislation; for example, Te Runanga o Ngati Porou".

If the exact legal status of an organisation is important this can be clarified with the organisation itself or its legal advisers.

Religious groups

The major church groups all have Maori sections and are increasingly taking a more political stance on Maori issues.

Maori land incorporations

These are legal entities formed for administration and development of communally owned Maori land. They derive their authority from the Maori Affairs Amendment Act 1967. These entities are formed in many instances because individual shareholdings are so small as to be uneconomic on their own.

438 Trusts

These trusts are so called because they are established under section 438 of the Maori Affairs Act 1953. Trustees are appointed by beneficial owners to develop Maori freehold land.

Mana Motuhake

When the Hon Matiu Rata resigned from the Labour Party and Northern Maori seat in 1979, he formed a new political party under this name. Its aim was to call for greater Maori self-determination. The term refers to the separate mana or sovereignty of the Maori people. It too has roots in the 19th century and was revived by the prophet Wiremu Tahupotiki Ratana in the early 20th century.

The party has enjoyed popularity among Maori voters unhappy with the performance of the major parties on Maori issues.

New Zealand Maori Council

The council is a national body which functions largely as a means of forming and using Maori opinion regionally and nationally on matters of importance to Maori. Its membership is derived from delegates elected by nine district Maori committees. It is established by the Maori Welfare Act 1962. The district councils in turn are made up of representatives from the Maori committees.

Maori Women's Welfare League

The Welfare League was established by the Government in 1951. Its purpose is "to unite Maori women in the common objective of homecraft and mothercraft and the general welfare of the Maori Mother and Child", and it has been expanded to cover issues such as housing and health as well. It operates at local, regional and national level.

Members of Parliament

There are four seats specifically set aside for Maori representatives, who may be contacted through the House of Representatives.

Ratana movement

Tahupotiki Wiremu Ratana founded the Ratana movement in 1918. The movement initially concentrated on uplifting the spiritual and physical health of the Maori people, and unity. In the late 1920s the movement went into politics. It formed an alliance with the Labour Party in 1935 and by 1943 its representatives had been elected in all four Maori seats.

Kingitanga

The "Maori King Movement" was formed to unite Maori and complement the role of the British Crown in New Zealand. One of the intentions was to symbolise the relationship of two sovereign heads of state under the umbrella of partnership.

It is at present led by Te Arikinui Dame Te Atairangikaahu. She is also known as the Kahui Ariki. The headquarters for this movement is at Ngaruawahia, at Turangawaewae marae.

The kingitanga has an annual Coronation Hui at Turangawaewae in May and a series of smaller hui, known as poukai, on marae that mostly actively support the movement. Its source of support lies mainly with the Tainui confederation of tribes.

Although the kingitanga is not supported by all Maori tribes, the size and strength of the Tainui confederation of tribes and the mana of the movement and its successors ensures it has widespread respect within Maoridom.

Kotahitanga

The word means unity, and the movement originates from Northland tribes in the 19th century. It has always sought a degree of Maori self-government. It was a strong movement in the 1890s, with a Parliament at Papawai in the Wairarapa. In the 1950s and 1960s the movement was based on the East Coast of the North Island. It was revived in 1983 to underscore the protest hikoi (march) to Waitangi in 1984.

Ringatu

Ringatu was founded by the prophet Te Kooti Te Turuki Rikirangi when he was being pursued by Government forces in the late 1860s. It means upraised hand, a gesture members still make in prayer. It is strong in the Bay of Plenty and East Coast regions, particularly among Tuhoe, Ngati Awa and Whakatohea tribes. Members meet for a day of prayer on the 12th of every month (Tekaumarua).

Maori Congress

An emergent group of affiliated tribes formed to present a national Maori response to issues affecting the development of Maoridom. It is fast gaining recognition as a national body and has many influential individuals and tribes within its membership.

Other organisations

In addition to the above organisations, there are cultural and sporting associations which may provide useful leads to follow. There may also be urban marae. A useful contact point for these organisations is the local Citizens Advice Bureau.

It is evident, therefore, that the question of "who" should be consulted is not easy to answer. Indeed it may well be that a number of institutions, organisations or individuals should be consulted at the same time. A fast track answer is not available.

Some local authorities are already grappling with the question of who to consult.

A common difficulty is the situation in which there is more than one group of tangata whenua within the region of the local authority – who should be consulted?

This publication cannot answer that question definitively – there may be no clear answer What can best be provided is a set of possibilities. Even if there is no apparent answer, that cannot relieve practitioners of the duty to consult.

One strategy when in doubt is to consult widely. That is, if there are no readily identifiable consultees the local authority may like to take a lead and call a public hui. This hui may have as its purpose to identify Maori who consider themselves people who should be consulted. It could, in the first instance, be held in a hall or in council chambers. The idea of this strategy (which was used by one local authority) is to provide the forum for discussion and if it is necessary to take the issue further, then at least tangata whenua have been made aware their views are being sought.

