MĀORI VALUES SUPPLEMENT

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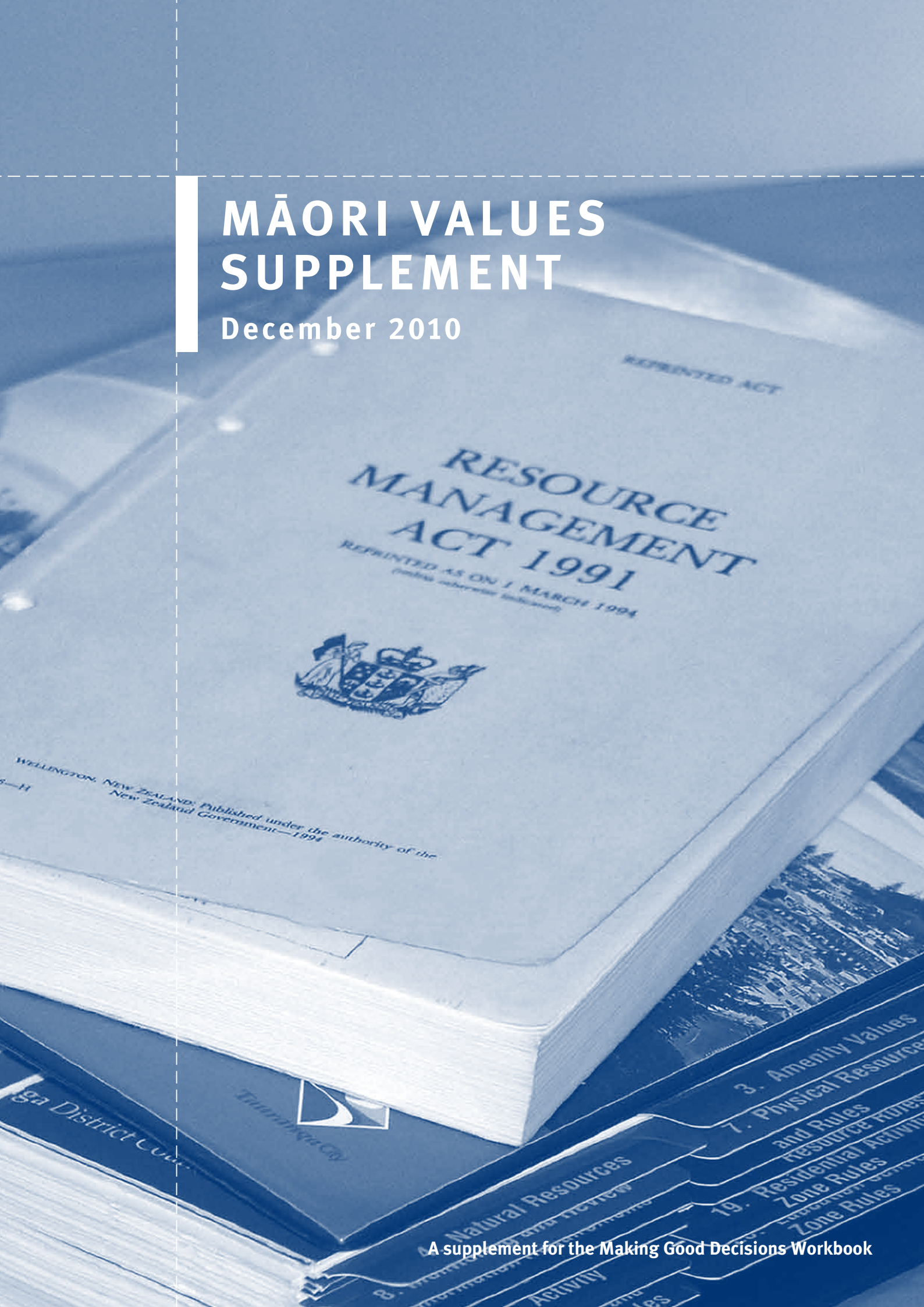

A supplement for the Making Good Decisions Workbook

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INTRODUCTION

CHAPTER 1

INTRODUCTION

PURPOSE

The purpose of this Māori Values and World Views Supplement is to enable decision-makers to take these values and world views into account in Resource Management Act 1991 (RMA) first instance decision-making. The Supplement sits alongside the Making Good Decisions workbook, in particular Module 2 (Considerations relating to Māori), and assists RMA hearing commissioners to:

- understand key concepts and values underpinning the Māori world view of the environment
- integrate Māori values into decision-making at hearings
- facilitate practical expression of tikanga Māori in hearings.

About this Supplement

At the outset, there are three important high-level points to note:

- There is no 'one' Māori world view, and this is reinforced throughout this Supplement. However, there are many concepts and values which are common throughout Te Ao Māori.
- There are differences between the dialects used by different iwi and hapū throughout Aotearoa; perhaps most noticeably between iwi of the North and South Islands[1]. The variations can affect not only the spelling of words and the use of macrons or elongated vowels (diphthongs), but also the meaning of some terms[2]. The use of North Island dialects in this Supplement is primarily the result of the authors being most familiar with these dialects (as all have descent to hapū and iwi of Te Ika a Maui).
- Māori values and concepts, and the beliefs that underpin them, are imbedded in mātauranga Māori and Māori language. Thus, translating Māori concepts into the English language and transposing them into a non-Māori world view has the potential to change or reduce their real meaning. As Metge (1996) has noted:

  To come to grips with Māori customary law, it is necessary to recognise that Māori concepts hardly ever correspond exactly with those Western concepts which they appear, on the surface, to resemble. While there is a degree of overlap, there are usually divergences as well. Even if the denotation – the direct reference – is substantially the same, the connotations are significantly different.

This limitation is acknowledged by the authors and should be borne in mind in reviewing this document.

1 In the South Island, for example, 'ng' is replaced by 'k' so that 'Ngāi Tahu' becomes 'Kai Tahu'.

2 For example, 'koro' means 'grandfather' in Waikato dialects, but can be an affectionate term to use for a young man in Ngapuhi dialect.

OVERVIEW OF SUPPLEMENT

The Supplement is made up of four chapters, and each summarised below to provide a quick overview for readers.

Chapter 1: Introduction

Chapter 1 introduces the Supplement, and provides an overview of each of its four chapters. It then provides a summary of the key points made in chapters 2, 3 and 4.

Chapter 2: Key Māori environmental concepts and values

Chapter 2 outlines some key Māori environmental concepts and values. It aims to increase commissioners' understanding of these, and the ways in which the definition and application of these concepts and values can differ between different tribal groups.

Chapter 2 begins with an introduction to mātauranga Māori and how the Māori world view differs from a Western world view. Spiritual and metaphysical values of importance to Māori are discussed and key environmental concepts which have emerged from these values are outlined. The variation of world views among Māori in relation to both the interpretation and application of these concepts is outlined, and the chapter concludes with a discussion of Māori as developers in both a customary and a modern setting.

Chapter 3: Integrating Māori values into decision-making

Chapter 3 considers the interface between Māori values and world views and the functions prescribed by the RMA. It aims to increase commissioners' awareness of the Māori dimension and the various factors that influence the integration of Māori values and world views into RMA decision-making. In particular, this chapter seeks to assist commissioners to apply Māori values in decision-making.

The chapter begins by explaining the context of the key Māori provisions within the RMA, and goes on to explain how to approach and interpret Māori values from a Māori world view. It discusses common issues and trends arising from the RMA jurisprudence relating to Māori values and the various Treaty of Waitangi considerations, and provides some thoughts on integrating Māori values across the range of RMA functions. It then discusses specific provisions which provide for Māori to participate in RMA functions, such as the delegation of RMA functions and co-management agreements.

Chapter 3 focuses on why we need to integrate Māori values into RMA processes and decision-making, while chapter 4 addresses how this can be done in hearing proceedings .

Chapter 4: Facilitating tikanga Māori at RMA hearings

Chapter 4 provides commissioners with some practical suggestions about how they can facilitate tikanga Māori at hearings. It sets out a number of procedural considerations and methods of integrating Māori values into RMA processes and decision-making.

Appendices

Appendix A sets out a glossary of Māori terms used in the Supplement; and Appendix B contains the bibliography.

SUMMARY OF KEY POINTS

The key points below are highlighted throughout this Supplement for easy reference. They are collated here, for easy reference.

Chapter 1

There is no 'one' Māori world view.

There are differences in dialect between hapū and iwi throughout Aotearoa.

Chapter 2

Mātauranga Māori, or Māori world views, are shaped from Māori values, traditions and experiences over time.

To understand mātauranga Māori, it is necessary to understand the values, traditions and experiences of Māori.

Māori believe the environment has spiritual and metaphysical values as well as a physical presence.

An understanding of Māori spiritual and metaphysical values is important to understand mātauranga Māori.

Māori cultural beliefs form part of cultural and social wellbeing considerations under sections 5 and 6(e) of the RMA.

There are a number of key environmental concepts, such as sustainability, respect and reciprocity, which govern the way that Māori view and interact with the environment.

These concepts are interrelated and emphasise the interconnection between all living things.

Restrictions on the way resources are used help to ensure that the goals of sustainability, respect and reciprocity are achieved.

There is no 'one' Māori world view. While there are many common elements between different Māori world views, there are often variations between hapū and iwi.

Māori world views evolve with changes in circumstances and technology.

Decision-makers should be aware of the world views of the tāngata whenua concerned.

Māori interests in the environment are that of guardian, resource user and developer.

While Māori have traditionally been focused on protecting resources under the RMA, Māori are now also increasingly involved in managing and developing resources.

Water, coastal development, forestry, geothermal, pounamu, marine and tītī are examples of areas where Māori have had customary interests and in which they remain involved today.

Chapter 3

Māori have a special relationship with New Zealand's environment and recognising this relationship contributes to good environmental outcomes.

Parliament pronounced a number of provisions to integrate Māori values and world views into the administration of the RMA. Key Māori provisions are contained within Part 2 of the RMA, which sets out the overriding sustainable management purpose.

These are strong directions, to be borne in mind at every stage of the planning process.

This framework allows the weighing and balancing of considerations – their scale and degree and relative significance.

The RMA provisions require substantive and procedural recognition of Māori values.

In most, if not all cases, substantive recognition will require procedural input.

The Māori provisions of the RMA place decision-makers at the interface between Māori concepts and customs and Western culture and common law.

Māori values and concepts, and the beliefs that underpin them, are imbedded in mātauranga Māori and Māori language.

The challenge is to interpret and define the Māori values and concepts in ways that retain their integrity. This requires those performing functions under the RMA to appreciate and understand Māori world views.

The RMA provisions recognise that Māori customary values and practices are relevant considerations.

The judicial approach to interpreting Māori values has developed over time and reveals varying approaches.

The High Court has stated the need for RMA decision-makers to use a 'wider lens' than that of Western culture when addressing Māori values.

The Environment Court has confirmed that Māori values must be approached from the Māori world view in accordance with tikanga Māori.

The legal tests relating to evidence do not always accommodate Māori customs, and conflicts often arise in this context.

The Court generally requires 'probative evidence' to establish findings of fact, including findings on Māori values.

Tohunga and kaumātua, as the repositories of knowledge of a whānau, hapū or iwi, may provide evidence of that group's values.

If kaumātua or tohunga evidence is challenged, there are various legal methods to address any such challenge.

A common mechanism for addressing Māori interests in respect of wāhi tapu or their tāonga is the use of discovery protocols.

Contests between tāngata whenua groups as to mana whenua sometimes arise in the RMA context.

As a general approach, the Environment Court avoids making determinations of mana whenua between competing Māori interests, and has consistently stated that the appropriate forum for such determination is the Māori Land Court.

Decision-makers will, on occasion, be required to make determinations which may directly or indirectly go to competing mana whenua rights.

It is necessary to recognise the distinction between 'iwi authorities' and 'tāngata whenua/mana whenua'.

Recognised customary activities are specifically protected under the RMA. Other customary activities may be provided for pursuant to the Part 2 provisions of the RMA.

The Environment Court has acknowledged the role of technical evidence in addressing mātauranga Māori.

The use of technical evidence does not always sit comfortably with Māori, particularly where it conflicts with tāngata whenua beliefs.

It is important to recognise the distinct roles of technical experts and tāngata whenua experts.

The RMA and the Treaty of Waitangi Act 1975 regimes are separate processes, and Treaty claims will not impede legitimate RMA processes.

Treaty principles include partnership, obligations to act reasonably and in good faith, active protection, mutual benefit, development and rangatiratanga.

There is no duty to consult in relation to resource consents and notices of requirement. However, consultation may be an important means of addressing the Māori values and interests provided for in Part 2 of the RMA.

