



# NZCPS 2010 Guidance note

## Policy 2: The Treaty of Waitangi, tangata whenua and Māori heritage

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## *Policy 2*

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

- (a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;
- (b) involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;
- (c) with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;
- (d) provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;
- (e) take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and
  - (i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and
  - (ii) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;
- (f) provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:
  - (i) bringing cultural understanding to monitoring of natural resources;
  - (ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;
  - (iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaimai or other non commercial Māori customary fishing;
- (g) in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:

- (i) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and
- (ii) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

**Mātauranga Māori** and **Pukenga** are defined in the New Zealand Coastal Policy Statement 2010 (NZCPS 2010) glossary and the full definitions are included in the glossary at the end of this guidance note.

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## *Overview of the policy*

Policy 2 of the New Zealand Coastal Policy statement 2010 (NZCPS 2010) concerns the Treaty of Waitangi<sup>1</sup>; and the connection and relationships that tangata whenua<sup>2</sup> have with the coastal environment, promotes tangata whenua involvement in coastal decision-making, and recognises the importance of Māori cultural and heritage values.

All readers of this policy guidance note should also refer to the NZCPS 2010 Implementation Guidance Introductory note<sup>3</sup>. The Introductory note contains general information and guidance that is important for implementing all of the objectives and policies in the NZCPS 2010.

## *Rationale*

Māori have strong traditional and continuing cultural associations with the coast. Policy 2 focuses on ways in which local authorities can actively involve tangata whenua in their planning processes and decision-making to enable tangata whenua to be active participants in coastal planning and management. Decision-makers are required by section 8 of the Resource Management Act 1991 (RMA) to take account of the principles of the Treaty of Waitangi (refer also to sections 6(e), 6(g) and 7(a)).

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<sup>1</sup> Treaty of Waitangi (Te Tiriti o Waitangi) has the same meaning as 'Treaty' as defined in section 2 of the Treaty of Waitangi Act 1975 (section 2, RMA).

<sup>2</sup> Tangata whenua means the iwi, or hapū, that holds mana whenua over an area (section 2, RMA).

<sup>3</sup> <http://www.doc.govt.nz/nzcps-introductory-note>

## ***Related objectives, policies and provisions***

This section covers the links (in terms of the Treaty of Waitangi, tangata whenua and Māori heritage) between the various provisions of the NZCPS 2010, the Resource Management Act 1991 (RMA), and other legislation.

### **NZCPS 2010**

When implementing any of the other objectives and policies in the NZCPS 2010, Policy 2 will also need consideration. Policy 2 relates to all other provisions of the NZCPS 2010.

Objectives 3 and 6 and Policies 4, 11 and 17 need particular mentioned in relation to implementing Policy 2. Matters which require consideration of Policy 2 of the NZCPS 2010 are likely to also require consideration of Objectives 3 and 6 and Policies 4, 11 and 17 as well.

Key objectives and policies	Other related objectives	Other related policies
Objectives 3 and 6 Policies 4, 11, and 17	All objectives	All policies

### ***Objective 3***

Objective 3 focuses on taking account of the principles of the Treaty of Waitangi, recognising the role of tangata whenua as kaitiaki and providing for tangata whenua involvement in managing the coastal environment. Policy 2 is the primary policy for implementing Objective 3 because it elaborates on how to actively involve tangata whenua in coastal management.

### ***Objective 6***

Objective 6 focuses on enabling people and communities to provide for their social, economic and cultural well-being and their health and safety. The objective specifically calls for recognition that the protection of habitats of living marine resources contributes to the social, economic and cultural well-being of people and communities; and that historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage. Policy 2, with its focus on the Treaty of Waitangi, tangata whenua and Māori heritage, is therefore an important way to achieve this objective.

### ***Policy 4: Integration***

Policy 4 promotes integration through coordinated management of natural and physical resources in the coastal environment and activities that affect the coastal environment through coordinated management of cross boundary matters and a collaborative approach to management. Policy 2 and Policy 4 both seek an integrated approach to coastal management.

### ***Policy 11: Indigenous biological diversity (biodiversity)***

Policy 11 seeks to protect indigenous biological diversity in the coastal environment which is important to Policy 2 because protecting indigenous biological diversity is critical to tangata whenua being able to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment.

### ***Policy 17: Historic heritage***

Policy 17 seeks to protect historic heritage in the coastal environment from inappropriate subdivision, use, and development, and directs how to identify and assess coastal historic sites in collaboration with others including iwi authorities and kaitiaki. There is a close relationship between Policy 2 and Policy 17.

## **Legislation**

Relevant legislation includes the RMA and the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act). Both statutes are significant to the implementation of Policy 2 of the NZCPS 2010. Readers should note that the MACA Act included consequential amendments to the RMA so that those people implementing the RMA are alerted to obligations under the MACA Act.

### ***Resource Management Act 1991<sup>4</sup>***

Specific RMA provisions apply to Policy 2:

- 5(2) The purpose of the RMA: is to ‘promote the sustainable management of natural and physical resources’. This provision includes cultural wellbeing in the definition of sustainable management. In achieving the purpose of the Act, outlined in Part 2, ‘all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources’ shall:
  - Recognise and provide for:
    - Section 6(e)—‘the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga’.
    - Section 6(f)—‘the protection of historic heritage from inappropriate subdivision, use and development’. Historic heritage is defined in Section 2 of the Act.
    - Section 6(g)—‘the protection of protected customary rights’.
  - Have particular regard to:
    - Section 7(a)—‘kaitiakitanga’.