Sometimes this strategy may not work, because Maori politics can be quite diverse and there are dangers inherent in the strategy. It may open a can of worms in the form of tribal rivalries, or the method of advertising may miss important people.

However, it is one strategy which has been used with positive results, and the wide coverage is likely to identify tangata whenua groups when a local authority is struggling in this area of who to consult.

In regard to inter-tribal rivalries, where tribes have ongoing grievances between them local authorities should not interfere. Local authorities operating in less than ideal situations may also need to make their own needs very clearly known. The provisions of the Resource Management Act also put other obligations on authorities, which must be balanced with these considerations.

Provided that a local authority has made reasonable attempts to resolve the dilemma of who to consult, then it may be valid to leave the issues to another forum to resolve.

This section has outlined some of the structures and individuals that may represent tangata whenua, but there may still be a problem deciding which groups have relevance to a particular issue.

As previously stated, where there may be a number of hapu, whanau, church groups, academics, local marae figures, sports clubs and national figures within the area of the local authority, in the absence of clear indications to the contrary the answer may be to consult all.

That may seem an onerous task, but the local authority should consider the risks of not consulting widely.

One thing is very clear. If local authorities intend to consult effectively, they must be aware that Maori processes do not always follow the same processes for decision-making that pakeha processes do. Tangata whenua may often require marae processes to be followed. These processes may seem slow, but they are an integral part of tikanga Maori. It is unusual for spokespeople to give feedback without consulting those they purport to speak for.

This, together with the fact that a hui may be necessary, requires local authorities to consult at the start, not at the end, of a process if frustration is to be avoided. Something that may take two hours at a meeting may take a lot longer done the Maori way. Allowance for this time factor must be made in advance. This will allow tangata whenua to feel more comfortable about pronouncing on issues and also about working through inter-tribal grievances.

It is likely the "who should be consulted" can be facilitated by having good advice within the local authority. This may be done by the appointment of advisors or perhaps liaison people. This idea works provided such people are supported within the system; for instance, their opinions should be treated with great respect. They should also be adequately resourced to enable them to travel out to the Maori community. They are then likely to be regarded highly by tangata whenua. This would also reflect favourably on the sincerity of the local authority.

6

WHERE SHOULD CONSULTATION TAKE PLACE?

When deciding what is the most appropriate form of consultation, a question of venue may arise. There are many instances where it would be appropriate for the resource management practitioner or practitioners to go to marae on a formal basis.

In deciding whether to go to marae or not, there are a number of issues to be weighed up. The decision will often turn on the importance of the issue to the tangata whenua.

If the answers as to why consultation is necessary and who should be consulted are clear to the resource management practitioner, there should also be clear indicators of whether a marae venue is the most suitable. The question of the most appropriate venue can be determined by what the consultation may involve.

Some examples which may be more appropriately dealt with at marae venues are:

- If there are Treaty issues in contention.
- If there are matters that affect the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.
- If the matter concerns the provisions in local authority plans for the protection of Maori interests.
- If the task is to ascertain the tangata whenua view of sustainable management and kaitiakitanga.

These are not exhaustive examples. If all the previously mentioned factors of why, who, and what have been taken account of, then the "where" (or venue) should become clear.

If a marae is established as the appropriate venue for consultation, a number of other matters must be considered.

Which marae

Knowing who to consult should give a definite lead as to where it should take place. The tangata whenua will more than likely give guidance as to which marae is appropriate. If there is a dispute within tangata whenua on that point, it is up to them to resolve it.

Practitioners should not assume that disputes show a lack of concern for the issue or an inability to co-operate. Disputes can often indicate the contrary. The nature of the issue could be of such importance that preliminary talks on marae may be needed to establish the appropriate choice of marae. It could be that the issue needs to be taken to more than one marae in the area.

Koha

Koha is perhaps one of the most misunderstood parts of Maori society. To non-Maori it is often seen as a charge for the production of services. Some marae have adapted to this non-Maori concept and "charge" on a per head per day basis. This accommodates the need to quantify the economic elements associated with a service.

However, charging not a Maori concept. What it represents is a compromise with the economic system of the time. Out of necessity marae have had to look at becoming viable entities in order to survive economically.

The true concept of koha should never be forgotten, although for accounting purposes the practitioner will need to have a quantified sum to work with.

Koha was traditionally a gift from one group of Maori to another at a time of interaction for a defined purpose. It was a donation of food or something the receivers could use for their physical maintenance or benefit. These days it is more common at times of tangi, hura kohatu, weddings, twenty-first birthdays, conferences, and hui. Nowadays the koha is usually a sum of money.

The koha was given from the heart and had an element of reciprocity underlining it. For example, the donor on one day might become the donee on another occasion and so on. Receipts were not given, but mental notes were always kept about the generosity of the giver. The greater the generosity the more mana the giver enjoyed. It was not necessarily true that quantity was the only yardstick for the quality of the koha.