Consultation with iwi is required during the preparation of policy and planning instruments.

Local authorities have a role in giving effect to the Crown's treaty obligations.

More recently, Treaty claims are being incorporated into the RMA processes as iwi and hapū reach settlements with the Crown.

Where Treaty claims are ongoing and not yet settled, it is possible to provide mechanisms in the RMA context in anticipation of iwi or hapū settlements.

There is an important link between Treaty settlements and the development aspirations of iwi and hapū.

The RMA encompasses three broad components to managing New Zealand's natural and physical resources: Policy development processes, consenting processes and compliance processes.

Effective integration of Māori values and world views in the administration of the RMA requires:

- implementation of Māori values and world views across all aspects of the RMA process
- a balanced approach to Māori aspirations.

The Māori values and interests provided for in the RMA have not been adequately supplemented through the policy and planning instruments.

Some gaps can be bridged by policy and planning instruments.

Chapter 4

The RMA specifically requires decision-makers to recognise and provide for tikanga Māori where appropriate.

Council policies and plans can include similar requirements and guidelines.

There are a number of ways that tikanga Māori can be incorporated into RMA hearings.

These include:

- incorporating mātauranga Māori into the staff report
- being flexible on the location and layout of the hearing
- appointing people with appropriate knowledge and expertise to the hearing panel and staff, after consultation with tāngata whenua
- incorporating pōwhiri, or less formal whakatau or mihimihi processes, into the hearings process, as appropriate
- encouraging the use of Māori language at the hearing
- ensuring protection against disclosure of sensitive information
- allowing sufficient time for Māori evidence to be presented
- recognising tikanga of different tribes.

KEY MĀORI ENVIRONMENTAL CONCEPTS AND VALUES

CHAPTER 2

KEY MĀORI ENVIRONMENTAL CONCEPTS AND VALUES

INTRODUCTION

This chapter outlines key Māori environmental concepts and values to assist commissioners' understanding of mātauranga Māori and how these Māori environmental concepts and values can differ between different tribal groups.

While the RMA includes definitions of Māori words and phrases, those definitions do not necessarily reflect the Māori world view, or the full range of meanings of the concepts. This was acknowledged by the Environment Court in the *Land Air Water Association v Waikato Regional Council*[3] as follows:

> *[392] The Act does provide definitions for a few of these terms. It became apparent during the course of this hearing that the statutory definitions do not necessarily convey the full range of meaning of the concepts. Seeking to explain concepts of tikanga Māori in the English language is complex and often nuances of the meaning are lost when the Māori word for a concept is translated by a single word or phrase. By so doing we may well hear only the English meaning which does not always correspond with the Māori concept. It would be wrong for this Court to inject the English view on these matters.*

It is noted that the way in which Māori concepts and terms have been defined in this Supplement are not exhaustive and are provided as a guide. Moreover, the tāngata whenua or mana whenua of a particular area may hold a different world view, which is to be respected.

OVERVIEW OF CHAPTER

This chapter begins with an introduction to mātauranga Māori and how the Māori world view differs from a Western world view. Spiritual and metaphysical values of importance to Māori are discussed and key environmental concepts which have emerged from these values are outlined. The variation of world views among Māori in relation to both the interpretation and application of these concepts is outlined, and the chapter concludes with a discussion of Māori as developers, in both a customary and modern setting.

A glossary of Māori terms used in this chapter and throughout the Supplement is included as Appendix A.

MĀTAURANGA MĀORI (MĀORI WORLDVIEWS)

Each culture has values, traditions and experiences that shape their world views and the laws which govern their respective communities/nations. Mātauranga Māori, or Māori world views, are views based on the values, traditions and experiences of Māori over time (ERMA, 2004, p 15):

> *The framework for identifying and characterising mātauranga Māori (Māori worldviews and perspectives) is based on an analysis of the traditional practices of Māori society. These traditional practices were and continue to be developed as tools controlling behaviour, particularly in regard to sustainable management of the environment in which Māori live.*
>
> *Mātauranga Māori is essentially a system of knowledge and understanding about Māori beliefs relating to creation and the relationship between atua (supernatural guardians) and tāngata (mankind). This relationship or whakapapa (genealogy) determines the way people behave in the context of their environmental ethical practices. Understanding Māori beliefs, values and the relationship of those to the natural world requires an understanding of traditional expressions including those portrayed in waiata (song) and pepeha (proverbs).*

There is, however, no 'one' Māori world view. Each world view is based on the values, traditions and experiences of a particular iwi or hapū; because these differ, so too do their world views. However, there are a number of common elements which underlie these different views, including genealogical connections and relationships with the natural world.

Māori culture is based on the genealogical connection between all things. Māori believe that humans are part of nature – and are related by genealogical links (whanaungatanga) to the forests, seas and waterways.

3 *Land Air Water Association v Waikato Regional Council* A110/01 (EC).

Māori therefore see themselves in a sacred relationship with the natural world, and traditionally the use of natural resources was conducted under strict regimes of tapu and mana administered by tohunga. This was underpinned by the belief that the spiritual (ancestral) and physical realms co-exist, and the need to respect and acknowledge the mana and tapu of both physical and metaphysical beings.

Miller (2005, p 3) says that myths and legends were "deliberate constructs" used to encapsulate mātauranga Māori and the values on which those views are based. To understand mātauranga Māori, it is necessary to understand the concepts, values and beliefs which underpin those views. In *Ngāti Maru Iwi Authority v Auckland City Council*,[4] the High Court confirmed that RMA decision-makers are to apply a wider lens in order to be able to understand mātauranga Māori:

> *[12] ...allude to the evolving international recognition that indigenous issues must now be viewed through a wider lens than that of western culture.*

This approach usefully acknowledges the normative difference in values, beliefs and concepts which underpin the views of each culture. In *Ngāti Hokopu ki Hokowhitu v Whakatane District Council*,[5] the Environment Court acknowledged that Māori view the physical and spiritual world as being inherently linked, whereas Western cultures generally separate the two:

> *[42] ...the majority New Zealand cultures tend to take a dualistic view – distinguishing physical and spiritual things – whereas the Māori world view tends to be monadic:* Kemp v Queenstown Lakes District Council *[2000] NZRMA 289 at para [62]. In the latter there is no rigid distinction between physical beings, tipuna (ancestors), atua (spirits) and taniwha.*

Key Points

- Mātauranga Māori, or Māori world views, are shaped from Māori values, traditions and experiences over time.
- To understand mātauranga Māori, it is necessary to understand the values, traditions and experiences of Māori.

SPIRITUAL AND METAPHYSICAL VALUES

Māori acknowledge the environment, and objects within the environment, as having not only a physical presence, but also as having spiritual and metaphysical values. Every living thing is recognised as having value and as having a mana, wairua and mauri of its own. The spiritual values are as important as the physical, and indeed, Māori believe that the physical and spiritual aspects of a person or thing are joined by mauri to make a complete whole.

Spiritual and metaphysical values are often (although not always) represented through some form of spiritual or intangible being (such as a taniwha), which is imbued with a kaitiaki role. In *Beadle v Minister of Corrections*[6], the Environment Court described the nature of a taniwha as follows:

> *[436] From the evidence that we have reviewed, we find that there are people who believe in the existence of the taniwha, Takauere, and respect what it stands for. It may be that there are some differences of detail among them about the nature, and the behaviour of Takauere. What is clear is that this taniwha is not a human person, nor a physical creature. To describe it as a mythical, spiritual, symbolic and metaphysical being may be incomplete or inaccurate, but will suffice for the present purpose.*

4 *Ngāti Maru Iwi Authority v Auckland City Council* AP18-SW01 (HC).

5 *Ngāti Hokopu ki Hokowhitu v Whakatane District Council* 9 ELRNZ 111 (EC).

6 *Beadle v Minister of Conservation* A74/02 (EC).

An appreciation of Māori spiritual and metaphysical values is not only important as a means to understand mātauranga Māori, it is also important for RMA decision-makers, as these values are cultural beliefs which form part of the cultural and social wellbeing considerations under section 5 of the RMA, and are protected as matters of national importance under section 6(e) of the RMA[7].

Key Points

- Māori believe the environment has spiritual and metaphysical values as well as a physical presence.
- An understanding of Māori spiritual and metaphysical values is important to understand mātauranga Māori.
- Māori cultural beliefs form part of cultural and social wellbeing considerations under sections 5 and 6(e) of the RMA.

KEY CONCEPTS

The following concepts recognise and reflect Māori spiritual and metaphysical values and are therefore key to understanding mātauranga Māori. The concepts are interrelated and together form the basis by which Māori society is ordered.

Holism

The concept of holism underpins mātauranga Māori and guides the way in which Māori view and treat the environment. This is reflected in the concepts of respect, reciprocity, spirituality and responsibility, which Māori apply to the environment (Cheung, 2008, research note 5, p 2).

Holism recognises that the natural environment is more than just the sum of its parts (Brown, 1973). This differs from a compartmentalising approach generally found in Western world views, as not only is each part regarded as having value in and of itself, but the value arising from a combination of the parts, and the contribution these individual parts make to the environment as a whole, is recognised.

The degree of interconnection between the various parts means that changes in one area, or to one part of the environment, have the potential to impact other areas or parts of the environment. Changes which upset the natural order or balance of the environment may require further changes in other areas in order to restore the balance (mauri). In other words, some form of reciprocity (utu) may be required.

Ranginui and Papatūānuku

Ranginui (**Rangi**) is often translated as meaning 'sky father' or 'the heavens', and Papatūānuku (**Papa**) as the 'Earth mother' or 'the Earth'. Such simplistic notions of the creation world view fail to reflect its fundamental importance to Māori and how it shapes and influences Māori environmental practices. Royal (Royal, 2008) states that while elements of the creation stories may differ between different Māori groups, the essence of the stories is the same. In the beginning, nothing existed (sometimes referred to as the period of nothingness (or Te Kore). From Te Kore, the first atua, Ranginui and Papatūānuku, emerged, joined together in a world that was dark (Te Pō). The children of Rangi and Papa, who included Tāne Mahuta, Tangaroa, Tawhirimātea, Tūmatauenga, Rongo Mātāne and Haumie Tiketike, were born into Te Pō but wished to live in a world that was light (Te Āo Marama). To achieve this, they physically separated their parents so that in between the heavens and the Earth there was Te Āo Marama. It is from Ranginui, Papatūanuku and their children that all living things (including people) descend.

Tāne Mahuta, Tangaroa and the other children of Rangi and Papa

The children of Rangi and Papa are themselves atua, each with responsibilities within their respective domain. Tāne Mahuta is atua of the forests (Hyland, 2002, p 14), Tangaroa is atua of the seas (Hyland, 2002, p 14), Tawhirimātea is atua of wind (Hyland, 2002, p 14), Rongo Mātāne and Haumie Tiketike are atua of cultivated and uncultivated foods respectively (Hyland, 2002, p 14), Tūmatauenga (Tū) is atua of war and of people (Hyland, 2002, p 14) and Rūaumoko is atua of earthquakes (Orbell, 1995), p 163). The concept of an atua, while often translated to mean god, is however different from the concept of the Christian god. Shirres (1997, p 26) explains the difference:

7 *Bleakley v Environment Risk Management Authority* [2001] 3 NZLR 213, 270 (HC), at paragraphs [58] – [65].

On another level of understanding these are distinct spiritual powers. Each one is identified with a particular area of creation and has responsibility for that area. In the English language the spiritual powers are often referred to as gods, but they are not gods. These atua are created. They are the children of Rangi and Papa, who themselves are created out of nothingness. It would be just as wrong to refer to them as gods as it would be to refer to the angels and saints of our European Christian tradition as gods. I speak of them, therefore, as created spiritual powers. In some ways they resemble the angels of the Jewish and Christian tradition.

Whakapapa

Whakapapa is often defined as genealogy (ancestry and descent of people). However, the term 'whakapapa' applies to more than just descent lines. In mātauranga Māori, all living things are recognised as having a whakapapa. Barlow (1991, p 173) explains:

Whakapapa is the genealogical descent of all living things from the gods to the present time. The meaning of whakapapa is 'to lay one thing upon another' as, for example, to lay one generation upon another. Everything has a whakapapa: birds, fish, animals, trees, and every other living thing: soil, rocks and mountains also have a whakapapa...

Whakapapa is the basis for the organisation of knowledge in respect of the creation and development of all things."

Waka, iwi, hapū, and whānau

In Māori society the largest social grouping is the waka (canoe), which refers to the descendants of a particular waka. Iwi and hapū are translated as, among other things, meaning tribes, and the term whānau is an extended family.