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<sup>4</sup>[http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html?search=ts\\_act\\_resource+management\\_rese&p=1&sr=1](http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html?search=ts_act_resource+management_rese&p=1&sr=1)

- Take into account:
  - Section 8—‘the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)’.
- Section 33(2)—Local authorities have the ability to delegate powers, functions and duties to (amongst others) any iwi authority.
- Section 35A—Duty to keep records about iwi and hapū:
  - (1) For the purposes of this Act or regulations under this Act, a local authority must keep and maintain, for each iwi and hapū within its region or district, a record of—
    - (a). the contact details of each iwi authority within the region or district and any groups within the region or district that represent hapū for the purposes of this Act or regulations under this Act; and
    - (b). the planning documents that are recognised by each iwi authority and lodged with the local authority; and
    - (c). any area of the region or district over which 1 or more iwi or hapū exercise kaitiakitanga.
- Sections 35(A)(3), 35(A)(4), 35(A)(5) and 35(A)(6), are also relevant to Policy 2 of the NZCPS 2010.
- Section 36(c) outlines the arrangements for Joint Management Agreements (which are also defined in Part 2 of the RMA).
- Section 39(2)(b) states that tikanga Māori should be recognised.
- Section 42—Local authorities can make orders to exclude the public from hearings and/or prevent public release of certain sensitive information where necessary ‘to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu’.
- Section 61(2A): ‘When a regional council is preparing or changing a regional policy statement, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region:
  - (a). the council must take into account any relevant planning document recognised by an iwi authority; and
  - (b). in relation to a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the council must, in accordance with section 93 of that Act,—
    - i. recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
    - ii. take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.’

- Section 62(1)(b) of the RMA requires that the regional policy statement (RPS) of a region must state ‘the resource management issues of significance to iwi authorities in the region’.
- Section 65(3)(e) directs that in the preparation and change of other regional plans that any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources must be considered.
- Section 66(2)(c)(iii) states that the regional council shall have regard to regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including by-laws relating to taiāpure, mahinga mātaimai, or other non-commercial Maori customary fishing).
- Section 66(2A)—When a regional council is preparing or changing a regional plan, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region:
  - (a). the council must take into account any relevant planning document recognised by an iwi authority; and
  - (b). in relation to a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the council must, in accordance with section 93 of that Act,—
    - i. recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
    - ii. take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.
- Section 74(2A) —When preparing or changing a district plan a territorial authority must take account of any ‘planning documents recognised by an iwi authority’.
- Section 80 of the RMA provides discretion to local authorities to prepare, implement or administer a combined regional or district plan, and combine plans where significant cross boundary issues relate to the use, development and protection of natural and physical resources
- Schedule 1, clauses 3, 3A and 3B include consultation provisions in the preparation and change of all policy statements and plans.

This is not an exclusive list of relevant RMA provisions and readers of this guidance should also refer directly to the Act.



## ***Marine and Coastal Area (Takutai Moana) Act 2011***<sup>5</sup>

The purpose of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act) is to establish a durable scheme to ensure protection of all legitimate interests of all New Zealanders in the marine and coastal area, and to recognise the mana tuku iho of iwi, hapū and whānau as tangata whenua<sup>6</sup>. The Act provides for recognition of customary interests in the common marine and coastal area<sup>7</sup> (CMCA) (a subset of the marine and coastal area). It extends from mean high water springs to the outer limit of the territorial sea and includes the marine and coastal area within these limits other than that which is in freehold title, the bed of Te Whaanga Lagoon in the Chatham Islands and specified conservation land held by the Crown. Detailed guidance on the MACA Act may be found at [www.ots.govt.nz](http://www.ots.govt.nz).

The MACA Act came into force on 1 April 2011 after the NZCPS 2010 had taken effect. Readers should refer directly to the MACA Act. This Act takes account of the intrinsic, inherited rights of iwi, hapū, and whānau, derived in accordance with tikanga and their mana-based relationship to the marine and coastal area and provides for the recognition of customary interests and rights in the CMCA.

Three types of customary interests are recognised within the CMCA under the MACA Act:

- Customary marine title (sections 58–93)
- Protected customary rights (sections 51–57)
- Participation in conservation processes (sections 47–50).

For more information about these customary interests refer to:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/marine-and-coastal-area-takutai-moana/about-the-legislation>

## ***Fisheries Act 1996***<sup>8</sup>

Part 9 of the Fisheries Act 1996 gives effect to the obligations stated in the Treaty of Waitangi Fisheries Claims Settlement Act 1992. Part 9 sets out tools to provide practical recognition of the right in relation to fisheries under Article 2 of the Treaty of Waitangi. Taiāpure and mātaihau reserves are included in the suite of management tools available for the purpose of recognising and providing for customary food gathering.

A **taiāpure** is a local management tool established in an area that has customarily been of special significance to an iwi or hapū as a source of food or for spiritual or cultural reasons (section 174 of the Fisheries Act).

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<sup>5</sup> <http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html>

<sup>6</sup> Refer to the glossary of terms for the definition of ‘mana tuku’ iho and ‘marine and coastal area’.

<sup>7</sup> Refer to the glossary of terms for the definition of ‘common marine and coastal area’.

<sup>8</sup> <http://www.legislation.govt.nz/act/public/1996/0088/latest/DLM394192.html>

**A mātaītai** is a traditional fishing ground for the purpose of recognising and providing for customary management practices and food gathering. A mātaītai reserve is established through the processes of the Kaimoana (Customary Fishing) Regulations 1998<sup>9</sup>.

### ***Historic Places Act 1993***<sup>10</sup>

The purpose of the Historic Places Act 1993 (HPA) 'is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand' (section 4(1) Historic Places Act 1993). Section 4(2)(c) states that 'In achieving the purpose of this Act, all persons exercising functions and powers under it shall recognise the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga'.

### ***The Local Government Act 2002***<sup>11</sup>

This Act has a number of provisions relating to the Treaty of Waitangi and Māori involvement in decision-making processes. Section 4 (Treaty of Waitangi) states that: 'in order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes'.