For example, a koha from X might be more in total than that from Y. However, if Y had given something that meant more of a personal sacrifice or burden then Y would certainly not be thought of in any less way than X. Thus a person may contribute $100 to a hui while someone else may only be able to help out in the kitchen. The relative values of each donation are usually not the subject of concern.

When assessing the amount of koha to take to a marae, the practitioner should take account of the following:

- The size of the group going to marae.
- That the hosts are usually there voluntarily and unpaid.
- Any recent events that have stretched the marae's resources; for example, a number of tangi or hui with other agencies.
- The mana of the marae.
- The cost of holding a conference at alternative venues.

Close consideration of these matters in the absence of firm direction from tangata whenua, should indicate an appropriate amount to give to the marae.

Sometimes an envelope is passed around immediately prior to going to a marae. People put money in it and it is presented with the main koha. This is usually an acknowledgement to the many voluntary helpers who have given their time to make a hui run smoothly. Those unsung helpers in the kitchen and providing the food are always saluted by visitors. It may be this envelope is presented to the ringa wera at the end of the hui with a speech of acknowledgement to the helpers. This may vary according to areas.

Knowledge of the tikanga of the marae

It is imperative that visitors to a marae familiarise themselves with the tikanga of the marae if they do not already know. If the "who should be consulted" has been worked out correctly, then it is probably safe to enquire of them what the protocol of the particular marae is. Pertinent issues to canvass may include:

- The tangata whenua expectations for the formal part of proceedings.
- The number of speakers the visitors wish to have and what order of speaking may be appropriate.
- Whether speeches can be read or whether they should be spoken without notes.
- Whether speeches be presented in English.
- If technical equipment can be used inside the marae.
- What the "do's" and "don'ts" are on the marae.
- If necessary, will tangata whenua assist in providing kai-karanga and/or kai-korero.
- Any special needs visitors have, e.g. vegetarian food or toilets for disabled.
- Who can speak.

There are many more specific issues that could arise. Remember that if the choice is to go to a marae, then it is tangata whenua that dictate the process. The marae is theirs, and offence may be caused by ignoring its spirituality and individual qualities.

It would be an unusual circumstance for tangata whenua not to accommodate the needs of visitors.

7

AN EXAMPLE OF EFFECTIVE CONSULTATION

One positive example of how consultation works comes from a regional council's initiative concerning a water right application.

A user applied to the council for renewal of a water right over a river which had significance to tangata whenua. Council wished to seek the views of tangata whenua, and identified and presented a request to a Maori elder who had an interest in resource management matters, and who clearly had respect and status among the tangata whenua. The applicant was invited to attend and accepted the invitation.

The kaumatua accommodated council's request by arranging a marae venue for a day where all major parties were invited to attend.

On the morning of the hui, members of the council assembled with their families at the council chambers. They had with them an assistant who had knowledge of the tikanga of the local marae. This assistant proceeded to talk to the gathering on the appropriate way of entering the marae. The assistant covered issues such as speaking order, the laying of the koha, waiata, and the hariru.

Council members were able to ask questions to ease their minds and generally make themselves more aware of procedures. The attitude was one of wishing to do things right and not breaching the protocol.

At the marae there was warm welcome from the tangata whenua and appropriate mihi from the two council speakers. The koha was laid after the last speaker had finished and the hariru was completed.

Both hosts and visitors moved in to the whare kai for a light morning tea.

About 20 minutes later tangata whenua indicated the business of the day should commence in the wharenui. Families and friends left the marae and business commenced. Mattresses were provided for people to rest on and business proceeded in earnest.

At the invitation of the tangata whenua (through the Maori group chairman) the council chairman began the proceedings. He explained the reasons why the marae hui was needed and stressed that the primary purpose was to consult with Maori before the council formally heard the consent application by the current user.

Throughout the proceedings he consistently referred certain issues to the tangata whenua for their response. At one stage he handed the chairing of the meeting over to the leader of the tangata whenua, allowing them to question the proposed applicant. The applicant was allowed time to make a presentation in support of the application.

It was left to the tangata whenua to close the proceedings in an appropriate Maori way.

The tangata whenua felt included and acknowledged. Although the issue itself was not completely resolved, a number of common points of agreement were reached.

Some initiatives that could be taken.

There has been a wide variety of approaches undertaken by local authorities in terms of consultation with tangata whenua, ranging from no action at all to actual implementation of consultation processes.

Local authorities have expressed varying degrees of reaction to the consultation issues inherent in the Act. Those that have started a process generally acknowledge the path is not easy. However, there are those who have indicated some very positive results have occurred in terms of bringing Maori and Pakeha to closer understanding of each other. There is the potential for some very promising outcomes.

Some local authorities initiated early action, in anticipation of the Resource Management Act, which recognises the status of the Treaty of Waitangi and the place of tangata whenua in relation to the environment

Some of the initiatives that have either commenced or been completed are referred to in the following examples:

Standing committee

Tangata whenua representatives are resourced to provide advice to full council on resource management matters.

Maori liaison committee

Similar principle to standing committee, although no specific resources are allocated and the committee operates on a more ad hoc basis.