The importance of a person's whakapapa and the iwi, hapū and whānau that they belong to, is illustrated by the dual meanings that these words have: iwi also means 'bone'; hapū also means 'pregnant'; and the term whānau also means 'birth' (Ryan, 2008, pp 12, 20, 92, 102).

In traditional Māori society, Walker (1990, pp 63–65) states that while the whānau was the "basic social unit", the hapū was the main political grouping and it was at the hapū level that most functions, such as mana whenua and kaitiakitanga, were carried out. Walker explains these terms:

The basic social unit in Māori society was the whānau, an extended family which included three generations. At its head were the kaumātua and kuia, the male and female elders of the group. They were the storehouses of knowledge, the minders and mentors of the children. Their adult sons and daughters, together with their spouses and children made up the whānau so that it numbered up to twenty or thirty people...

The whānau provided its own workforce for its subsistence activities in hunting, fishing and gathering of wild plant foods. It was self sufficient in most matters except defence, a fact of existence recognised in the aphorism that ' a house which stands alone is food for fire'...

As a whānau expanded over succeeding generations it acquired the status of a hapū, or sub-tribe. But achievement of hapū status was not automatic. The conditions under which identity as a hapū was recognised included the emergence of a leader with mana derived from founding ancestors through his or her whakapapa, skill in diplomacy, ability to strengthen the identity of the hapū by political marriages, and fighting prowess. A combination of these factors defined a hapū's identity as a land-holding political entity. Once territorial control of the hapū's turangawaewae was confirmed, then the name of the founding leader was adopted as the name of the hapū...

Hapū ranged in size from 200 to 300 people... The hapū was the main political unit that controlled a defined stretch of tribal territory...

The largest effective political grouping was the iwi, or tribe. The iwi was composed of related hapū from a common ancestor. Canoe ancestors, or one of their descendants who had great mana, were used as points of reference for the definition of iwi identity...The chiefs of the component hapū units of an iwi regarded themselves as co-equals, although there was a hierarchy in terms of tuakana and teina relationships of senior and

junior descent…The iwi was at its most effective in defending tribal territory against enemy tribes.

The largest social grouping of Māori society was the waka; comprised of a loose confederation of tribes based on the ancestral canoes of the fourteenth century…The waka was only a loose ideological bond. The iwi of a waka, like the sub-tribes of a tribe, often fought each other. But should tribes from other waka invade their domain; the waka bond would be used to form an alliance against intruders.

Today, while Māori still whakapapa to waka, iwi, hapū and whānau, the emphasis placed on these groups and the functions carried out by these groups has evolved. While the various reasons for this shift are outside the scope of the Supplement, iwi tend to take a much larger political role in the affairs of Māori.

Collective responsibility

Collective responsibility is a key concept in Māori society. It involves the attribution of responsibility on a collective rather than an individual basis. In relation to people, it means that the whānau, hapū or iwi of an individual accepts responsibility for that person's actions. However, the concept of collective responsibility applies to more than just people; it extends to all living things. Patterson (1992, p 154) describes the concept:

To understand Māori values and ideals it is essential to take seriously such concepts as collective responsibility. As we have seen, this idea is central to a Māori view of human nature and the nature of the world we live in. Māori identity can be seen as essentially collective identity, seen in terms of kinship. Māori values can be seen as essentially collective values, expressed in terms of collective action and responsibility. This is part of what is commonly referred to as Māori spirituality, the idea that everything is linked, more or less directly, to everything else. Māori collective responsibility extends beyond the family, beyond the tribe, beyond the Māori race, beyond the human race; it extends to all living things, it extends to the lands and the waters of the earth, it extends to Earth and the Sky themselves. When Pākehā begin to understand this, they can begin to understand Māori values.

Rangātiratanga

Mead (2003, p 366) describes 'rangatiratanga' as "political sovereignty, chieftainship, leadership, self-determination, self-management" and, when applied to an individual, as "qualities of leadership and chieftainship over a social group, a hapū or iwi".

In traditional Māori society, rangatiratanga was exercised by rangatira (leaders) of iwi or hapū groupings and provided a political structure through which Māori life was ordered. The term 'rangatiratanga' was used in the Māori text of the Treaty of Waitangi in 1840 to signify the rights that Māori were to retain over their lands and other tāonga. Modern interpretations of the term have included actions such as the bringing of an Environment Court appeal as an exercise of rangātiratanga:[8]

[200] We agree as well that the Pita Whānau in exercising their legal rights to bring this appeal, are exercising their rangatiratanga to endeavour to ensure that decisions made in respect of their ancestral land, tāonga and wāhi tapu are the correct ones.

Mana, mana atua, mana whenua and mana moana

To understand what 'mana atua', 'mana whenua' and 'mana moana' mean, it is first necessary to understand the concept of 'mana'. Williams (1971, p 172) indicates that mana includes authority, control, influence, prestige and power. Barlow (1991, p 61) agrees with these interpretations and goes on to explain that mana also has a spiritual aspect, in that it is something handed down from the gods which applies to people as well as the environment. Barlow defines 'mana atua' and 'mana whenua' as:

Mana atua: *This is the very sacred power of the gods known as the ahi kōmau which is given to those persons who conform to sacred ritual and principles.*

Mana whenua: *This is the power associated with the possession of lands; it is also the power associated with the ability of the land to produce the bounties of nature.*

8 *Nga Uri o Wiremu Moromona Raua ko Whakarongohau Pita v Far North District Council* A014/08 (EC).

While Barlow does not expressly define 'mana moana', he acknowledges that similar interpretations would apply to other areas. The Environment Court has interpreted 'mana moana' to mean "authority over the sea"[9] and as "the authority, the prestige and the dominion over … waters".[10]

In the RMA context, Māori have conveyed to decision-makers that their ability to fulfil their responsibilities can affect their mana. For example, mana would be diminished if an activity despoiled the environment over which they exercise kaitiakitanga.

Tāngata whenua

'Tāngata', meaning 'people', and 'whenua', meaning 'land', means 'tāngata whenua' is often translated as meaning 'people of the land'. However, the meaning of this term to Māori goes beyond merely identifying them as Māori or as a people from New Zealand. The term 'tāngata whenua' acknowledges the spiritual connection that Māori have with land (in its widest sense), as descendents of Papatūānuku and Ranginui. It also acknowledges the specific connection between Māori and their birthplace/traditional tribal or hapū areas (rohe), remembering 'whenua' also means placenta/afterbirth (and 'pito', umbilical cord). A common practice when babies were born (and which still occurs today) was to bury the placenta/afterbirth/pito within the land of the whānau, hapū or iwi. Such planting often takes place near waterways and in proximity to vegetation, for example, karaka trees. This practice symbolises the depth of the connection Māori had with the land, which Mead (2003, p 269) describes as being "similar to the biblical idea of 'dust to dust'".

The connection that Māori have with their land underpins being tāngata whenua, and their corresponding rights and obligations (such as kaitiakitanga).

Tūrangawaewae

'Tūrangawaewae' literally translated means 'a place for the feet to stand'. A person's tūrangawaewae is their home or the place from which they come. Mead (2003, p 43) explains the concept as a right conferred by birth:

> *It is a place where one belongs by right of birth. Tūrangawaewae represents one spot, one locality on planet Earth where an individual can say, 'I belong here. I can stand here without challenge. My ancestors stood here before me. My children will stand tall here.' The place includes interests in the land, with the territory of the hapū and of the iwi. It is a place associated with the ancestors and full of history.*

A tūrangawaewae is a place where a person has a right to be heard and it is also a place where that person has both rights (such as rights to use certain resources within the area comprised by the tūrangawaewae) and responsibilities (such as kaitiakitanga over the land and manākitanga towards visitors). It is a place where a person is recognised as being tāngata whenua and as having mana whenua (rights, authority and obligations) over that land.

Rohe

Williams (1971, p 344) defines 'rohe' as meaning 'boundary', 'enclose' or 'come to an end/cease'. In recent times, it is perhaps more commonly used to refer to a tribal area. Mead (2003, p 220) states that while most land within traditional tribal areas has been alienated, the concept of the tribal rohe as being a base for that tribe "remains strong".

Rohe were primarily established through whakapapa, birthright and continuous occupation, or ahi kā roa. The exact boundaries of any particular tribal rohe fluctuated as land was lost (or gained) through marriage, war, gifts and/or occupation. At any particular time, multiple iwi could therefore have an interest in the same area, although the degree and strength of that interest would depend on factors such as use and occupation.

The Waitangi Tribunal has recognised that multiple iwi have interests in an area and that such interests should be recognised by decision makers.

9 *Te Runanga o Muriwhenua v Te Runanganui o Te Upoko o Te Ika Association Inc* [1996] 3 NZLR 10 (CA), at page 14.

10 *Huataki Holdings Limited v Ministry of Agriculture and Fisheries* M39/94 and M40/94 (HC), at page 3.

Kaitiaki and kaitiakitanga

'Kaitiaki' and 'kaitiakitanga' are Māori concepts which have been translated in legislation, and in particular, the RMA, as loosely meaning 'guardians'/'stewards' and 'guardianship'/'stewardship' respectively. However, such a meaning does not convey the full meaning of the Māori concept of kaitiakitanga. In essence, kaitiakitanga derives from whakapapa and whanaungatanga.

Miller (2005, p 6) explains that, while the word 'kaitiakitanga' is a recent development, the underlying principles have most likely been practised for hundreds of years. Both Miller and Marsden (1992, p 15) agree that in traditional Māori society there was no concept of ownership, just "user rights", and therefore defining by reference to stewardship (which connotes guarding someone else's property) is incorrect. Marsden explains the meaning of kaitiakitanga as follows:

> *The term 'tiaki', whilst its basic meaning is to guard, has other closely related meanings depending on its context. Tiaki may therefore also mean to keep, to preserve, to conserve, to foster, to protect, to shelter, to keep watch over.*
>
> *The prefix 'kai' with a verb denotes the agent of the act. A 'kaitiaki' is a guardian, keeper, preserver, conservator, foster-parent, protector. The suffix 'tanga' added to the noun means guardianship, preservation, conservation, protecting and sheltering.*

While in more recent times the term kaitiaki has been associated with the roles carried out by Māori in relation to the environment, the term 'kaitiaki' also includes a more spiritual aspect. Barlow (1991, p 34) explains the spiritual elements of this concept as follows:

> *Kaitiaki or guardian spirits are left behind by deceased ancestors to watch over their descendents and to protect sacred places. Kaitiaki are also messengers and a means of communication between the spirit realm and the human world. There are many representations of guardian spirits, but the most common are animals, birds, insects and fish.*

Kaitiakitanga means more than just mere guardianship. It is the intergenerational responsibility inherited at birth to care for the environment, which is passed down from generation to generation. The purpose of kaitiakitanga is not only about protecting the life supporting capacity of resources, but of fulfilling spiritual and inherited responsibilities to the environment, of maintaining mana over those resources and of ensuring the welfare of the people those resources support. Kaitiakitanga is the key means by which sustainability is achieved (Miller, 2005, p 6):

> *The purpose of kaitiakitanga is to ensure sustainability (of the whānau, hapū or iwi) in physical, spiritual, economic and political terms. It is the responsibility of those managing resources to ensure survival and political stability in terms of retaining authority over an area.*
>
> *Included in kaitiakitanga are concepts concerning authority and the use of resources (rangātiratanga, mana whenua), spiritual beliefs ascertaining to sacredness, prohibition, energy and life-force (tapu, rāhui, hihiri, and mauri) and social protocols associated with respect, reciprocity, and obligation (manāki, tuku and utu).*

Life cycles

Māori recognise that all living things, humans, and flora and fauna, have life cycles. Mātauranga Māori recognises and protects these life cycles through concepts such as kaitiakitanga, karakia, rāhui, mauri and hau (among others).

The practice of kaitiakitanga ensures that resources are managed in a way that respects the life cycles of those resources, and therefore their life supporting capacity. For example, the Māori lunar calendar (maramataka) recognises these life cycles by indicating days which are important for planting, harvesting, and so forth (Miller, 2005, p 7).

Karakia are said at different stages throughout the life cycle of a resource (such as a cultivation or fishing ground) to recognise the spiritual aspects of the resource and to help the resource flourish Miller, 2005, p 8).

The imposition of rāhui is another method by which life cycles are respected. Restricting access to resources in a particular area for a certain period of time enables the resources in that area to recover from a tapu event (such as death) or resource sensitivity in the area.