### ***Treaty of Waitangi Settlements***

Local authorities should be aware of any relevant settlements and legislation arising from them. Treaty of Waitangi settlements, background claims under the Treaty of Waitangi and deeds of settlement may concern matters relevant to the RMA. See the Office of Treaty Settlements<sup>12</sup> summary edition of the publication 'Healing the past, building a future' for a discussion on the claimant group's ability to participate in specified RMA processes (page 49).<sup>13</sup>

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<sup>9</sup> <http://www.legislation.govt.nz/regulation/public/1998/0434/latest/DLM267987.html>

<sup>10</sup> <http://www.legislation.govt.nz/act/public/1993/0038/latest/DLM300511.html>

<sup>11</sup> <http://www.legislation.govt.nz/act/public/2002/0084/73.0/DLM170873.html>

<sup>12</sup> <http://www.ots.govt.nz/>

<sup>13</sup> <http://www.nz01.2day.terabyte.co.nz/ots/DocumentLibrary/HealingSummaryreprint.pdf>

## *Origins of the policy*

Policy 2 of the NZCPS 2010 builds on the New Zealand Coastal Policy Statement 1994 (NZCPS 1994) provisions relating to the Treaty of Waitangi, tangata whenua and Māori historic heritage. The NZCPS1994 had four policies covering these topics:

- Taking account of the Treaty of Waitangi, consultation, involving tangata whenua in planning and consents decision-making processes and taking account of any relevant iwi resource management plan or planning documents.
- Characteristics of special value to tangata whenua.
- Transfer, delegation or sharing of local authority functions, powers and duties regarding characteristics of special value to tangata whenua.
- Historic heritage of significance to Māori.

These four policies from the NZCPS 1994 have been integrated into one policy in the NZCPS 2010, namely Policy 2. Local authorities and decision-makers are provided with more specific direction on the identification and protection of coastal sites and resources of particular significance, importance or value to Māori in Policy 2. Elements of the NZCPS 1994 that repeated RMA provisions are not retained.

The NZCPS Board of Inquiry<sup>14</sup> commented that tangata whenua values and interests in sustainable management need to be better catered for, such as building on and in some cases establishing relationships to recognise and provide for tangata whenua involvement.

The Board also commented on the importance of recognising the enduring relationship of tangata whenua over their lands, territories and resources and their spiritual and cultural practices. That includes protecting characteristics of the coastal environment that are of special value to tangata whenua. Degradation of coastal water quality or disturbances to coastal areas or sites of significance to Māori, for example, have the potential to have widespread adverse effects on Māori cultural well-being.

The Board found that the RMA requirements for recognising Māori values in coastal management are inconsistently implemented. Tangata whenua participation in decision-making processes is low in some places where Māori could be expected to have a strong interest. The NZCPS 2010 encourages councils to support Māori participation in plan and consent processes, and to engage with tangata whenua to identify ways to manage culturally important places and resources.

The Board also discussed: consultation (and heard a number of submissions on this topic); definitions of a number of Māori terms; and iwi resource management plans and other relevant planning documents recognised by iwi. The recommendations of the Board were included, with some amendment, in the NZCPS 2010.

Policy 2 specifies some of the methods available to recognise and provide for Māori cultural and heritage values. It stresses the importance of consultation and collaboration with tangata whenua.

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<sup>14</sup> <http://www.doc.govt.nz/getting-involved/consultations/results/new-zealand-coastal-policy-statement/>

Policy 2 of the NZCPS 2010 should be read in conjunction with Policy 17 (historic heritage) of the NZCPS 2010. For further information refer to the Board of Inquiry Report, Volume 2, pp. 21-44.<sup>15</sup>

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<sup>15</sup> <http://www.doc.govt.nz/getting-involved/consultations/results/new-zealand-coastal-policy-statement/proposed-new-zealand-coastal-policy-statement-2008-board-of-inquiry-report-and-recommendations/>

## *Implementing the policy*

While guidance is provided here on implementing Policy 2 it is also necessary to consider the NZCPS 2010 as a whole when implementing each policy. Please also refer to the NZCPS 2010 Implementation Guidance Introductory note<sup>16</sup> which covers the matters that are relevant in giving effect to the NZCPS 2010.

Key issues in implementing Policy 2 include:

- Recognising the relationship tangata whenua have with the coastal environment
- Involving tangata whenua in the preparation of resource management plans and policy statements through effective consultation
- Incorporating mātauranga Māori into regional policy statements and plans and in the consideration of statutory decision-making
- Providing opportunities for Māori involvement in decision-making
- Taking into account any relevant iwi resource management plan and other relevant planning documents recognised by the appropriate iwi authority or hapū
- Providing opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment
- Consulting and collaborating with tangata whenua when carrying out historic heritage, landscape or cultural impact assessments, in order to—
  - (a). recognise the importance of Māori cultural and heritage values, areas and sites
  - (b). identify, assess, protect, and manage such areas or sites of special value to Māori.

These matters are considered under the following broad headings:

- Consultation
- Māori involvement in resource management plans and decision-making
- Taking account of planning documents recognised by iwi and hapū
- Kaitiakitanga
- Māori cultural and heritage values, sites and places.

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<sup>16</sup> <http://www.doc.govt.nz/nzcps-introductory-note>

## Consultation

Consultation is vital to implementing Policy 2(a) of the NZCPS 2010 and recognising that ‘tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places they have lived and fished for generations’. Consultation can aid understanding. Increased knowledge of places that are culturally important to tangata whenua (by local government staff and decision-makers) can also assist with planning and decision-making processes.

Policy 2(b) seeks to improve processes for consultation with tangata whenua through iwi authorities or hapū in the development of plans and policy statements. Such consultation should be early, meaningful and as far as practicable in accordance with tikanga Māori.

The RMA sets out the requirements for consultation in relation to the preparation of policy statements and plans and resource consents (and notices of requirements). For the preparation of a proposed policy statement or plan, clauses 2 -3C of Schedule 1 of the RMA apply in particular. These provisions make it clear that iwi authorities and any customary marine title group in an area are to be consulted<sup>17</sup>.

Section 36A of the RMA outlines the situations where there is no duty to consult under the RMA. Neither an applicant nor a local authority has a duty, under the RMA, to consult any person about an application. This only applies to the RMA and in relation to consent applications. However, each must comply with a duty under any other enactment (including the MACA Act) to consult any person about the application. Any person including applicants and local authorities, may consult any person about the application or notice of requirement (section 36A(1)(c)). Consultation with tangata whenua or Māori generally, as an affected party or parties at the early stage of the consent process, may be considered good planning practice and may facilitate or advance the progress of an application.