Staff appointments

Staff with expertise are appointed to liaise with tangata whenua and set up systems for consultation.

Staff training

Trainers are commissioned to provide bi-cultural training to enable local authority staff to address Maori issues with greater understanding. Further staff development is encouraged by local authority.

Consultants

Outside consultants are commissioned to prepare strategies for addressing the issues of consultation.

Direct liaison

The elected leader of the local authority and/or chief executive regularly meet with identified leaders of the tangata whenua to discuss issues.

Consultation on marae

Hui held on marae to address negotiated issues. Meeting attended by councillors and high level staff to show importance of the issue to the local authority.

These are some strategies which have been used to date. They will not always produce the same results, but their value lies in the honesty of intention that has accompanied the attempts.

8
SUMMARY

This publication has attempted to set a scene. It cannot answer all questions that will arise in the everyday contact local authorities will have with tangata whenua.

The challenge within the Act is for local authorities to recognise tangata whenua and provide for their interests. The Treaty of Waitangi is intended to be a unifying document and dysfunctions will occur if its place in the Resource Management Act is deliberately undermined or ignored.

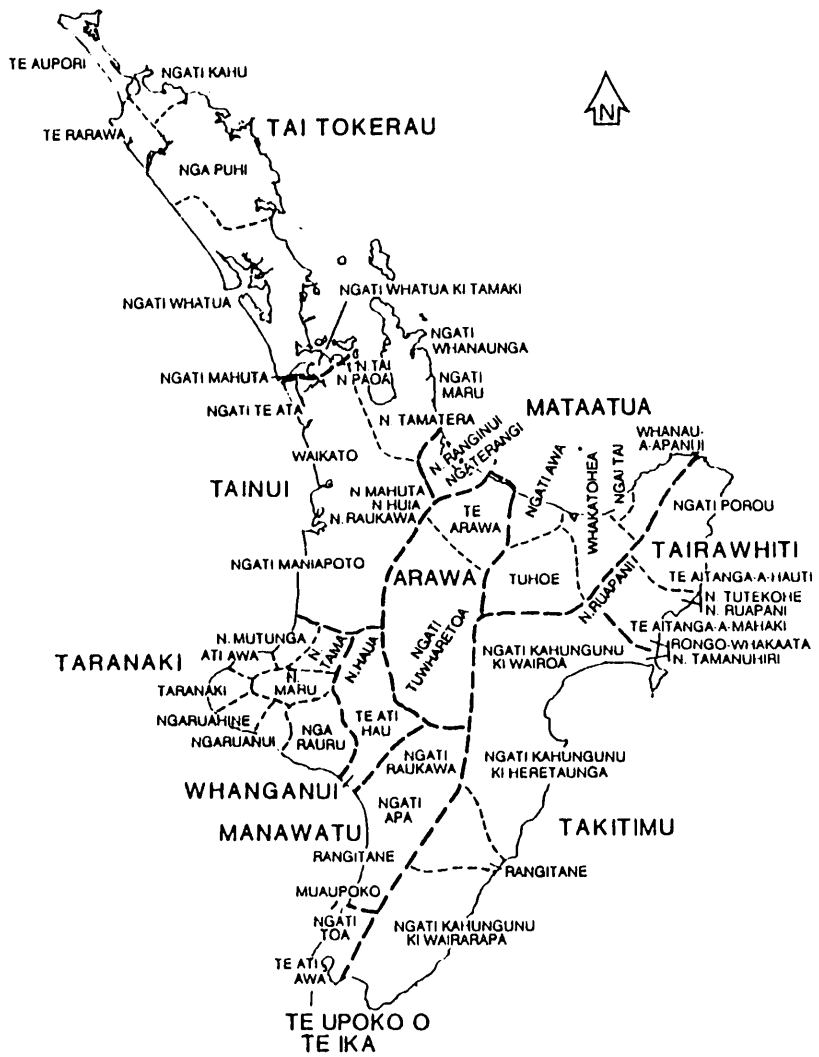
Tangata whenua are aware there is a Treaty section in the Act and will expect the obligation to be discharged. If this is done with the utmost reasonableness and good faith a positive relationship should be established.

The question of what is effective consultation incorporates preliminary questions of when it is appropriate, what it should involve and who should be consulted. The obligation under the Act lies with local authorities to initiate mechanisms and strategies that will meet that requirement.

APPENDIX A
MAP OF TRIBAL DISTRICTS

Location of iwi (tribes) and rohe (regional groupings of iwi), June 1988.

NOTE: The boundaries shown are to be treated as general guidelines only.