Ahi kā roa

'Ahi kā roa' literally means 'the long burning fire'. It is a concept which refers to rights of occupation or use of resources in an area. In traditional Māori society, as long as the land was interacted with on a periodic basis (whether by cultivation, hunting or as a place to live), the rights that that Māori group had to use and occupy the land continued. Occupation was not required to be constant, and in many places was seasonal, reflecting the availability of food resources and cultivation periods. For example, hapū could reside at different locations around their rohe during each season. The right of a group to occupy or use the resources of a particular area continued as long as ahi kā roa was maintained. The point at which such rights were lost could differ depending on the resource.

In modern times, many Māori have moved away from their tribal rohe to pursue work or other opportunities. In *Nga Uri o Wiremu Moromona Raua ko Whakarongohau Pita v Far North District Council*,[11] the Environment Court recognised a more modern use of the term, deciding that filing Waitangi Tribunal claims, keeping in regular contact with whānau in the area and regular visits to an area could maintain ahi kā roa.

Mauri

'Mauri' is often described as a life force or essence. Barlow (1991, p 83) describes it as a 'special power' which binds body and spirit together and which permits "living things to exist within their own realm and sphere". Everything has mauri: people, animals, plants. Even certain structures, such as wharenui and waka, are recognised as having mauri where they are the product of expert input.

Mauri is not static, and the mauri of any particular thing can be affected by the environment in which it exists. Barlow (1991, p 83) gives an example of how depletion of the food supply (in the oceans, rivers and forests) can result in the mauri or health of that food supply decreasing. He notes that mauri is able to be restored through conservation measures, such as the imposition of rāhui, and through the carrying out of rituals/ceremonies. The maintenance of mauri is therefore very important to ensure the wellbeing of the environment as a whole.

Wairua

Williams (1971, p 476) defines 'wairua' as "spirit" or "unsubstantial image, shadow". Every living thing has a wairua; people, and flora and fauna. Wairua is bound to the physical body by mauri. Barlow (1991, p 152) explains that it is only when the person (animal or plant) dies that the wairua is separated from the body. Wairua is therefore similar to the biblical concept of a human soul, except that wairua applies to more than just people; it applies to the Earth and all life forms within it. Mead (2003, p 148) explains the concept of wairua and the way it is related to mauri in people as follows:

> *At death the mauri that a person is born with dies and disappears. It is extinguished then the spark of life ceases, breathing stops and the heartbeat throbs no more. But the wairua that is released either prior to or immediately after death leaves the body and journeys upwards towards Ranginui, the sky father.*

In the same way as mauri is affected by changes in the environment, so too is wairua. Because of the connection of wairua with the body of the person/animal/plant, changes or damage to the body can also damage the wairua. An example which Mead (2003, p55) gives, is how physical illness and injury experienced by a person can also damage and weaken the wairua of that person.

11 *Nga Uri o Wiremu Moromona Raua ko Whakarongohau Pita v Far North District Council* A014/08 (EC), at paragraph [198].

Tapu and noa

The concepts of tapu and noa are inter-related and are best understood by reference to each other. 'Tapu' is commonly taken to mean 'sacred', with 'noa' taken to mean something which is 'free of tapu' or 'ordinary'. However, both terms also have extended meanings. Williams (1971, pp 385, 223) defines 'tapu' as including a religious, superstitious or ceremonial restriction, as well as something which is "beyond one's power" or "inaccessible". He defines 'noa' as meaning "free from tapu or any other restrictions", "of the moment, ordinary", "indefinite", and "within one's power".

All living things (people, animals and plants) are recognised as having an inherent tapu. Shirres (1997, p 142) clarifies that when 'noa' is interpreted as being 'free from tapu', this only applies to restrictions imposed as part of the extended meaning of tapu; it does not remove the inherent tapu of that person or thing. A common example is the lifting of the tapu associated with the dead by the splashing of water on leaving an urupā. The rituals and restrictions of tapu, and the conditions in which these restrictions can be uplifted (by making noa), not only recognise and protect this inherent tapu in a spiritual sense, but are also part of a Māori environmental resource management system which assists in promoting a sustainable use of resources.

Wāhi tapu

A literal translation of 'wāhi tapu' is 'sacred place' (Manatu Māori, 1991, p 9). The term wāhi tapu is most commonly understood in relation to urupā (burial areas), but in fact the term is used far more widely. Mead (2003, p 68) states that places associated with "important persons, with religious ceremonies, with death, sickness, burial, learning, birth or baptism ceremonies" may be categorised as wāhi tapu. He gives examples of wāhi tapu applying to mountains, rocks and springs.

The degree of significance attached to any particular wāhi tapu depends on the reason for it having such status, and its importance to the iwi, hapū or whānau of the area in which it is located. This is because it is the iwi, hapū or whānau of an area that is responsible for wāhi tapu. The significance attributed to different wāhi tapu can, and do, differ between iwi, hapū and whānau (Manatu Māori, 1991, p 10).

The concept of wāhi tapu not only acknowledges the significance or sacredness of a site, it is also a means of protection. This is because it generally results in the imposition of restrictions on access to, use of, or, in some cases, even knowledge of the area. In the case of the latter, it was common (and still is to a much lesser extent), for both the existence and location of wāhi tapu to be protected (Manatu Māori, 1991, p 10):

> *Many sites are secret and their location may only be known to a few elders. It would be an anathema to them to make public the existence, let alone location, of these sites.*

Where the location and nature of wāhi tapu are not in the public domain, methods of protection include statutory protection (eg, under the Historic Places Act 1993) or 'silent files' (where the location is disclosed to a local authority on a confidential basis to ensure development proposals would not compromise the wāhi tapu), especially where land is no longer in Māori ownership. These protection methods are discussed in more detail in chapters 3 and 4.

Tāonga

'Tāonga' is sometimes loosely translated to mean 'treasures'. Williams (1971, p 381) defines the term as meaning "property" or things which are "highly prized". Tāonga include tangible items, as well as intangible things, such as waiata, traditional skills and knowledge handed down (tāonga tuku iho). Te reo Māori has also been acknowledged as a tāonga (Patterson, 1992, p 92).

Tāonga also includes natural resources, such as land, sea and species growing/living on or in the land and the sea. Māori regard natural resources highly, not only because of their life sustaining capacity, but also because of the genealogical link they have with these resources.

Pōwhiri

A 'pōwhiri' is a ceremony which is most commonly associated with welcoming of visitors to a marae. However, it is also becoming commonplace for many hui (meetings), openings and other proceedings to include a pōwhiri.

A pōwhiri is an important process for Māori as it allows people to acknowledge and show respect for each other, clears the way spiritually and lays a platform for discussions to occur. Mead (2003, p 117) explains pōwhiri:

> *Relationships between and among people need to be managed and guided by some rules. In Māori society there are procedures for meeting strangers and visitors. These procedures are part of the tikanga called the pōwhiri or pōhiri, commonly translated as the welcome ceremony. The pōhiri ceremony has been generalised to cover all forms of welcome and is not confined only to very important occasions when manuhiri (visitors and guests) from outside of the tribe or country visit the marae. In one sense the pōhiri is a ceremony to welcome visitors and to show hospitality in an appropriate way.*

A pōwhiri involves a number of steps, including karanga (ceremonial call), whakaeke (visitors' slow walk), he tangi ki ngā mate (respecting the dead), ngā whaikōrero (formal speeches), waiata (songs), whakaratarata (hongi between hosts and visitors), te hākari (sharing of a meal) and poroporoaki (farewell speech) (Mead, 2003, pp 122–124). The way in which pōwhiri are carried out differ between different waka, iwi and hapū.

Tikanga and kawa

Tikanga and kawa are often thought of as referring to protocols or customs. While there is some overlap between the meanings, the terms are not interchangeable, and they are therefore defined separately here.

'Tikanga' includes Māori customs, rules or methods, and, when applied to an action, tikanga is the right way of doing something (Williams, 1971, pp 416–417). Tikanga is an important means by which Māori society is regulated. Mead (2003, p 12) explains:

> *...tikanga is the set of beliefs associated with practices and procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do.*
>
> *Tikanga differ in scale. Some are large, involve many participants and are very public ... Some may be carried out by individuals in isolation from the public, and at other times participation is limited to the immediate family. There are thus great differences in the social, cultural and economic requirements of particular tikanga.*
>
> *Tikanga are tools of thought and understanding. They are packages of ideas which help to organise behaviour and provide some predictability in how certain activities are carried out. They provide templates and frameworks to guide our actions and help steer us through some huge gatherings of people and some tense moments in ceremonial life. They help us to differentiate between right and wrong in everything we do and in all of the activities we engage in. There is a right and proper way to conduct one's self.*

'Kawa' are ritual or ceremonial actions or protocols which guide the way that Māori life is ordered. Kennedy and Jefferies (2009, pp 24, 25) note the "paramount importance" that Māori place in observing kawa, especially in relation to issues involving kaupapa Māori and tikanga. Marsden (1992, p 18) explains that kawa had to be conducted "carefully and meticulously" to ensure no spiritual offence was caused. Different kawa were developed to apply to different situations, and kawa differs between tribal groups. While kawa are most often understood as applying in relation to marae protocols, kawa applies to a much wider range of situations, including ceremonies, rituals, greetings and so forth.

Rāhui

'Rāhui' is a form of restriction placed on resources or specific areas in order to prohibit use of that resource or area for a particular period of time. Rāhui are imposed for a variety of reasons.

Rāhui is a mechanism for protecting and restoring mauri of resources. Rāhui are most commonly used following loss of life and as a means of conservation management (Manatu Māori, 1991, p 3).

Maxwell and Penetito (2007, p 13) explain the modern use of rāhui as follows:

> *Māori continue to instate rāhui following an aituā, or to replenish resources in a particular area. New Zealand's increasing population size and subsequent increasing demands on natural resources means that these types of rāhui are only practiced to a fraction of their original scope, and are no longer strictly enforced. In the case of an aituā, it is important to highlight that rāhui are still instated to pay respects to the deceased and to allow the tapu associated with death in an area to dissipate naturally from the area. When used for replenishing resources, rāhui rely on restricted access to the resource and respect of a rāhui by the local community to be successful. Both the length of time taken to install a voluntary rāhui and the length of time a voluntary rāhui can be in place for, varies. The important point is that these rāhui continue to be used by people with mana, in order to fulfil the principle of kaitiakitanga and to replenish the mauri of the resource.*

Rāhui are usually imposed by a tohunga or rangatira of a tribe, and the existence of a rāhui is generally indicated by the erection of pou. Rāhui are lifted when determined by a tohunga or rangatira (ie, when the tapu of the loss of life has sufficiently dissipated, or when the food stocks have been sufficiently replenished).

Taiapure

The term 'taiapure' refers to a local fishery. In traditional times, the term referred to an area of coastline or a specific fishing ground which was set aside by the coastal tribe of a particular area for use by an inland tribe. The taiapure was often accompanied by the right for the inland tribe to use an area of land near to the taiapure so that fish and kaimoana caught during the fishing season could be preserved for use though winter (Marsden, 1992, p 20).

Mahinga kai and mātaitai

The terms 'mahinga kai' and 'mātaitai' relate to the traditional food sources of Māori, especially seafood. Mead (2003, p 362) defines 'mahinga kai' as "seafood gardens and other traditional sources of food". Williams (1971, p 187) defines 'mātaitai' as "fish or other foodstuff obtained from the sea or from lakes".

The particular food sources associated with tribal areas are a source of mana for iwi/hapū of that area. Hākari (feasts) were (and still are) a key part of showing manāki (hospitality) and mana towards visiting tribes. For coastal tribes, ensuring that the mahinga kai and mātaitai were offered as part of the hākari was, and still is, very important. Marsden (1992, p 20) explains the reasoning for this as follows:

> *The presence of visitors was equivalent to the bestowal of a blessing upon the hosts. On the part of the hosts, they bestowed a blessing upon the guests by giving them the best of their provisions in the hākari (banquet) and hospitality provided. This was a reciprocal relationship which could be extended by the exchange of gifts.*

Key Points

- There are a number of key environmental concepts, such as sustainability, respect and reciprocity, which govern the way that Māori view and interact with the environment.
- These concepts are interrelated and emphasise the interconnection between all living things.
- Restrictions on the way resources are used help to ensure that the goals of sustainability, respect and reciprocity are achieved.

VARIATION OF WORLD VIEWS AMONG MĀORI

Mātauranga Māori also differs between iwi and hapū. This is because views are based on the values, traditions and experiences of a particular iwi or hapū. The concept of Māori as one people, rather than a collection of hapū and iwi, is a relatively recent one; traditionally Māori views were shaped by the whānau, hapū or iwi to which they belonged. Accordingly, while there is a high degree of commonality between values, traditions and experiences of different iwi and hapū, there are differences. It is these differences which explain the different views held by Māori on matters such as what is, and what is not, wāhi tapu, and what the best methods for protecting wāhi tapu are. See, for example, *Ngāti Hokopu ki Hokowhitu v Whakatane District Council*,[12] where the Court traversed the evidence of a number of tikanga experts and kaumātua on whether or not a particular piece of land was wāhi tapu.