The Board of Inquiry report outlines the key principles of consultation from the *Wellington International Airport Limited v Air New Zealand* [1993] 1 NZLR 671 case:

- Notification is not consultation.
- Consultation must be allowed sufficient time, and genuine effort must be made.
- Consultation is not merely to ‘tell’ or ‘present’.
- Consultation requires the statement of a proposal not yet finally decided upon; listening to what others have to say and considering their responses; and then finally deciding.
- Consultation is not negotiation, for that involves two persons, which has as its object arriving at an agreement (although consultation may well lead to negotiation and agreement).

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<sup>17</sup> Refer to the glossary of terms for the definition of ‘iwi authority’ and ‘customary marine title group’.

Ngāi Tahu kaumātua Mr Ellison's comments to the Board of Inquiry<sup>18</sup> provide further guidance on consultation:

So we have had enough of the tick the Maori box mentality, and we seek more proactive ways to establish meaningful partnerships between tangata whenua and local authorities. One way of helping to bring this about for the NZCPS, is to explicitly state that a key outcome that is expected, and will result from taking into account the principles of the Treaty of Waitangi, is the establishment of partnerships with tangata whenua, the formation of relationships that are characterised by open trust, openness, reasonableness, neutral cooperation and active protection of our values.

(Submission 429 Ngāi Tahu, Ellison, Volume 2: Working Papers: Board of Inquiry report on the NZCPS 2008, page 27.)

Recent case law makes it clear that consultation needs to be meaningful and robust, and that when a council proposes a plan change or variation, consultation with Māori must occur prior to notification. See the case law section at the end of this guidance note for further details on *Waikato Tainui Te Kauhanganui Inc v Hamilton City Council, 2010, High Court, CIV, 2009, 419-1712*.

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<sup>18</sup> <http://www.doc.govt.nz/upload/documents/getting-involved/consultations/closed-consultations/nzcps/NZCPS-2008-board-of-inquiry-vol-2.pdf>

## **Māori involvement in resource management plans and decision-making**

Policy 2 provides guidance on how to support Māori involvement in resource management plans and the resource management decision-making process. Policy 2(c) states that:

with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes.

Giving effect to Policy 2(c) requires effective consultation and collaboration with tangata whenua including iwi and hapū. As far as practicable tikanga Māori (Māori customary values and practices) is to be followed and mātauranga Māori (Māori customary knowledge) included in resource management policy statements and plans and other regulatory decision-making processes (as above). This will involve a lot of work by tangata whenua to articulate mātauranga effectively to councils. Councils will require considerable capacity-building internally to be able to understand and respond to mātauranga imperatives.

Some councils have developed joint management agreements under section 36B of the RMA; for example, Taupō District Council with Ngāti Tūwharetoa, who now have joint decision-making powers in relation to notified resource consents. The Otago Natural Resources Committee, of the Otago Regional Council, includes iwi representatives on it. A number of councils have used other approaches to involve Māori in the RMA planning and decision-making process, such as employing iwi liaison officers, setting up standing committees (such as in Hawke's Bay), employing translators, the use of Māori units, and cultural advisers.

Working with tangata whenua to develop consent conditions is another means of involving Māori in resource management decision-making. This can happen after tangata whenua initiate the process by making a submission on a resource consent application. Alternatively, a council could discuss with tangata whenua, in a general sense, the kinds of matters that are likely to arise that may be of interest to tangata whenua, and then the council could take the initiative by recognising these interests of Māori when they arise and informing the relevant iwi or hapū when there is an opportunity to engage in pre-application consultation or to make a formal submission on an application. Where tangata whenua have identified an interest in the outcome being sought, local authorities can provide for their involvement in the resource management planning and decision-making process, in some circumstances.

Policy 2(d) is about providing opportunities for Māori involvement in decision-making. The example given in this policy is involving Māori experts, including pūkenga (a person skilled in customary and traditional knowledge, who may have knowledge not otherwise available, when a consent application or notice of a requirement is dealing with cultural localities or issues of cultural significance. This approach accepts customary and traditional knowledge as well as technical expertise (such as engineering advice) on a topic or a location (such as landscape advice).

A further means of involving Māori in resource management decision-making and plans is to transfer (section 33, RMA) and delegate (section 34A, RMA) functions and



duties to tangata whenua, when and where appropriate. There are limited examples of delegated functions and duties to tangata whenua but Northland Regional Council and Northland district councils (Whangarei, Kaipara and Far North) have transferred a range of RMA functions, powers and duties between themselves, relating to:

- The processing, administration and enforcement of resource consents (for land use consents, the sale of liquor, structures, discharges)
- The administration and enforcement of unauthorised noise originating from the coastal marine area
- The control of contaminant discharges on the foreshore of the coastal marine area (from live and dead stock, abandoned vehicles, rubbish and fires).

The transfers are aimed at increasing efficiencies in the processing, administration, monitoring and enforcement of clearly defined functions, powers and duties. A monitoring and reporting regime has been developed to check implementation.

## **Taking account of iwi resource management plans and other recognised planning documents**

Decision-makers are required by Policy 2(e) to take into account any relevant iwi resource management plan or relevant planning document recognised by the appropriate iwi authority or hapū (that is lodged with the council), to the extent that its content has a bearing on resource management issues in the region or district.

Policy 2(e) elaborates on statutory obligations in relation to iwi resource management plans and relevant planning documents recognised by an iwi authority or hapū. Readers should note that statutory obligations also exist in respect of planning documents prepared by customary marine title groups under section 85 of the MACA. Obligations arising from the MACA are not the subject of this guidance note. Specific guidance on customary marine title planning documents is provided at [www.ots.govt.nz](http://www.ots.govt.nz).

Iwi resource management plans and relevant planning documents recognised by an iwi authority or hapū potentially have a significant role to play in coastal planning and management, including local authority decision-making. Such planning documents are one method of recognising matters of environmental significance for tangata whenua. These documents can also provide insight into cultural values. Where appropriate, references to and material from such plans can be incorporated into regional policy statements and regional and district plans.