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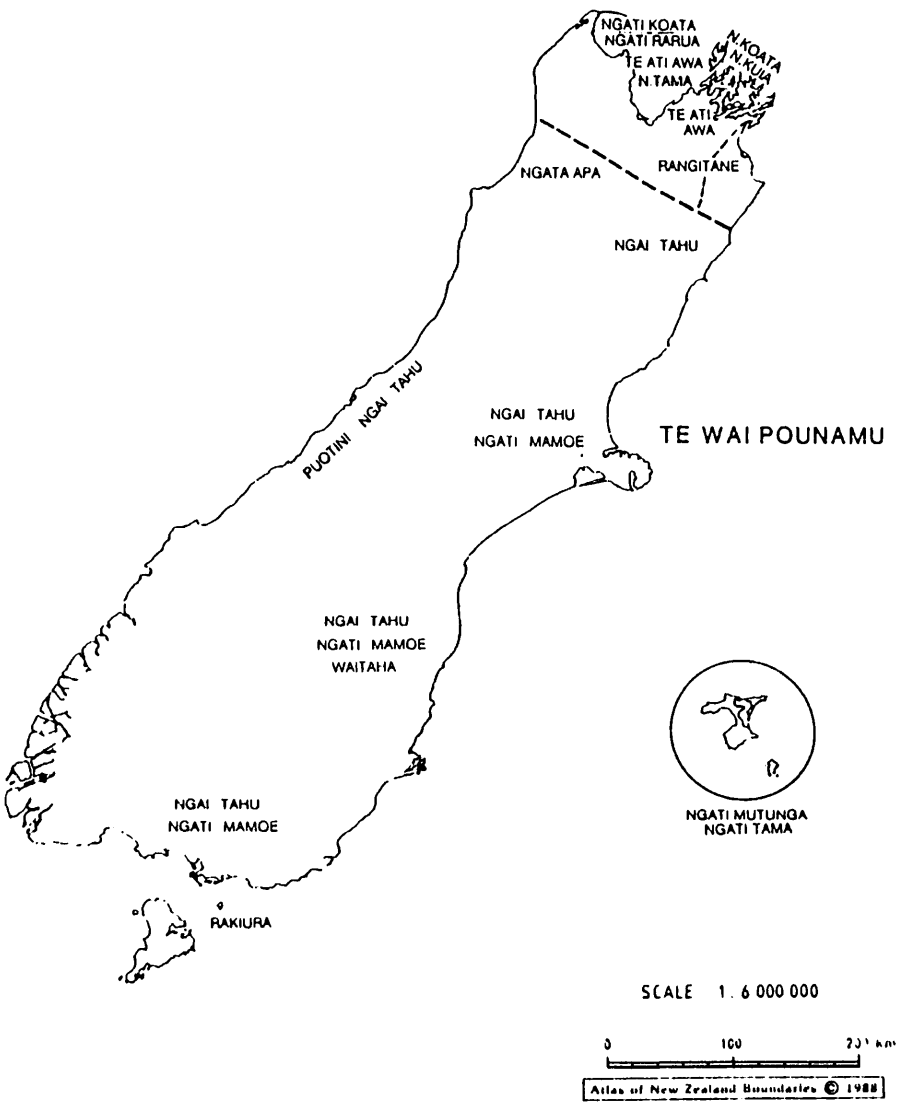
Cartographic Section, Geography Department, University of Auckland



APPENDIX B
MAORI LAND COURT

There are eight district offices:

The Registrar
Maori Land Court
P O Box 1764
96 Banks Street
WHANGAREI
Phone (089) 481-088
Fax: (089) 489-583

The Registrar
Maori Land Court
P O Box 620
Charles Heaphy Building
Cnr Knox and Anglesea Streets
HAMILTON
Phone (071) 380-970
Fax: (071) 380-990

The Registrar
Maori Land Court
P O Box 3012
Government Building
Hauora House Annex
Haupapa Street
ROTORUA
Phone: (0734) 82-189
Fax: (0734) 85-019

The Registrar
Maori Land Court
P O Box 849
Government Building
Lowe Street
GISBORNE
Phone: (06) 867-8200
Fax: (06) 867-8201

The Registrar
Maori Land Court
P O Box 134
Dept Building
2nd Floor
Cnr Lyndon Road and Warren Street
HASTINGS
Phone: (06) 876-2962
Fax: (06) 876-2962

The Registrar
Maori Land Court
P O Box 122
Government Building
Cnr Cameron Terrace and Wickstead Street
WANGANUI
Phone: (06) 345-8188
Fax: (06) 345-8174

The Registrar
Maori Land Court
P O Box 2200
Government Building
76 Peterborough Street
CHRISTCHURCH
Phone: (03) 654-182
Fax: (03) 662-834

The Registrar
Maori Land Court
P O Box 273
Massey House
Lambton Quay
WELLINGTON
Phone: (04) 472-5980
Fax: (04) 499-4410

APPENDIX C
GOING ONTO MARAE

There are certain forms of ritual that local authorities should be aware of and which are, almost without exception, part of the process of going on to marae. There are variations to this ritual, and these would probably be identified during preliminary discussions with tangata whenua. The ritual of entering on to a marae may include some or all of the following.

Wero

Depending on the importance of the occasion and the mana of the manuhiri, the tangata whenua may issue a wero through one or more of their warriors.