In addition, it should not be forgotten that, just as Western world views may change to take account of changing values, circumstances and technologies, so too does mātauranga Māori. For example, in the *Long Bay Okura Great Park Society v North Shore City Council*[13] case, evidence was given by two different iwi as to the different values they placed on certain sites within the Long Bay area, and the appropriate way for protecting and providing for those sites.

When hearing matters concerning hapū or iwi, decision-makers should be conscious not only of the fact that Māori world views differ to Western world views, but also of the differences in views that occur between different hapū and iwi, and of the capacity of such views to evolve as new information and technology comes to light.

12 *Ngāti Hokopu ki Hokowhitu v Whakatane District Council* 9 ELRNZ 111 (EC).

13 *Long Bay Okura Great Park Society v North Shore City Council* A078/08 (EC).

Key Points

- There is no 'one' Māori world view. While there are many common elements between different Māori world views, there are often variations between hapū and iwi.
- Māori world views evolve with changes in circumstances and technology.
- Decision-makers should be aware of the world views of the tāngata whenua concerned.

MĀORI APPROACHES TO RESOURCE USE

Māori have intergenerational responsibilities, such as kaitiakitanga for the interrelated and connected elements of their cultural and spiritual world. Mātauranga Māori also recognises the need for people to use natural resources to provide for their wellbeing. Indeed, this use element is a primary basis for many concepts, such as mana whenua and ahi kā, among others.

The ability of people to use natural resources for this purpose is illustrated by one version of the story of Tū. Tradition records that Tawhirimātea, who represented wind, attacked the earth. Of his brothers, Tū was the only one brave enough to withstand him. After the battle, Tū, angry with his brothers because they did not assist him, turned on Tāne Mahuta, Tangaroa, Rongo Mātāne and Haumie Tiketike. This set the pattern for the future, as Tū represents humans and his brothers represent the creatures and plants that humans rely on for food and survival. Following this, humans were able (after performing appropriate rituals and subject to kaitiaki responsibilities) to safely use the world's natural resources to provide for their needs.

The following section provides some examples of Māori approaches and involvement in resource use in both traditional and contemporary contexts. It should be noted that the responsibilities regarding kaitiakitanga and development/use of resources can sometimes be split between different people and groups within iwi and hapū; and in some instances these two functions can conflict. These issues are considered further in chapter 4 of this Supplement.

Fresh water

Māori have a special relationship with the freshwater resources within their respective takiwā. Rivers and lakes have been the subject of a number of Waitangi Tribunal claims and Treaty settlements, as well as RMA considerations.

The Whanganui River Tribunal Report (Waitangi Tribunal Report, 1999) highlights the importance of the Whanganui River to Whanganui iwi, stating:[14]

> *It is necessary to consider how Māori saw and related to the river, recalling again the philosophy of their place in the natural order, and the centrality of the river to everyday lives … It has been a home for a numerous people from immemorial time, but a home that was built around a river life. The region was marginal for major food crops, but the river, with its eels, fish, freshwater shellfish, and waterfowl, provided the staples.*
>
> *The river was also the pathway to the sea, and the roadway that knitted the people spread along its banks into a single entity. People travelled by canoe as far inland as Ongarue … Small settlements were strung along the entire length of the river…*
>
> *Around the river had been woven many stories and beliefs. For the Atihaunui people, the river is a doctor, a priest, a larder, a highway, a moat to protect their cliff-top pa, and, with the cliffs, a shelter from winds and storms. It was … 'the aortic artery, the central bloodline of that one heart'.*
>
> *As we see it, the relationship, for Māori, is first and foremost genealogical. Ancestral ties bind the people and the river…*
>
> *…when the claimants spoke of the river, or referred to its mana, wairua (spirit), or mauri, they might in fact have been referring not just to the river proper but to the whole river system, the associated cliffs, hills, river flats, lakes, swamps, tributaries, and all other things that serve to show its character and form…*
>
> *Cementing the association with the river is the presence of taniwha … the taniwha are part of the rich tapestry of history and lore that the river brings to mind. They are part of the mix that binds the people and the river together.*
>
> *The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 provides for a co-management regime between tāngata whenua, the Crown and local authorities in relation to the management of the Waikato River. The following excerpt from the preamble illustrates the relationship of Waikato-Tainui with the Waikato river, and underlines the basis for the co-management approach:*

Noo taatou te awa. Noo te awa taatou. E kore e taea te wehe te iwi o Waikato me te awa. He tāonga tuku iho naa ngaa tuupuna. E whakapono ana maatou ko taa maatou, he tiaki i taua tāonga moo ngaa uri whakatupu.

This is translated to:

> *The River belongs to us just as we belong to the River. The Waikato tribe and the River are inseparable. It is a gift left to us by our ancestors and we believe we have a duty to protect that gift for future generations.*[15]

The deed of settlement which led to the Waikato River Settlement Act states:

> *…The Waikato River is our tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui.*
>
> *The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace and substratum as well as its metaphysical being.*
>
> *Our relationship with the Waikato River, and our respect for it, gives rise to our responsibilities to protect te mana o te Awa and to exercise our mana whakahaere in accordance with long established tikanga to ensure the well being of the River.*

14 Whanganui River Report – paragraph 2.6.

15 A Statement by Robert Te Kotahi Mahuta 1975, Clause 1.8 and 1.40 of the Deed of Settlement.

Our relationship with the River and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture."[16]

Similar sentiments have been expressed by other hapū and iwi in relation to their respective water resources.

Coastal development

The coast is very important to Māori. As Māori were traditionally a seagoing people, it provided a means of transport to other areas (Walker, 1990, p 24), caves in which remains could be buried (Mead, 2003, p 68), and premium locations for pa, given the extensive views available from some coastal areas.

The coast also provided Māori with a rich abundance of natural resources, including mahinga kai, mātaitai and, in warmer areas, fertile spots for cultivation of taro and kumara (Orbell, 1995, pp 91, 192). Walker (1990, p 30) tells how, in the South Island, coastal locations were also favoured moa hunting camp sites.

Coastal Māori recognised the high value of the resources offered by the coast and exchanges of kai with inland tribes were common. Mead (2003, p 183) explains:

Some intertribal gift exchanges were formerly largely economic in purpose, as when coastal dwellers exchanged food supplies with inland tribes. Here, items of food not necessarily available to inland tribes were given to them in exchange for food items that were a specialty in inland areas, such as huahua (preserved birds). Seafood was always highly desired by inland-dwelling people and one way of having access was by way of an exchange relationship.

In addition to exchange, coastal Māori also provided others, such as inland tribes, with rights to occupy certain parts of the coast and use certain resources within their rohe during the fishing season (taiapure) (Marsden, 1992, p 20).

The rights of coastal Māori to make use of the resources of the coast has been expressly recognised and provided for in legislation such as the Māori Fisheries Act 2004 and the Māori Commercial Claims Aquaculture Settlement Act 2004.

Forestry

Māori have a long history of forestry practices. Māori felled trees and used wood for constructing pa sites, buildings, meeting houses and waka, and to make weapons and many daily utensils. Wood was a valuable resource in traditional Māori society and is an important commodity today.

Māori people were guided in their interaction with the environment by the legends and stories of their atua and ancestors. The story of Rata is particularly relevant to forestry practices and reminds Māori of their relationship with their natural resources and the need to follow proper protocols before exploiting resources.

When Rata (an early ancestor) felled a giant totara tree without performing the proper ritual, the Hakuturi (kaitiaki of the forest) punished him by making the tree stand upright again overnight while he was away preparing for his return the next day to carve a waka. On his return he was amazed to see the tree standing upright again. He felled the tree again, and again the Hakuturi restored it. This occurred for three nights before Rata suspected he was being tricked. On the third night Rata felled the giant totara tree then hid nearby. Before long he saw the Hakuturi chanting and rebuilding the tree. The Hakuturi then saw Rata and they reproached him for cutting down the tree without performing the proper rituals and seeking authority from his ancestors. Rata was very embarrassed and apologised for his wrongdoing. The Hakuturi eventually went on to help Rata build his waka (Orbell, 1995, p 150).

This tradition highlights the relationship between Māori and natural resources, and the need to respect the mana and tapu of their ancestors and the atua, and is a reminder that such resources can only be exploited after following proper protocols.

16 This is the statement of significance in the Deed of Settlement, clause 3.4.

Māori are becoming more involved in contemporary forestry following Treaty settlements with the Crown. This facilitates the continued tradition of Māori and promotes their economic and cultural aspirations.

Geothermal resources

Geothermal resources are highly regarded tāonga of importance to Māori. Māori used, and continue to use, geothermal resources in a variety of ways, such as providing hot water for cooking, preserving, healing, ceremonial use and bathing. Some pools also contain mud with medicinal properties (for example, kūpapapapa or sulphur) that are used to treat skin, rheumatic and arthritic ailments. Māori also use geothermal minerals, such as kōkōwai (red ochre), as paints, wood preservatives and dyes.

Māori have been involved in using and developing geothermal resources for other uses, such as electricity generation, horticulture and tourism.

One example is the Tuaropaki Power Company (majority owned by a Māori Land Trust), which operates two geothermal power stations at Mokai. The geothermal power stations are being developed in a staged manner to minimise adverse environmental effects and accommodate the needs of existing users, as well as the potential needs of future generations. Tuaropaki also recognises the use of geothermal tāonga, such as therapeutic and cooking pools, and a key part of the development is re–injecting used geothermal fluid back into the deep geothermal aquifer to minimise the impact on existing geothermal features and natural ecosystems.

Another example is the use of geothermal resources for tourism purposes. Waiariki Springs, at Ngawha in Northland, and Hellsgate and Whakarewarewa in Rotorua, are all tourism businesses with significant Māori involvement and/or ownership.

Pounamu

Pounamu is a precious stone of significant cultural importance to Māori. It is found primarily on the west coast of Te Wai Pounamu (the South Island). This stone was traditionally used by Māori for tools, weapons or mauri stones, and is a tāonga tuku iho.

In 1997, the Crown and Ngāi Tahu agreed to a settlement which resulted in Ngāi Tahu taking ownership of pounamu within its takiwā (excluding the Arahura River Catchment), and assuming responsibility for the management of this precious resource. Guided by its kaitiaki responsibilities, in 2002, Ngāi Tahu approved a Pounamu Management Plan, which outlines the iwi's approach on how to best manage pounamu to ensure its sustainability for future generations.[17]

Marine resources

The sea and its resources are of significant cultural importance to Māori. In pre-European times, the sea provided Māori, and, in particular, coastal iwi and hapū, with a key food resource as well as a means of transportation.

Today, the sea is still regarded as a key food resource, especially for the meeting of manākitanga obligations of the host tribe to manuhiri, and it also is increasingly providing Māori with development opportunities.

The 1992 fisheries settlement[18] recognised the rights of Māori in relation to the fisheries resource. It also provided Māori with the opportunity to take a more active role in commercial fisheries by providing Māori with money to purchase a half share in Sealord Products Ltd, and by allocating Māori 20 per cent of the commercial fisheries quota for all new species brought into the quota management system. The 2004 aquaculture settlement[19] provided similar recognition for Māori in relation to aquaculture resources, and provides iwi with assets equivalent to 20 per cent of the water space rights created in coastal waters since 21 September 1992. These two settlements have provided Māori with significant opportunities to participate in and develop the fisheries and aquaculture resources.