A key challenge, for meaningful integration of iwi and hapū interests into the local government resource management decision-making process, is the disclosure of sensitive information. There are situations when tangata whenua may wish the location of taonga such as a wāhi tapu to remain confidential and this can create challenges for RMA planning and decision-making processes.

Some iwi and hapū are not well resourced to prepare iwi resource management plans. Policy 2(e)(ii) encourages local authorities to consider giving practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans. Assistance could be funding, technical expertise and resources.

Cultural impact assessments (CIAs) are another tool for involving Māori in resource management processes and decision-making, as they provide an additional level of detail. A CIA is a report documenting Māori cultural values, interests and associations with an area or a resource, and the potential impacts of a proposed activity on these. CIAs can facilitate meaningful and effective participation of Māori in impact assessment. A CIA should be regarded as technical advice, much like any other technical report such as ecological or hydrological assessments.

## Kaitiakitanga

Section 7(a) of the RMA requires councils to have particular regard to kaitiakitanga. Kaitiakitanga is defined in the RMA as ‘the exercise of guardianship by tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources and includes the ethic of stewardship’. This definition of kaitiakitanga was included in the RMA in 1997, and distinguished the concept from that of ‘stewardship’. It applies only to the exercise of guardianship by the tangata whenua of an area.

Those administering the RMA must give particular weight to section 7(a) and the other clauses in section 7. It creates a duty to those administering the RMA to be on inquiry, including consulting (when needed) to ensure this is possible. It means genuine attention and thought needs to be given to kaitiakitanga, but submissions on the topic may be accepted, accepted in part, or rejected. See, for example, *Takamore Trustees v Kapiti Coast* 27/10/04 DC [2003] NZRMA 433 (HC) and *Minhinnick v Minister of Corrections* EnvC A043/04.

Policy 2(f) seeks to provide opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands and fisheries in the coastal environment. The policy lists some of the measures that could be included, such as monitoring, methods to manage, maintain and protect taonga and taiāpure, mahinga mātaimai and other related customary fishing.

The exercise of guardianship by tangata whenua may include things like practicing karakia (prayers and incantations), returning the first fish caught in reciprocity for the gifts of the sea (from fishing) and limiting catches to only that which is needed.

Tangata whenua need to be provided the opportunity to exercise kaitiakitanga of the natural and physical resources of an area in accordance with tikanga Māori. One means of doing this is to enable on going involvement of tangata whenua with natural resources in their area. Consultation could establish how this involvement might work. Hearing and understanding the views of tangata whenua on the exercise of kaitiakitanga and letting those views influence decision-making are good first steps in implementing Policy 2(f). Further, local authorities can consider how RMA responsibilities for fisheries resources can be implemented in an integrated manner consistent with kaitiakitanga, through such things as the assessment of habitats and nursery areas.

Tangata whenua may have an interest in the operational aspects of an activity or application or in state of the environment monitoring and reporting. Monitoring by Māori may potentially be a means of tangata whenua exercising kaitiakitanga. Examples to date include the joint development of monitoring programmes, observations, data collection, receiving any monitoring reports from consent holders, and input into ensuring that appropriate tikanga Māori is followed if any taonga (such as human remains) are uncovered. Tangata whenua exercise of kaitiakitanga may require payment for Māori involvement and expertise.

There may be other means of having regard to tangata whenua’s role as kaitiaki in a given coastal area, such as observing rāhui (which is a form of tapu restricting access to, or use of, an area or resource by unauthorised persons at particular times) and recognising and providing for a kaitiaki role through resource management plans and policy statements.

## **Māori historic heritage**

Historic heritage (as defined in the RMA):

- (a). means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:
  - i. archaeological:
  - ii. architectural:
  - iii. cultural:
  - iv. historic:
  - v. scientific:
  - vi. technological; and
- (b). includes—
  - i. historic sites, structures, places, and areas; and
  - ii. archaeological sites; and
  - iii. sites of significance to Māori, including wāhi tapu; and
  - iv. surroundings associated with the natural and physical resources

(section 2, RMA)

Policy 2(g) is about recognising places, landscapes or values of historic, cultural or spiritual significance or special value to tangata whenua. Policy 2(g) seeks consultation and collaboration with tangata whenua, and recognising that tangata whenua have a right to choose whether or not to keep this information on such places, landscapes and values in private in what's known as a silent file. On the other hand there is a responsibility under Policy 17 to identify and protect historic heritage sites and so on.

There needs to be more recognition that the definition of historic heritage above applies to a historic landscape, not just a site. Hence, cultural landscapes are enabled by both the RMA and the NZCPS 2010. Readers of this guidance should also refer to the guidance notes on 'Policy 15: Natural features and natural landscapes' and 'Policy 17: Historic heritage identification and protection'.

Policy 2(g)(i) seeks to recognise the importance of Māori culture and heritage values, including through historic heritage, landscape and cultural impact assessments.

Policy 2(g)(ii) seeks to provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including through historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies.

The following are known examples of heritage:

- Areas of reefs, rock formations, fishing grounds, places associated with early Māori explorers (e.g. caves, tauranga waka<sup>19</sup>, landing sites, landscape boundary markers)
- Cultural and spiritual sites (such as islands, peninsulas, headlands and inlets)
- Places of canoe migration traditions
- Areas where early encounters between Māori and Pākehā occurred
- Pa sites, fishing villages, urupā, mahinga kai areas and sites for weaving and where weaving materials are located.<sup>20</sup>

(NZCPS Board of Inquiry Report, Volume 2, page 40).

New Zealand's historic heritage includes places and values of significance to Māori, including wāhi tapu<sup>21</sup>, and tangata whenua need to be involved in the identification, assessment and management of historic heritage of significance to them. Tikanga Māori would ideally be followed in this process. Collaboration with other heritage protection agencies is also considered to be good practice.