Today it is more to embellish the mana of the visitors but in traditional times it had deadly significance. Its purpose was to identify whether visitors came in peace or not.

A young fleet warrior would venture outside the pa and, amidst a flurry of animated actions, place a dart before the manuhiri. If the visitors came with animosity they would kill the warrior if he was not fast enough to escape. If manuhiri came in peace they would pick up the dart and be escorted to the marae.

Nowadays, the leader of the manuhiri picks up the dart in respectful solemnity, with eyes fixed on the warrior. The warrior turns and leads the manuhiri to the gates of the marae.

Karanga

If a wero is not issued then manuhiri gather at the gates at an appointed time in respectful solemnity waiting to take their cue from the tangata whenua. That cue is a kuia usually standing in or near the porch of the wharenui. She will be noticeable in the sense that she stands alone. Sometimes more than one kuia stands ready to call manuhiri on.

Manuhiri may not enter marae unannounced because they bring with them alien spirits which might clash with those of the hosts.

The kuia from the tangata whenua will karanga to manuhiri. Manuhiri will also have a kuia to respond and both kuia will exchange tributes to the dead and words of salutation as manuhiri enter the marae.

In traditional Maori society, manuhiri were poorly thought of if they did not have kuia to take them on. Some tribes will refuse to receive manuhiri if there is not a kai-karanga to respond.

Entry on to marae

At the same time the karanga is happening manuhiri are walking solemnly onto the marae. Usually women walk on collectively in front of men. This may differ according to circumstance; for example, a man or men of high status may be to the front with the kai-karanga.

Manuhiri move further into the marae to a place which leaves a reasonable amount of room between tangata whenua and manuhiri. This place is usually indicated by a row of seats or an obvious structure for manuhiri to stand under.

Manuhiri stand for a respectable time in acknowledgement of the dead. There is an inextricable link between life and death in the Maori world view. Thus the karanga and the pause at the seats is to acknowledge the dead are still around.

After the pause the tangata whenua will sit down, their kaumatua and speakers will be to the front and opposite the manuhiri. Manuhiri will sit, their speakers to the front. Women usually sit behind the men. In some unusual circumstances women may sit in the front if they are to speak.

Mihi

The mihi is the standard form of greeting from the tangata whenua. It is ritualised and solemn and again varies according to the reasons for the hui. The tangata whenua will commence proceedings.

The first speaker of the tangata whenua will rise and usually begin with a tauparapara. It generally has very deep meaning and may include a salutation to the dead or a piece of advice to the living.

The speaker may then embark on tributes to the dead, the whare and all who are gathered.

On some marae the tangata whenua will use all their speakers first and the manuhiri will then reply with all of theirs. On other marae tangata whenua will begin, then it will go back and forth until both sides have finished their speakers. Whichever protocol applies could be answered at preliminary talks with tangata whenua.

An appropriately simple reply to tangata whenua could include the following:

Tena koutou
Te whare e tu nei tena koe
Te marae e takoto nei tena koe
Tena koutou ki nga rangatira
Ki nga mate haere haere haere
Ki te hunga ora tena tatou
Tena koutou
Tena koutou tena tatou katoa

Greetings
The house that stands, greetings
The marae that lies here, greetings
Greetings to you, oh chiefs
Farewell to the dead
To us the living, greetings
Greetings to us all.

Waiata

After each speaker finishes a song is sung. This waiata is to finally embellish what the speaker has said. It is usually led by women. Ideally waiata should have some significance in relation to the reason for having the hui. If no appropriate waiata is known, a short hymn will usually be appropriate.

Koha

After the last speaker finishes the koha is laid down on the marae. It may be before or after the waiata. It also signals to tangata whenua that manuhiri have finished their speakers.

Hariru

Once the tangata whenua see the koha laid they will indicate by standing that the hariru process should commence. Hariru is the process of handshaking and the hongi.

Manuhiri move over to the tangata whenua – usually the men lead.

On some marae manuhiri handshake and hongi the kaumatua first and move through to the end. On other marae manuhiri start from the other end and finish with the kaumatua and speakers. This process too can be canvassed in preliminary talks with kaumatua.

Sometimes the hariru takes place before speeches.

Hongi

This is a pressing of noses. Sometimes it is once, sometimes it is twice. Sometimes the hongi involves the pressing of foreheads and noses. The lead should be taken from tangata whenua. Sometimes also, when encountering women or kuia it is appropriate to kiss them on the cheek. After finishing the hongi it is usual to say tena koe or kia ora koe. Some people say tena koutou which has the effect of including ancestors in the greeting.

Kai

The final process of the ritual is to have a meal or a light repast. This finally ends the tapu manuhiri. The hui can then proceed according to contracted criteria.

The don'ts on marae

- Do not walk in front of speakers as they are talking.
- Do not sit on tables
- Do not sit on pillows. It is acceptable to recline on mattresses if they are provided.
- Do not leave personal items, e.g. hats, on tables.
- Do not step over people's heads or bodies.
- Do not eat on the marae complex or in the wharenui.