17 Refer **www.ngaitahu.iwi.nz** for more details on the Ngāi Tahu Pounamu Management Plan

18 Refer Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 for more details.

19 Refer Māori Commercial Aquaculture Claims Settlement Act 2003 for more details.

Tītī (muttonbird)

Tītī were, and still are, an important food resource for Māori. In pre-European times, rāhui were used to regulate the use of tītī and other food resources to sustain their health and to respect their life cycles (Maxwell and Penetito, 2007):

> *Seasonality is a feature of food procurement ... yet other seasons are imposed for reasons of resource management (the rāhui on tuna (eel) when the big eels appear ...)(Williams, 2004, p.98). Some rāhui were seasonal: thus, kiore (rats) and ducks were not taken until the rāhui had been lifted (Tikao and Best, 1977, p 366; cited by Williams, 2004, p 140).*

Today, the home of the tītī, the Tītī Islands, is a good example of how the customary controls on use imposed by rāhui has been embraced and codified in law (Maxwell and Penetito, 2007):

> *...the Tītī (Mutton Bird) Islands were not, indeed are still not, visited between the end of May and the following March. This is akin to a Duck Shooting season ... (Williams, 2004, p140)...*
>
> *The rāhui forbidding people to set foot on the islands from the end of May until 15th March the following year is centuries old (Tītī Times, June 2001, p 18). This tradition is now codified in law... (The Tītī (Muttonbird) Islands Regulations 1978...)."*

Key Points

- Māori interests in the environment are that of kaitiaki, resource user and developer.
- While Māori have traditionally been focused on protection of resources under the RMA, Māori are now also increasingly involved in managing and developing resources.
- Water, coastal development, forestry, geothermal, pounamu, marine and tītī are examples of areas where Māori have had customary interests, and in which they remain involved today.

INTEGRATING MĀORI VALUES INTO DECISION-MAKING

CHAPTER 3

INTEGRATING MĀORI VALUES INTO DECISION-MAKING

OVERVIEW OF CHAPTER 3

This chapter considers the interface between Māori values and world views and the functions prescribed by the RMA. It aims to increase commissioners' awareness of the Māori dimension and the various factors influencing the integration of Māori values and world views into RMA decision-making. In particular, this chapter seeks to help commissioners understand and apply Māori values in decision-making. While directed at commissioners, others may also find this chapter of assistance in carrying out decision-making functions under the RMA.

This chapter begins by explaining the context of the key Māori provisions within the RMA, and goes on to explain approaching and interpreting Māori values from a Māori world view. It discusses common issues and trends arising from the RMA jurisprudence relating to Māori values and the Treaty of Waitangi considerations, and provides some thoughts on integrating Māori values across the range of RMA functions. It then discusses specific provisions which provide for Māori participation in RMA functions, such as the delegation of RMA functions and co-management agreements.

This chapter focuses on substantive considerations relating to integrating Māori values in decision-making (the 'why'), while chapter 4 addresses procedural considerations and methods of integrating Māori values into RMA processes and decision-making (the 'how').

CONTEXT OF RMA PROVISIONS WHICH ADDRESS MĀORI VALUES

The RMA is the primary statute which governs the use and development of natural and physical resources in New Zealand. It applies to all resources within New Zealand (including the coast), and to all people seeking to exercise rights, obligations or powers in relation to those resources.

Māori values and world views are a feature of New Zealand's environmental regulatory regime and have an influential role in the management of New Zealand's natural and physical resources.

In enacting the RMA, Parliament pronounced a number of provisions to integrate Māori values and world views into the Act's administration. The provenance of some of these provisions derive from the Town and Country Planning Act 1977. Key provisions are contained within Part 2 of the RMA, which sets out the Act's purpose and principles, including the overriding sustainable management purpose. Many other provisions recognise the Māori dimension and the role of tāngata whenua in RMA processes. Schedule 1 to this chapter outlines the many references to Māori terms and concepts in the RMA.[20] The more general aspects of the RMA, and the rights and obligations applying to all persons (including Māori) seeking to use, protect or develop resources, are the subject of other parts of the Making Good Decisions workbook and are not repeated here.

The primary Part 2 provisions expressly addressing Māori values require persons exercising functions under the RMA to:[21]

- Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other tāonga as a matter of national importance (section 6(e)).
- Recognise and provide for the protection of recognised customary activities as a matter of national importance[22] (section 6(g)).

20 Other environmental statues also contain provisions to provide for and integrate Māori values into decision-making

21 The relevant Part 2 provisions are set out in full in Schedule 2 to this chapter.

22 While customary activities can apply to non-Māori activities, it is included here because of its importance in protecting customary Māori activities.

- Have particular regard to kaitiakitanga (section 7).
- Take into account the principles of the Treaty (section 8).

An important factor in understanding the context of these provisions is the hierarchy of Part 2:

- Sections 6, 7 and 8 list various matters to be 'recognised and provided for' (section 6), 'have particular regard to' (section 7), and 'taken into account' (section 8).
- All of these matters are subordinate to the single overarching purpose in section 5 of the RMA, and are to be approached as factors in the overall balancing exercise.

The importance and scope of these provisions has been emphasised by the Privy Council:[23]

> *[21] …The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and these include particular sensitivity to Māori issues. By s 6, in achieving the purpose of the Act, all persons exercise functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for various matters of national importance, including "(e) [t]he relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu [sacred places], and other tāonga [treasures]". By s7 particular regard is to be had to a list of environmental factors, beginning with "(a) Kaitiakitanga [a defined term which may be summarised as guardianship of resources by the Māori people of the area]". By s 8 the principles of the Treaty of Waitangi are to be taken into account. These are strong directions, to be borne in mind at every stage of the planning process.*

Other judicial approaches are reflected in the following extracts:

- The High Court in *Ngāti Maru Iwi Authority v Auckland City Council*:[24]

  > *[22] It is in my view arguable that s6 and 8 factors should be the subject of "inbuilt preference", to use the expression employed by Cooke P in another context: Ashburton Acclimatisation Society v Federated Farmers of New Zealand Inc [1988], when considered against s7 interests.*

- The Environment Court in *Living Earth Limited v Auckland Regional Council*:[25]

  > *[281] The Court has to weigh all the relevant competing considerations and ultimately make a value judgement on behalf of the community as a whole. Such Māori dimension as arises will be important but not decisive, even if the subject matter is seen as involving Māori issues. Although the Māori dimension, whether arising under s 6(e) or otherwise, calls for close and careful consideration, other matters may in the end be found to be more cogent when the Court, as the representative of New Zealand society as a whole, decides whether the subject matter has an adverse effect. In the end a balanced judgement has to be made.*

The RMA provisions require substantive and procedural recognition of Māori values. The substantive provisions (such as Part 2) recognise that Māori values and world views will influence the outcome of RMA decisions and are to be given practical effect in policy and planning instruments and consenting processes. Procedural requirements include, for example, the need to respect Māori customs and the use of Māori language, and the need to notify iwi or hapū of matters that may affect them or sites of significance to them. In many cases substantive recognition will require substantial procedural input.

23 *McGuire v Hastings District Council* [2002] NZLR 577 (PC).

24 *Ngāti Maru Iwi Authority v Auckland City Council* AP18-SW01 (HC).

25 *Living Earth Limited v Auckland Regional Council* A126/2006 (EC).

Key Points

- Māori have a special relationship with New Zealand's environment and recognising this relationship contributes to good environmental outcomes.
- Parliament pronounced a number of provisions to integrate Māori values and world views into the administration of the RMA. Key provisions are contained within Part 2 of the RMA, which sets out the overriding sustainable management purpose.
- These are strong directions, to be borne in mind at every stage of the planning process.
- This framework allows the weighing and balancing of considerations – their scale and degree and relative significance.
- The RMA provisions require substantive and procedural recognition of Māori values.
- In most, if not all cases, substantive recognition will require procedural input.

MĀORI DIMENSION

The Māori provisions[26] of the RMA place decision-makers at the interface between the Māori concepts and customs and Western culture and common law.

As outlined in chapter 2, the Māori world view[27] is based on the genealogical connection between all things. Māori believe that humans are part of nature and are related by genealogical links to all natural elements. Māori see themselves in a sacred relationship with the natural world, where the use of natural resources was conducted under strict regimes of tapu and mana, underpinned by the belief that the spiritual (ancestral) and physical realms co-exist.

Conversely, the Western world generally views nature as objective and fixed, with human beings having a central position, and where societies are progressive in science and economy. Concepts of private property and political liberalism are linked to beliefs of efficiency and individualism (Klein, 2000, p 103).

Moreover, Māori values and concepts, and the beliefs that underpin them, are imbedded in mātauranga Māori and Māori language; thus translating Māori concepts into the English language has the potential to change or reduce their real meaning.[28]

Acknowledging these limitations, the RMA charges decision-makers with resolving issues on the Māori values enshrined in the RMA. The challenge therefore is to interpret and define Māori values and concepts in a way that retains their integrity. This requires people performing functions under the RMA to appreciate and understand the Māori world view. Commissioners will often be faced with situations of having to understand and interpret Māori values and concepts. In order to ascertain the meaning of Māori values, this task needs to be approached from a Māori paradigm and viewed within the Māori spiritual world view, encompassing its various concepts and values.

The specialist role of consent authorities (and the Environment Court) is an important factor in this context. The RMA framework requires decision-makers to make subjective value judgments in relation to competing values as part of the RMA balancing exercise.[29]

26 The Māori provisions also reflect New Zealand's international obligations (such as the Rio Declaration and Declaration on the Rights of Indigenous Peoples – while this is not binding as a matter of international law, it forms part of New Zealand's international obligations).

27 It is acknowledged that there are variations to tikanga and mātauranga between different iwi and hapū. References in this paper to Māori, mātauranga or tikanga are to be interpreted subject to this qualification.

28 This limitation has been acknowledged by the Courts – refer *Land Air Water Association v Waikato Regional Council* A110/01 (EC), at paragraph [393]; and *Nga Uri o Wiremu Moromona Raua ko Whakarongohau Pita v Far North District Council* A14/2008 (EC), at paragraph [182].

29 In *Long Bay-Okura Great Parks Society Incorporated v North Shore City Council* (A78/2008), the Court stated:

[20] We consider there are not three but four general steps in most proceedings under the RMA:

(1) fact-finding;
(2) the statement of the applicable law;
(3) risk predictions: assessing the probabilities of adverse effects and their consequences;
(4) the overall assessment as to what better achieves the purpose of the RMA.

[21] Steps (1) and (2) and (4) are the traditional steps in legal decision-making, **although under the RMA the fourth step involves more value judgements than Courts are usually entrusted with…"** [Emphasis added].

Recognising the cultural difference and potential issues arising where non-Māori are interpreting Māori concepts, section 253(e) of the RMA provides for the appointment of commissioners who possess a mix of knowledge and expertise including "matters relating to the Treaty of Waitangi and kaupapa Māori". This is an example where the procedural and substantive provisions connect to achieve the RMA directives. While section 253(e) concerns Environment Court commissioners, this principle is equally applicable to council decision-making, and many councils appoint commissioners with knowledge and expertise of tikanga Māori at local authority hearings.

These provisions, and others, seek to ensure that decision-makers have the necessary tools to effectively integrate mātauranga Māori into RMA processes and decision-making. For convenience, we generally refer to these provisions throughout this chapter as 'the Māori provisions', whilst recognising that other provisions may also be of relevance to Māori.

Key Points

- The Māori provisions of the RMA place decision-makers at the interface between Māori concepts and customs and Western culture and common law.
- Māori values and concepts, and the beliefs that underpin them, are imbedded in mātauranga Māori and Māori language.
- The challenge is to interpret and define the Māori values and concepts in ways that retain their integrity. This requires those performing functions under the RMA to appreciate and understand Māori world views.

CONSIDERATION OF MĀTAURANGA MĀORI

The RMA jurisprudence highlights common issues, themes and principles relevant to the consideration of Māori values within the RMA framework. This section discusses the following matters relevant to decision-makers' consideration of Māori values in the RMA context.

- Approach to interpreting Māori values.
- Courts' approach to evidential matters.
- Consideration of kaumātua oral evidence.
- Considering wāhi tapu.
- Considering tāonga and metaphysical beings.
- Discovery protocols/Historic Places Act 1993.
- Kaitiakitanga.
- Mana whenua.
- Customary rights and activities.

Interpreting Māori values

The approach to interpreting Māori values and concepts is vital to the effective integration of these matters into the RMA framework. The definition of Māori values and concepts will impact on the appreciation of their scale and degree, and have a direct impact on the weight assigned to these matters in the overall balancing exercise. As Māori values are imbedded in the Māori world view and conceptual paradigm, it is necessary to approach the interpretation of them from this position.

The judicial approach to interpreting Māori values has developed over time and reveals varying approaches. Consideration of two pre-RMA examples illustrates issues in approaching Māori values from a non-Māori paradigm, and provides a relevant backdrop to the current RMA provisions.