A guide has been prepared by Te Puni Kōkiri on how Māori heritage issues might be identified and assessed. This can be accessed from their website or following the link provided in this footnote<sup>22</sup>.

A further matter to consider in relation to Policy 2(g) is that many Māori communities live on the coast and are subject to climate change effects such as coastal inundation and erosion. This could cause considerable social and economic upheaval and put Māori historic heritage at risk.

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<sup>19</sup> Refer to the glossary of terms for a definition of 'tauranga waka'.

<sup>20</sup> Refer to the glossary of terms for a definition of 'urupā' and 'mahinga kai'.

<sup>21</sup> Refer to the glossary of terms for a definition of 'wāhi tapu'.

<sup>22</sup> <http://www.tpk.govt.nz/en/in-print/our-publications/publications/maori-and-aquaculture-development/>

## *Related and ongoing work*

### **Mana Whenua Mana Moana—New Plymouth District Council Coastal Strategy<sup>23</sup>**

The Mana Whenua Mana Moana Paper was prepared by the Mana Whenua Reference Group for input into the New Plymouth Coastal Strategy. It highlights the importance of the coastal environment from the mana whenua perspective, by describing its history and values through stories. The paper also sets a direction for the future use and protection of the coast as desired by mana whenua. Elements of Mana Whenua Mana Moana were considered when developing the Coastal Strategy.

### **Cultural heritage example**

Ngāi Tahu and Ngātiwai have identified the preservation of Māori heritage as one of their objectives for plan reviews, plan changes and variations. To do so, a form of CIA, called a Historic Heritage Assessment, has been introduced. This is the type of approach sought by Policy 2(g) of the NZCPS 2010.

The Hauraki Gulf Forum (working with Keir Volkerling and Ngātiwai) prepared a guide for how Māori heritage issues might be identified and assessed (entitled *Effects based planning for cultural heritage*<sup>24</sup>). This document stresses the need for:

- A New Zealand Historic Places Trust register database
- A bibliographic database
- A heritage agency and consultant's database
- A Māori heritage inventory which lists known sites (not necessarily registered) or those listed in a district or regional plan or cited by the New Zealand Archaeological Association as indicators of possible heritage sites
- 'Alert layers' constructed from the above
- Predictive modelling—which involves putting a percentage on whether a given area is a Māori heritage site by looking for markers such as beach and coastal remains (like mahinga kai middens and tauranga waka mooring sites). The use of GPS and GIS can assist with location and spatial identification.

(Hauraki Gulf Forum, 2008)

The use of tools such as those listed above can determine the likelihood of potential impacts and enable the planning regime to provide for it better.

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<sup>23</sup> <http://www.newplymouthnz.com/CouncilDocuments/PlansAndStrategies/CoastalStrategy.htm>.

<sup>24</sup> <http://www.arc.govt.nz/albany/fms/main/Documents/Environment/Coastal%20and%20marine/Effects%20based%20planning%20for%20cultural%20heritage.pdf>

## Resources

### Relevant case law

#### *Ruahine v Bay of Plenty Regional Council [2012] NZHC 2407*<sup>25</sup>

This case considers the Port of Tauranga's applications to dredge, deposit dredged materials in the coastal marine area, disturb the sea bed, discharge sediment, and deposit boulders (to create an artificial reef), and carry out beach nourishment. The Court considered the Environment Court's consideration of cultural impacts and consultation with tangata whenua. It held that "...the Environment Court correctly considered the competing evidence before it. It gave careful and sympathetic attention to the cultural evidence. It has given correct weight to all Part 2 matters, including ss 6, 7, and 8. It has evaluated all relevant matters and statutory imperatives. It has reached a conclusion consistent with the Act's purpose".

#### *Waikato Tainui Te Kauhanganui Inc v Hamilton City Council, NZRMA285 (HC)*<sup>26</sup>

This case defines consultation in relation to the RMA. The Court has made it clear that where Council proposes a plan change or variation, consultation with iwi must occur prior to notification. The Court has expressed the importance of maintaining an open mind in order to achieve meaningful consultation. This decision reiterates the importance that the RMA places on consulting with iwi in a meaningful and robust way. In doing so, a fair process, established in good faith, should be used. This case provides some helpful guidance on the Court's view of effective consultation.

#### *Outstanding Landscape Protection Society Inc v Hastings District Council, W024/07*<sup>27</sup>

The Outstanding Landscape Protection Society successfully appealed the granting of consents to Unison Networks Ltd to construct and operate a wind farm comprising 37 turbines at Te Waka, Hawkes Bay. A number of parties opposed the application on the grounds of inappropriate use and development of outstanding natural landscape and adverse effects on Māori interests. Other parties supported the application on the grounds of positive effects of renewable energy generation and climate change response.

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<sup>25</sup> <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2012/2407.html?query=port%20of%20tauranga%20dredging%202012>

<sup>26</sup> [http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2010/896.html?query=title\(Waikato%20Tainui%20Te%20Kauhanganui%20](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2010/896.html?query=title(Waikato%20Tainui%20Te%20Kauhanganui%20)

<sup>27</sup> [http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2007/162.html?query=title\(Outstanding%20Landscape%20Protection%20Society%20Inc%20](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2007/162.html?query=title(Outstanding%20Landscape%20Protection%20Society%20Inc%20)

The adverse effects of the proposal were found to be more than minor but the proposal was not found to be contrary to objectives and policies of the district plan. The proposal would have significant adverse visual and landscape effects on an outstanding landscape, both individually and cumulatively with two other consented wind farms in the area; the locality was found to be of great spiritual and social importance to tangata whenua; and the relationship with lands and wāhi tapu would be adversely affected by granting this consent. On balance the proposal did not meet the requirements of section 5 of the RMA and the consent was declined. The active protection principle of the Treaty was particularly advanced in this appeal.