APPENDIX D
GLOSSARY OF MAORI TERMS

Nga kupu Maori – Maori words

Maori words have been used liberally in this paper. There are several reasons for this.

Firstly, a number of Maori words have become, through common usage, part of the language that New Zealanders speak. Examples are hui and tangi. The use of these words in this paper further reinforces this trend which adds to the richness of a bicultural society.

Secondly, the Maori Language Act declares Maori to be an official language.

Thirdly, the use of Maori words may help to demystify and dispel any fears people may have about these increasingly common terms.

It is with these points in mind that translations in brackets have been deliberately omitted. Readers are encouraged to increase their understanding of Maori words in common use.

Many Maori people are now expecting to hear Maori words if an issue involves a matter with clear implications for Maori. To them, the use of Maori words indicates a willingness to acknowledge the rangatiratanga of the Maori.

However, it is clear that there are many people who wish to know more about Maori words but have little or no knowledge. The challenge is to do something about it.

To assist readers to improve their understanding of Maori language, all of the Maori words used in this paper have been translated here.

What is defined here is only for the purpose of this paper. There will be variations in pronunciation and meaning according to district protocol. Also included are some words and exchanges which may be helpful in interaction with tangata whenua.

A very basic introduction to vowel sounds goes thus:-

a	- as in far,	e.g. pa (fortified village)
e	- as in egg,	e.g. te (the)
i	- as in see,	e.g. iti (small)
o	- as in talk,	e.g. po (night)
u	- as in too,	e.g. utu (revenge)

Some difficult sounds are encountered in the following:

ng	- as in sing,	e.g. hangi (earthen meal)
wh	- as in fun,	e.g. whare (house)
ai	- as in eye,	e.g. kai (food)
ei	- as in say,	e.g. teina (younger brother)
au	- as in sew,	e.g. whanau (family)

Other terms

The definitions given here are by no means exhaustive. They are general indicators, and may be more particularly defined by tangata whenua in each area.

hapu	sub-tribes, usually a number of whanau with a common ancestor.
hariru	the process whereby people greet each other physically. This includes the hongi and the handshake.
hongi	the pressing of noses. It is not a rubbing or stabbing motion. The noses come together at their tips.

hui	a meeting, a gathering. It can be for any number of purposes; for example, twenty-first birthdays, weddings, anniversaries, galas, fundraising events and to discuss issues. In other words, anything that is designed to bring people together.
hura kohatu	process for unveiling a headstone, usually around the first anniversary of a death.
Kahui Ariki	the Maori Queen
kai	food. It may include the process of sitting down to a meal.
kohanga reo	a language nest. A place for learning tikanga Maori.
korero	a talk, speech, or a conversation depending on circumstance. One may korero to a group or to an individual.
kai-korero	a speaker, one who is doing the talking. Also one who is an orator on ceremonial occasions.
kai-karanga	the kuia who leads the karanga.
karanga	a call. Usually a cry of emotion to someone who may be living or dead. The karanga universally signals the entry of a group of manuhiri on to marae and is started by kuia on the tangata whenua side. It may also be used by tangata whenua to signal kai is ready. Perhaps when people are milling around the marae waiting for the next step to happen a woman may spring forth and cry in Maori that kai is ready. It will usually be accompanied by physical actions to show food is what is meant.
kaitiakitanga	see section 2 of the Resource Management Bill. It means the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.
kaumatua	a respected elder man. More usually they are noticeable by their advanced years and experience. They are certainly visible by the physical position they occupy on the marae.
kia ora	greetings, a salutation.
koha	a gift, a gratuity from the heart.
koura	freshwater crayfish.
kuia	a respected elder woman. They are more usually noticeable by their air of leadership and control.
kupu	Maori term for word.
mana	spiritual power, prestige, authority. Anything to do with the status and standing of an individual or group.
mahinga kai	areas from which food is procured.
mahinga maataitai	maataitai means food resources from the sea and mahinga maataitai means the areas from which these resources are gathered.
manuhiri	visitors. Manuhiri are identified by their lack of apparent association with a tribal area. Once the rituals of mihi have been performed manuhiri are no longer visitors, but are looked at with a sense of belonging to the particular marae.
marae	two meanings – it can refer to the whole complex around a wharenui or to the physical space in front of the wharenui.
mihi	process of welcome.
Pakeha	a term denoting a non-Maori. It is not a term intended to insult.
rangatira	a very respectful term referring to a person in the warmest way. Kaumatua and kuia are rangatira in their own rights. They are chiefs and chieftainesses. Some others will be rangatira by virtue of achievements that make them stand out.

ringa wera	literally warm hands. The term is used to refer to those helpers behind the scenes who prepare and serve in the kitchen. They are regarded as important to the running of a hui, for without them the mana of the marae is lessened.
tangi	funeral process.
taonga	a term of very deep and spiritual meaning. Taonga can be the treasures as the sacred possessions of the tangata whenua. Taonga are prized and protected and not limited to things that can be seen or touched. For example, reo is considered a taonga.
taonga raranga	plants which produce material highly prized for use in weaving.
tauparapara	an ancient chant formerly associated with the launching of canoes.
tauranga waka	canoe landing sites.
tikanga Maori	Maori tradition and custom. It includes protocol and ceremony, values, beliefs.
tuna	eel.
waiata	a song, a lament.
waahi tapu	a place which is particularly sacred or spiritually meaningful to tangata whenua. It includes burial grounds and places where significant events have taken place.
wero	a challenge.
whakapapa	genealogy, family tree.
whanau	an extended family including the nuclear family, and aunties, uncles and cousins.
whare	house.