Section 3(1)(g) of the Town and Country Planning Act 1977,[30] required local authorities, in the administration of their planning schemes, to recognise and provide for:

> *(g) The relationship of the Māori people and their culture and traditions with their ancestral land.*

30 Being the predecessor to the RMA.

For more than a decade, a line of Planning Tribunal cases held that land was not 'ancestral land' if it was no longer in Māori ownership. This narrow approach was eventually overturned by the High Court,[31] which held that the appropriate interpretation was land which was owned by Māori ancestors, and went on to state that it was the nature of the relationship with the land that was important.[32]

Further, in the context of the Water Soil and Conservation Act 1967, the High Court overturned a long line of Planning Tribunal approaches[33] which declined to recognise Māori spiritual relationships with water. The High Court stated:[34]

> *[223] … In an application for the grant of a water right under ss. 21 and 24 of the Water Act, the primary tribunal and the Planning Tribunal cannot rule inadmissible evidence which tends to establish the existence of spiritual, cultural and traditional relationships with natural water held by a particular and significant group of Māori people. In terms of s24(4) that evidence must be directed to establishing that the grant of the application would prejudice the objectors interests in the spiritual, cultural and traditional relationships of the particular and significant group of Māori people with natural water…*

The RMA provisions are more sophisticated than the legacy legislation, and contain specific provision recognising that the relevant customary values and practices to be considered are those of Māori. Section 39(2) of the RMA requires persons performing functions under it to:

> *…recognise tikanga Māori where appropriate…*

Section 7(a) also incorporates[35] the need to consider tikanga Māori. 'Tikanga Māori' is defined in section 2(1) of the RMA to mean:

> *Māori customary values and practices.*

The Environment Court has confirmed that the Māori values need to be approached from the Māori paradigm in accordance with tikanga Māori, in light of the Māori spiritual world view and its associated concepts, noting:[36]

> *"[390] These provisions place the Court directly at the interface between the concepts of British common law (which has its genesis in Roman law) and the concepts of Māori customary law which is founded on tikanga Māori. The Treaty promised the protection of Māori customs and cultural values. The guarantee of Rangitiratanga [sic] in Article 2 was a promise to protect the right of Māori to possess and control that which is theirs:*
>
> *'In accordance with their customs and having regard to their own cultural preferences.' …*
>
> *"[391] …the need to have regard to "tikanga Māori" … means that the Court may be required to have regard to a wide range of concepts such as "tāngata whenua", "manawhenua", "whanaungatanga", "mana", "tapu", "utu", and "mauri" to mention just a few."*

The Environment Court has recognised Waitangi Tribunal reports as an important source of interpreting tikanga Māori and its related concepts, and has relied on these reports in interpreting Māori values and concepts.[37]

31 *Royal Forest and Bird Protection Society v W A Habgood Ltd* 12 NZTPA 76 (HC). This case was subsequently approved by the Court of Appeal in *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 (CA).

32 *Royal Forest and Bird Protection Society v W A Habgood Ltd* 12 NZTPA 76 at page 81 (HC).

33 The Planning Tribunal approach is reflected in the following passage from *Huakina Development Trust v Waikato Valley Authority* C19/86 (PT):
To the extent that it is possible to do so, the cultural attitude of the Māori people to the waters of the estuary have been taken into account and have been provided for. The Act does not provide for their spiritual relationship with those waters to be taken into account. Indeed we cannot see how the law could do so.

34 *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC).

35 The RMA defines 'kaitiakitanga' as meaning "the exercise of guardianship by the tāngata whenua of an area in accordance with tikanga Māori in relation to the natural and physical resources; and includes the ethic of stewardship" (section 2(1) of the RMA).

36 *Land Air Water Association v Waikato Regional Council* A110/01 (EC), at paragraphs [390]-[391].

37 *Land Air Water Association v Waikato Regional Council* A110/01 (EC) at paragraph [105].

The Environment Court has advanced varying approaches to ascertaining Māori values.[38] The following approach to interpreting Māori values captures the imperative to approach this from a Māori paradigm:[39]

> *"[43] In our view there can be some meeting of the two worlds. We start with the proposition that the meaning and sense of a Māori value should primarily be given by Māori. We can try to ascertain what a concept is (by seeing how it is used by Māori) and how disputes over its application are resolved according to tikanga Ngāti Awa."*

Māori evidence

The Environment Court is not bound by the same rules of evidence as the general courts of law.[40] However, it has subscribed to the basic principles of evidence developed by the general courts.[41] Under these principles, the court generally requires 'probative evidence'[42] to establish findings of fact, including findings on Māori values.

The legal tests relating to evidence do not always accommodate Māori customs, and conflicts often arise in this context. In particular, there is at times a mismatch between these legal tests and the oral and spiritual customs of Māori culture. The Environment Court has suggested the following methodology for testing the veracity of Māori values, which attempts to balance these competing world views:[43]

> *[53] That 'rule of reason' … approach if applied by the Environment Court, to intrinsic … and other values and traditions, means that the Court can decide issues raising beliefs about those values and traditions by listening to, reading and examining (amongst other things):*
>
> - *whether the values correlate with physical features of the world (places, people);*
> - *people's explanations of their values and their traditions;*
> - *whether there is external evidence (eg Māori Land Court Minutes) or corroborating information (eg waiata, or whakatauki) about the values. By 'external' we mean before they became important for a particular issue and (potentially) changed by the value-holders;*
> - *the internal consistency of people's explanations (whether there are contradictions);*
> - *the coherence of those values with others;*
> - *how widely the beliefs are expressed and held.*

The conflicts between Māori customs and the judicial process led the High Court to state the need for RMA decision-makers to use a 'wider lens' than that of Western culture when addressing Māori values:[44]

> *[12] …indigenous issues must now be viewed through a wider lens than that of western culture. The concepts discussed in the Law Commission's Study Paper 9 Māori Custom and Values in New Zealand Law (2001) … may now be taken as matters sufficiently well known as not to require fresh proof in every case. The same may in my opinion be said of the material on which Ngāti Maru relied in argument as dealing with the significance of land and concepts of wāhi tapu and their significance, namely writings of Dame Joan Metge and Professor Ranginui Walker, acknowledged authorities, and the Waitangi Tribunal (regarded by the Court of Appeal as "of great value to the Courts": see Te Runanga o Muriwhenua v Attorney-General [1990] 2 NZLR 641, 652)…*
>
> *[13] A lesson of those and other cases and materials and of statutory references to tikanga has been … that the judicial oath – to do right to*

38 For example, in *Winstone Aggregates Ltd v Waikato Regional Council* A80/02 (EC), the Court stated the following approach:

The first is to determine, as best as we are able in the English language, the meaning of the concept. The second is to assess the evidence to determine whether it probatively establishes its existence and relevance in the context of the facts of a particular case. If so, the third is to determine how it is to be recognised and provided for. When, as in the case here, it is alleged that a site is waahi tapu, it is necessary: first to determine the meaning of waahi tapu; second to determine whether the evidence probatively establishes the existence of waahi tapu; and third, if it does, how it is to be provided for.

The reference to the English language recognises the need for non-Māori to understand the concepts being considered. This should not detract from the need to approach these matters from a Māori perspective. The evidential considerations are discussed below.

39 *Ngāti Hokopu ki Hokowhitu v Whakatane District Council* C168/2002 (EC).

40 Section 276(2) of the RMA.

41 *Winstone Aggregates Ltd v Waikato Regional Council* A80/02 (EC).

42 Probative evidence is evidence which provides proof of a particular statement or allegation.

43 *Ngāti Hokopu ki Hokowhitu v Whakatane District Council* C168/2002 (EC).

44 *Ngāti Maru Iwi Authority v Auckland City Council* AP18-SW01 (HC).

all manner of people after the laws and usages of New Zealand – can apply to what for many New Zealanders are unfamiliar usages of the Māori people, which have been introduced by the RMA. An example of present relevance is Section 42 (reproduced at para [52] below) by which local authorities are required to take special precautions, to which the Courts must give effect, to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu.

[14] That offers a challenge to any judge. But it is a Court's responsibility to: equip … itself for its task of taking judicial notice of all such things as it ought to know in order to do its work properly.

The suggestion that 'judicial notice' could be taken on cultural matters recognises the normative cultural realities of Māori. The 'wider lens' approach allows practical effect to be given to the RMA directives to recognise tikanga Māori, and allows Māori to effectively integrate their customs and practices into the RMA process.

Kaumātua evidence

Traditional Māori knowledge was passed down orally from one generation to the next for many generations. Tohunga and kaumātua were regarded as the repositories of knowledge and were highly regarded for their knowledge of the spiritual and physical realms. These customs are still commonplace in Māori culture today. The importance of kaumātua has been recognised by the Waitangi Tribunal[45] and courts.[46]

There have been instances when the Environment Court has refused to accept kaumātua evidence based on oral tradition. However, this is to be considered carefully. Thus, when the Environment Court refused to accept kaumātua evidence and this was not effectively challenged, the High Court found it difficult to understand why it was not accepted, stating:[47]

[58] … the source of his knowledge was his elders and wharewananga. For the Environment Court to say that it was "based on indirect sources" invites the question of why the iwi's environmental manager, with the advantages of whakapapa and cultural knowledge that he must have acquired throughout his life, should not be competent to speak of such matters … In the absence of effective challenge to the evidence in cross-examination or on grounds of inherent implausibility it is difficult to understand why the rule in Jones v Dunkel … should not apply and require its acceptance, as far as it went.

In another case,[48] the High Court overturned an Environment Court decision which refused to accept unchallenged kaumātua evidence, and made the point that those in the iwi entrusted with the oral history had given the evidence, and the fact that there was no written record corroborating the oral evidence was not grounds for refusing to accept it.

Where kaumātua evidence is challenged, the issue is not so clear. In Winstone Aggregates,[49] the Court cited with approval another Environment Court decision, stating:

In Te Rohe Potae o Matangirau Trust v Northland Regional Council *Judge Bollard and his colleague Commissioners stated that evidence of kaumatua is frequently helpful, but if challenged, the question is not to be resolved simply by accepting an assertion or belief by kaumatua or anyone else. General evidence of wāhi tapu over*

45 Ngāti Awa Raupatu Report:
Many sites of historical and spiritual significance were pointed out to us by kaumatua during site visits made in the course of the hearing…
Though most of the sites visited are now in private ownership, the ancient history is still preserved in the memory of kaumatua, even though some of the sites are in a fragile condition and access to them is limited.

46 *Te Kupenga o Ngāti Hako v Hauraki District Council* A10/01 (EC): "It is the content of their knowledge and recollections … which carried weight in relation to Te Kupenga's wāhi tapu assertions."
Greensill v Waikato Regional Council W17/95 (EC):
The tāngata whenua as between themselves accept without question the concept of wāhi tapu and further accept without question the word of a person who has particular knowledge of a particular site or area. Thus if a Kaumatua simply says that a place is wāhi tapu then that is an end of the matter…

47 *Ngāti Maru Iwi Authority v Auckland City Council* AP18-SW01 (HC).

48 *Takamore Trustees v Kapiti District Council* [2003] 3 NZLR 496 (HC):
[68] …Those in the iwi entrusted with the oral history of the area have given their evidence … The evidence was given by kaumātua based on the oral history of the tribe … The fact no European was present with pen and paper to record such burials could hardly be grounds for rejecting the evidence. Nor could the kind of geographical precision apparently sought by the court be reasonably expected.

49 *Winstone Aggregates Ltd v Waikato Regional Council* A80/62 (EC).

a wide and undefined area (in that case evidence as to the entire bay being used as a traditional food gathering area), was not probative of a claim that wāhi tapu existed on a specific site.

Wāhi tapu

The RMA does not define wāhi tapu. The Environment Court has considered wāhi tapu to constitute "sacred places with the same form of essential characteristics, ie sometimes death, sometimes association with people of note, sometimes activities, and sometimes resources".[50]

There has been some debate in the authorities as to whether wāhi tapu are limited to small, specific places of religious or spiritual significance, or whether they encompass wider areas. Some divisions of the Environment Court[51] have approved views that wāhi tapu are specific, small places of high spiritual and religious danger, and that they do not include areas associated with secular activities, such as old pa sites, fortifications, cultivations and the like.[52] By contrast, the High Court[53] has upheld an Environment Court finding that a large area of land was of cultural and spiritual significance to the tāngata whenua and was wāhi tapu.[54]

Tāonga/metaphysical beings

Mātauranga Māori encompasses spiritual and physical realities, where metaphysical beings are recognised features of the environment. The Court's consideration of metaphysical beings illustrates the conflicts between Māori values and custom and the judicial legal tests of evidence.

In Bleakley,[55] the High Court considered whether 'tāonga' in the context of section 6(d) of the Hazardous Substances Act 1996 included intangible matters. The Court found that tāonga included both tangible and intangible matters.

50 *Te Runanga o Ate Awa ki Whakarongotai Inc (Takamore Trustees) v Kapiti Coast District Council* [2002] 8 ELRNZ 265 (EC), at paragraph [70].