***Beadle v Minister of Corrections & Northland Regional Council, (A074/02***<sup>28</sup>

This case recognises the principle of active protection in terms of resource management. The Court said:

The person making a decision on a designation requirement or resource consent application has to take into account the principle of the Treaty by which the Crown has an obligation of active protection of Maori property and taonga, which are not limited to physical and tangible resources but extends to spiritual and intrinsic values. The Crown's obligation is not absolute, being qualified by its other responsibilities as the Government, but is to take such action as is reasonable in the circumstances prevailing at the particular time. It may, in some cases where they are significant, require decisions to be made according to tenets of Maori spiritual belief. It does not necessarily require preserving the status quo and prohibiting development of a resource. It does not imply a veto of development by those asserting Maori interests.

***Wellington International Airport Limited v Air New Zealand [1993] 1 NZLR 671***

This case was a key one for outlining what consultation is and is not in relation to the RMA. The Court's findings are summarised in the earlier section Consultation.

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<sup>28</sup> [http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2002/124.html?query=title\(Beadle%20\)](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2002/124.html?query=title(Beadle%20))



## Examples of iwi management plans

### *Te Tangi a Tauira—The Cry of the People—Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008*<sup>29</sup>

The kaupapa of this plan is 'Ki Uta Ki Tai—From the Mountains to the Sea'. It is a culturally based natural resource framework developed by and for Ngāi Tahu Whānui and has been identified and advocated as a key tool in assisting Ngāi Tahu achieve more meaningful rangatiratanga and kaitiakitanga in natural resource management. It is about an indigenous understanding of the environment that can be used to help address the wide range of issues rūnanga face with regards to environmental management. Ki Uta Ki Tai is based on the idea that if the realms of Tāwhirimātea (god of the winds), Tāne Mahuta (god of all living things), Papatūānuku (mother earth) and Tangaroa (god of the sea) are sustained, then the people will be sustained.

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<sup>29</sup> <http://www.es.govt.nz/publications/plans/iwi-management-plan/>

## Reports, websites and additional information

### *Local Government New Zealand*

- ‘Local authorities and Māori: case studies of local arrangements’ (2011)  
[http://www.lgnz.co.nz/library/files/store\\_024/000000507784.pdf](http://www.lgnz.co.nz/library/files/store_024/000000507784.pdf)  
‘Council–Māori engagement: the benefits of building good relationships with Māori’ (2007) [http://www.lgnz.co.nz/library/publications/Maori\\_Sheet\\_A4\\_02.pdf](http://www.lgnz.co.nz/library/publications/Maori_Sheet_A4_02.pdf)  
This fact sheet provides information on the benefits of building good relationships with Māori, statutory responsibilities, and ways of strengthening engagement to meet Local Government Act 2002 requirements.
- ‘Frequently asked questions on Council–Māori engagement: a resource to support councils’ (2007)  
[http://www.lgnz.co.nz/library/publications/FAQs\\_Maori.pdf](http://www.lgnz.co.nz/library/publications/FAQs_Maori.pdf)  
This document provides answers and information to address questions frequently asked by councils about Council–Māori engagement.

### *Local Government New Zealand, Te Puni Kōkiri, Ministry for the Environment and Department of Prime Minister and Cabinet*

- ‘Local authority engagement with Māori’ (2004)  
[http://www.lgnz.co.nz/library/files/store\\_005/Localauthorityengagementwithmaori2004.pdf](http://www.lgnz.co.nz/library/files/store_005/Localauthorityengagementwithmaori2004.pdf)  
This report presents the findings of a survey conducted in 2004, to identify current practices used by councils when working with or engaging Māori. It is based on, and updates, a 1997 Local Government New Zealand survey published under the title ‘Liaison and consultation with tangata whenua’.

### *Ministry for the Environment*

- ‘Māori Values supplement’—a supplement for the ‘Making good decisions workbook’ (2011) <http://www.mfe.govt.nz/publications/rma/maori-values-supplement/maori-values-supplement.PDF>
- ‘Your Rights as an “affected person”’ (2006)  
<http://www.mfe.govt.nz/publications/rma/everyday/affected/>  
A guide for people who have been asked to give their written approval to someone else's resource consent application.

- ‘Effective participation in resource consent processes: a guide for tangata whenua’ (2005) <http://www.mfe.govt.nz/publications/rma/participation-resource-consent-tangata-whenua-mar05/participation-resource-consent-tangata-whenua-mar05.pdf>

This guide aims to help tangata whenua to participate effectively in resource consent decision-making. It explains the RMA and its importance to tangata whenua; how and when tangata whenua can get involved in resource consent decision-making; what tangata whenua need to do to participate effectively; and what tangata whenua can expect and what is expected of them.

- ‘Guidelines for consulting with tangata whenua under the RMA: an update on case law’ (2003) <http://www.mfe.govt.nz/publications/rma/guidelines-tangata-whenua-dec03/index.html>

This paper builds on an earlier RMA working paper published in June 1995. It is targeted primarily at local authorities and iwi authorities working under the Act, and aims to assist them in understanding the principles emerging from case law. It had been updated to incorporate the Resource Management Amendment Act 2003.

- ‘Whakamau ki Nga Kaupapa: making the best of iwi management plans under the Resource Management Act 1991’ (2001) <http://www.mfe.govt.nz/publications/rma/whakamau-ki-nga-kaupapa-jun01/index.html>

This guide provides a practical summary of ideas to help local authorities make the most of iwi management plans and other iwi planning documents. It provides suggestions for council staff and their consultants to work more effectively with iwi, and represent their views in district and regional planning processes using iwi management plans as a focus and starting point.

- ‘Talking constructively: a practical guide for building agreements between iwi, hapu and whanau, and local authorities’ (2000) <http://www.mfe.govt.nz/publications/rma/building-agreements-with-maori-guide-may00.html>

This guide is designed to be a practical summary to help iwi, hapū, whānau and local authorities to prepare for all forms of joint discussions, including mediation.

- ‘He Tohu Whakamarama’ (1998) <http://www.mfe.govt.nz/publications/treaty/he-tohu-whakamarama-jan98.pdf>

This is a report on the interactions between local government and Māori organisations in RMA processes.