APPENDIX E

REFERENCES IN THE RESOURCE MANAGEMENT ACT TO MAORI ISSUES

Part I				
Section 2	(1)			Definitions including maataitai, mana whenua, tangata whenua, taonga raranga, tauranga waka, tikanga Maori, iwi, kaitiakitanga.
Part II				
Section 6		(e)		the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
Section 7		(a)		reference to kaitiakitanga.
Section 8				duty to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)
Part III				
Section 11	(1)	(c)		reference to Maori Affairs Act re subdivisions and SOE Act 1986 s.27D.
	(2)			reference to Maori Affairs Act 1953.
Section 14	(3)	(c)		reference to geothermal water and tikanga Maori.
Part IV				
Section 33	(1)	(a)		transfer of functions by local authority to iwi authority
Section 39	(2)	(b)		reference to tikanga Maori and receiving evidence in Maori.
Section 42	(1)	(a)		protection of information to avoid serious offence to tikanga Maori and disclosure of the location of waahi tapu.
Part V				
Section 45	(2)	(h)		reference back to Treaty of Waitangi in the context of statements of government policy.
Section 58		(b)		refers to protection of waahi tapu, tauranga waka, mahinga mataitai and taonga raranga in New Zealand coastal policy statements.
Section 61	(2)	(a)	(ii)	regional authority to have regard to management plans prepared under any other Act (e.g. iwi management plans), and taiapure fisheries when preparing regional policy statements.
Section 62	(1)	(b)		regional policy statements to state matters of resource management significant to iwi authorities.
Section 65	(3)	(e)		regional council to consider preparing a regional plan where tangata whenua have concerns about their cultural heritage re natural and physical resources.
Section 66	(2)	(b)	(ii)	regional plans and iwi management plans and management of taiapure fisheries.
Section 64	(2)	(b)	(ii)	district plans and iwi management plans and taiapure fisheries.
Section 93	(1)	(f)		notification of iwi authorities re resource consent applications.
Section 140	(2)	(h)		Treaty reference for Minister's power of call in.

Part VII

Section 187		(a)	(ii) refers to Minister of Maori Affairs as heritage authority.
		(b)	refers to iwi authority.
Section 189	(1)	(a)	preserving or protecting an area of significance to tangata whenua.
Section 199	(2)	(c)	refers to protection of water body considered to be significant to Maori.
Section 204	(1)	(c)	(iv) iwi authority to be notified of application to special tribunal.

Part X

Section 249	(2)		reference to Maori Land Court Judge eligible as alternate Planning Judge
Section 250			Minister of Maori Affairs may recommend appointment of Planning Judge or alternate Planning Judge.
Section 253		(e)	Planning Tribunal members to have a mix of knowledge and experience including Treaty of Waitangi and kaupapa Maori matters.
Section 254	(1)		Minister of Maori Affairs may support appointment of Planning Commissioner.
Section 269	(3)		Planning Tribunal to recognise tikanga Maori where appropriate.
Section 276	(3)		refers to evidence in Maori
Section 353			notices and consents re Maori land.

SCHEDULES

First Schedule

Part I

Clause 3	(1)	(d)	local authority to consult with tangata whenua when preparing policy statements.
Clause 5	(4)	(f)	notification of proposed policy statements to tangata whenua.
Clause 20		(f)	provision of copy of operative coastal plan to tangata whenua.

Second Schedule

Part I

Clause (4)		(c)	reference to waahi tapu in regional policy statements and plans.

Part II

Clause (2)		(c)	reference to waahi tapu in district policy statements and plans.

Fifth Schedule

Clause 24		(d)	provisions of the Hazards Control Commission for the aspirations of Maori people.

Eighth Schedule

Part I

reference to the Maori Affairs Act 1953.

BIBLIOGRAPHY

Hui, by Anne Salmond, Reed, Wellington 1975

Kawe Korero – A guide to Reporting Maori Activities, by Michael King, New Zealand Journalists Training Board, 1990.

Partnership Dialogue – A Maori Consultation Process, Responsiveness Unit, State Services Commission, 1989.

Te Marae – A Guide to Customs and Protocol, Reed Methuen, 1986.

Maori Values and Environmental Management, Manatu Maori, 1991.

Environmental Management and the Principles of the Treaty of Waitangi, Parliamentary Commissioner for the Environment, 1988.