### ***Ministry for Primary Industries***

- ‘Maori customary fisheries’  
<http://www.fish.govt.nz/en-nz/Maori/default.htm>
- ‘Guidelines for mātaihai reserve applications’  
<http://www.fish.govt.nz/NR/rdonlyres/A0C5BDD6-E57D-4C31-A2CB-A4722AF6893B/0/201012GuidelinesforMataihaiReserveApplicationsbooklet.pdf>

### ***Parliamentary Commissioner for the Environment***

- ‘Kaitiakitanga and local government: tangata whenua participation in environmental management’ (1998)  
<http://www.pce.parliament.nz/publications/all-publications/kaitiakitanga-and-local-government-tangata-whenua-participation-in-environmental-management-2>

This study revisited an earlier investigation on guidelines for local authority consultation with tangata whenua. The report reviews progress made on tangata whenua involvement in RMA processes. It identifies a number of areas for improvement, particularly in processes followed and relationships between iwi and councils.

### ***Te Puni Kōkiri and the Ministry for the Environment***

- ‘Māori me te whanaketanga ahumoana: Māori and aquaculture development’ (2007) <http://www.tpk.govt.nz/en/in-print/our-publications/publications/maori-and-aquaculture-development/>

This booklet was written by Keir Volkerling for the Ministry for the Environment, and subsequently published by Te Puni Kōkiri. It discusses how tangata whenua can engage with the planning processes for aquaculture development, develop relationships with the aquaculture industry, and implement arrangements for the allocation of aquaculture assets.

### ***Te Puni Kōkiri***

- ‘Māori and council engagement under the Resource Management Act 1991’ (2006) <http://www.tpk.govt.nz/en/in-print/our-publications/publications/maori-and-council-engagement-under-the-resource-management-act-1991/>

This is a report of the findings of case studies about the ways that councils and Māori are working together under the RMA. It presents what Māori and council staff consider to be the practical issues, such as capacity and capability, that affect their engagement.

## *Quality Planning*

- 'Context for consultation with tangata whenua'  
<http://www.qualityplanning.org.nz/index.php/plan-development-components/consultation-with-tangata-whenua>
- 'FAQs on iwi management plans'  
<http://www.qualityplanning.org.nz/index.php/supporting-components/faq-s-on-iwi-management-plans>
- 'Historic heritage' <http://www.qualityplanning.org.nz/index.php/planning-tools/heritage>

## *Glossary of terms and definitions*

### **NZCPS 2010 glossary:**

**Papakāinga development** is development of a communal nature on ancestral land owned by Māori.

A **pūkenga** is a person skilled or versed in the customary and traditional knowledge, tikanga, arts, histories and genealogies of a particular iwi or hapū.

**Mātauranga Māori** means Māori customary knowledge, traditional knowledge or intergenerational knowledge.

### **Other definitions:**

**Coastal Marine Area (CMA)** means the foreshore, seabed, and coastal water, and the air space above the water—

- (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.

(Section 2, RMA)

**Common Marine and Coastal Area (CMCA)** means the marine and coastal area other than—

- (a) specified freehold land located in that area; and
- (b) any area that is owned by the Crown and has the status of any of the following kinds:
  - (i) a conservation area within the meaning of section 2(1) of the Conservation Act 1987;
  - (ii) a national park within the meaning of section 2 of the National Parks Act 1980;
  - (iii) a reserve within the meaning of section 2(1) of the Reserves Act 1977; and
- (c) the bed of Te Whaanga Lagoon in the Chatham Islands

(Section 9(1), Marine and Coastal Area (Takutai Moana) Act 2011)

**Customary marine title group** means—

- (a) an applicant group to which a customary marine title order applies or with which an agreement is made and brought into effect; and

- (b). includes a delegate or transferee of the group if the delegation or transfer is made in accordance with tikanga.

(Section 9(1), Marine and Coastal Area (Takutai Moana) Act 2011).

**Iwi authority** means ‘the authority which represents an iwi and which is recognised by that iwi as having authority to do so’ (section 2, RMA). Note that the term ‘iwi authority’ definition in the RMA is limited to RMA issues. It does not specifically imply formal Crown recognition of that group as an iwi.

**Kaitiakitanga** means ‘the exercise of guardianship by tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources and includes the ethic of stewardship’. (section 2, RMA).

**Mahinga kai** means a place where work is done, activity, garden, fishery (Moorfield<sup>30</sup>, 2006). The Waitangi Tribunal (in the Ngāi Tahu claim) found that this expression meant ‘those places where food was produced or procured’. Such a definition includes the tribal resources in and on the land, in the forests and in the rivers, lakes and sea and in the sky. It includes kai ika, kai moana, kai awa, kai manu, kai roto and kai rākau.

**Marine and coastal area—**

- (a) means the area that is bounded,—
  - (i) on the landward side, by the line of mean high-water springs; and
  - (ii) on the seaward side, by the outer limits of the territorial sea; and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the airspace above, and the water space (but not the water) above, the areas described in paragraphs (a) and (b); and
- (d) includes the subsoil, bedrock, and other matter under the areas described in paragraphs (a) and (b).

(Section 9(1), Marine and Coastal Area (Takutai Moana) Act 2011)

**Mana tuku iho** means inherited right or authority derived in accordance with tikanga (section 9, Marine and Coastal Area (Takutai Moana) Act 2011)

**Mātaitai** means traditional seafood gathering places (Fisheries Act 1996).

**Tikanga Māori** means Māori customary values and practices (section 2, RMA).

**Taiāpure** means local fisheries and customary fishing (Fisheries Act 1996).

**Tauranga waka** means canoe landing sites (section 2, RMA).

**Urupā** means a burial ground, cemetery, graveyard (Moorfield<sup>31</sup>, 2006)

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<sup>30</sup> <http://www.maoridictionary.co.nz/>

<sup>31</sup> <http://www.maoridictionary.co.nz/>

**Wāhi tapu** means sites of significance to Māori (RMA definition of historic heritage). See also Historic Places Act 1993 definition of wāhi tapu: ‘a place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense’ (section 2). They can be tangible or intangible, and each iwi, hapū or whānau determines what a wāhi tapu is to them.