51 See, eg, *Land Air Water Association v Waikato Regional Council* A110/01 (EC).

52 See also *Living Earth Limited v Auckland Regional Council* A126/2006 (EC).

53 *TV3 Network Services Limited v Waikato District Council* [1998] 1 NZLR 360 (HC).

54 *TV3 Network Services Limited v Waikato District Council* [1998] 1 NZLR 360 (HC), at page 370.

55 *Bleakley v Environmental Risk Management Authority* [2001] NZLR 213 (HC).

In Beadle,[56] the Environment Court declined to recognise taniwha as a tāonga under section 6(e) the RMA. This finding was due partly to the difficulty that this would cause decision-makers in meeting the legal tests of evidence. The Environment Court stated:

> *[439] Even so, the Act and the Court are creations of the Parliament of a secular State. The … Resource Management Act … does not extend to protecting the domains of taniwha, or other mythical, spiritual, symbolic or metaphysical beings. The definition of the term 'environment' in s 2(1) does not extend to such. Although ss. 6(e), 7(a) and 8 are sometimes referred to as protecting Māori spiritual and cultural values, those sections have been carefully worded. Their meaning is to be ascertained from their text and in the light of the purpose of the Act. Neither the statutory purpose, nor the texts of those provisions, indicates that those making decisions under the Act are to be influenced by claimed interference with pathways of mythical, spiritual, symbolic or metaphysical beings, or effects on their mythical, spiritual, symbolic or metaphysical qualities.*
>
> *[440] There are difficulties in expecting a judicial body to decide questions about mythical, spiritual, symbolic or metaphysical beings. First, although findings might be made about sincerity of belief, there is no reliable basis for deciding conflicting claims about the beings the subject of the belief…*
>
> *[446] The outcome is that the Court does not accept that the claims about the taniwha, Takauere, should influence its decision in these proceedings.*

This decision was considered on appeal by the High Court (refer Friends of Ngawha[57]) and also by the Court of Appeal.[58] While the appellate courts upheld the Environment Court decision, they found that beliefs of metaphysical beings are tāonga, with the critical feature for consideration being the impacts on the people that hold those beliefs. The High Court decision noted:

56 *Beadle v Minister of Corrections* A74/02 (EC).

57 *Friends and Community of Ngawha Incorporated v Minister of Corrections* [2002] NZRMA 401.

58 *Friends and Community of Ngawha Incorporated v Minister of Corrections* [2003] NZRMA 272 (leave to appeal).

> *[41] …First, I agree with the Full Court in Bleakley that taonga embraces the metaphysical and intangible (eg beliefs or legends) as much as it does the physical and tangible (eg a treasured carving or mere). Had the Environment Court held otherwise, it would have misinterpreted s 6(e). Had it excluded taniwha and Takauere from its s 6(e) assessment, it would have misapplied the provision…*
>
> *[46] The two concepts seem to me to be inextricably bound up. In the course of argument I instanced a hill on which a taniwha has its ana. Quarrying and effective removal of the hill would obviously affect both the taniwha and the people who believe in it. Dealing with a resource management application for the quarry, the Environment Court might properly, in terms of s 6(e), take into account those dual and interconnected affects…*

In terms of tāonga more generally, the courts have accepted that kōiwi (human remains) and treasures buried with them are tāonga.[59]

Discovery protocols/cultural impact assessments

A common mechanism for addressing Māori interests in respect of wāhi tapu or their tāonga, is the use of discovery protocols and other requirements in resource consent conditions for development proposals. Where the conditions place responsibility on iwi or hapū (such as receiving notices, providing advice, agreeing to meet, etc), those groups should be consulted to ensure the conditions are workable before the conditions are adopted. Where there are more than one iwi or hapū, parallel protocols may be required with each group. In *Kaiawha v Bay of Plenty Regional Council*,[60] the Court recognised the appropriateness of having parallel protocols where more than one group is involved. Examples of 'accidental' discovery protocols and other resource consent conditions addressing Māori values are attached as **Schedule 3** at the end of this chapter.

Authorisations under the Historic Places Act 1993 are also common mechanisms in this regard, and may be required when wāhi tapu, archaeological sites or tāonga may be affected by development works.

It is important to recognise the distinction between wāhi tapu or tāonga and archaeological sites. Archaeological assessments are restricted to physical attributes, while wāhi tapu and tāonga include cultural and spiritual elements.

Another common assessment undertaken in the resource consent context is a cultural impact assessment. In the Māori context, these are normally undertaken by tāngata whenua groups and are usually carried out by a representative of the affected hapū or iwi who has knowledge of the cultural values, beliefs and tāonga of that group, as well as an understanding of the scope and likely effects of the development proposal. The assessment will outline the cultural values, beliefs, traditions and tāonga that may be affected by the development proposal, and discuss the way in which these matters will be affected. However, as the information contained in such assessments can itself be a tāonga or be tapu (such as the identification of wāhi tapu sites), sometimes only a part of the assessment, such as a summary, may be released. The issues surrounding confidentiality of tribal knowledge and the means of protecting that knowledge (such as non disclosure and the creation of silent files) are discussed further in chapter 4.

Māori cultural impact assessments can assist decision-makers in understanding the cultural impacts of a particular proposal on a particular hapū or iwi. Where a development proposal extends into the rohe of more than one hapū or iwi, or where there is an overlap between these respective rohe, more than one cultural impact assessment may be required, as values, beliefs and traditions can vary between different hapū and iwi.

59 *Te Runanga o Ati Awa ki Whakarongotai Inc v Kapiti District Council* 8 ELRNZ 265 (EC).

60 *Kaiawha v Bay of Plenty Regional Council* (A199/2009).

Kaitiakitanga

The courts have found that kaitiakitanga requires:

- ongoing involvement, and is a responsibility to care for something of great value to the survival of the iwi or hapū[61]
- tāngata whenua to be provided with the opportunity to exercise guardianship of the natural and physical resources in accordance with tikanga Māori.[62]

Kaitiakitanga may be given practical effect by resource consent conditions that involve consultation and parallel reporting to tāngata whenua over the term of a consent;[63] provide tāngata whenua with monitoring roles;[64] or allow tāngata whenua to guide how a particular resource should be developed.[65]

RMA provisions which could provide further practical effect to kaitiakitanga include the ability for councils to delegate RMA functions to tāngata whenua or to enter into co-management agreements (among others). These are discussed further below. It is common for local authorities to enter into memorandums of understanding or heads of agreements arrangements with iwi and hapū in their regions or districts, which also recognise the kaitiakitanga relationship and mana whenua of tāngata whenua.[66] These agreements tend to outline high-level commitments between local authorities and tāngata whenua.[67]

Mana whenua

Contests between tāngata whenua groups as to mana whenua arise in the RMA context. Mana whenua is a complex notion which allows a system of various shared interests between different iwi, hapū and whānau to their ancestral lands, waters and natural resources. Mana whenua is central to the identity of iwi, hapū and whānau, and there is generally a mutual respect between iwi and hapū for each others' mana. Conversely, competing interests to mana whenua are strongly protected and fiercely contested.[68]

The RMA defines 'tāngata whenua' as meaning:

> *"... in relation to a particular area, means the iwi or hapū that holds mana whenua over that area"*

And, defines 'mana whenua' as meaning:

> *"... customary authority exercised by an iwi or hapū in an identified area."*

As a general approach, the Environment Court avoids making determinations of mana whenua between competing Māori interests, and has consistently stated that the appropriate forum for such determinations is the Māori Land Court.[69]

Decision-makers will, on occasion, be required to make determinations which may directly or indirectly go to competing mana whenua rights. In Ngawha,[70] the Court of Appeal upheld the Environment Court finding that certain tribal groups were the primary kaitiaki for the area, as against other groups. Courts may also elect between competing tāngata whenua evidence.[71]

In this context, the Court has rejected the notion of tuakanatanga (seniority) in assessing competing evidence. In Beadle, the Court stated:[72]

> *[405] First, the Court has to make findings on issues raised by the purpose of the Resource Management Act which is described in section 5, and the particular aspects of that purpose described in sections 6(e), 7(a) and 8. None of those sections indicates that persons of particular status are to be preferred over others.*

61 *Tautari v Northland Regional Council* A55/96 (EC).

62 *Minhinnick v Minister of Corrections* A43/04 (EC).

63 *Carter Holt Harvey v Te Runanga o Tuwharetoa ki Kawerau* [2003] 2 NZLR 349 (HC).

64 *Haddon v Auckland Regional Council* [1994] NZRMA 49 (EC).

65 *Haddon v Auckland Regional Council* [1994] NZRMA 49 (EC).

66 For example, Rodney District Council and Ngāti Whatua Nga Rima ki Kaipara have a memorandum of understanding to this effect. Refer also Ministry for the Environment Paper – Whakamau Ki Nga Kaupapa – making the best of iwi management plans under the Resource Management Act 1991 – **http://www.mfe.govt.nz/publications/rma/whakamau-ki-nga-kaupapa-jun01/index.html**; and also Grant Hewison, Agreements Between Māori and Local Authorities, NZJEL Volume 4 2000.

67 Refer for example, Grant Hewison, Agreements Between Māori and Local Authorities, NZJEL Volume 4, 2000.

68 For example, the Treaty settlement process between the Crown and Ngāti Whatua o Orakei was halted due to overlapping interests in the Auckland area – Tāmaki Makaurau Settlement Process Report, WAI 1362.

69 *Luston v Bay of Plenty Regional Council* A 49/94; *Paihia v Northland Regional Council* A77/95 (EC); *Tawa v Bay of Plenty Regional Council* A18/95 (EC); *Te Pairi v Gisborne District Council* W93/04 (EC).

70 *Friends and Community of Ngawha Inc v Minister of Corrections* [2003] NZRMA 272.

71 For example, *Nga Uri o Wiremu Moromona Raua ko Whakarongohau Pita Inc v Far North District Council* A14/08 (EC); *Minhinnick v Minister of Corrections* A43/04 (EC).

72 *Beadle v Minister of Corrections* A74/02 (EC).

Local authorities have a role to play in addressing mana whenua issues, and the provisions introduced into the RMA in 2005, which require local authorities to maintain records of the iwi authorities within their regions or districts, will assist this issue.

'Iwi authority' is defined in the RMA as meaning:

> *"... the authority which represents an iwi and which is recognised by that iwi as having authority to do so."*

A list of iwi authorities and tāngata whenua is available from Te Puni Kokiri's website, Te Kāhui Māngai.[73] It should be noted, however, that tāngata whenua or mana whenua status remains an important factor.[74] Thus, where iwi or hapū are not represented by an iwi authority, this does not relegate their interests.

The notion of large iwi is a relatively modern concept. However, they do have a basis in Māori custom, based on the elaborate network of whakapapa and mana whenua, but qualified by the need to respect the autonomy of the hapū or whānau. This matter was discussed in the Whanganui River report, which provided:[75]

> *It is thus consistent with custom that, with the exception of only one group, the many Māori who appeared before us strongly supported the presentation of a united claim and urged that their collective concerns be managed by a group representative of them all. However, we did not understand this to mean that such a body had the primary right or authority over the river. The distinction, we consider, is important...*
>
> *None the less, a tension remains as to the respective roles of hapū and iwi bodies. In defining those roles, we think it important to recognise that, while changes have taken place, the traditional ethic has remained the same; that is, political authority moves from the bottom up. Accordingly, the legitimacy of an iwi group today, in our view, depends on its accountability to the hapū, its respect for hapū autonomy, and its sensitivity to local conditions and interests.*
>
> *...While particular hapū might block parts of a river in times of war, and while each hapū had a rangatira of its own, the right of control depended ultimately on the collective authority of the people. In the final analysis, control and rangatiratanga vested in the people as a whole...*

The case of Pita[76] involved competing interests between a whānau group and hapū representatives. The hapū representatives eventually conceded that the whānau had mana whenua in respect of the specific block of land in question. By contrast, in Waiareka Valley, the Environment Court declined to make provision[77] for a separate Waitaha entity in addition to the collective entity of Te Rūnanga o Ngāi Tahu. In this case, the Waitaha witnesses were demonstrably opposed to, and had chosen not to, embrace the Ngāi Tahu entity, notwithstanding proactive Ngāi Tahu processes in place to canvass their concerns, and other Waitaha descendants registering with Ngāi Tahu whanui.[78]

In Kaiawha,[79] the Environment Court noted the importance of recognising various interests, stating:

> *[7] Often issues of mana whenua mean that hapū who may have cultural interests in an area conflict with existing hapū who held mana whenua over any rights to participation. We recognise that the rights of parties who hold mana whenua are important. Nevertheless, the Act also recognises as important the relationships of various hapū, iwi, with sites of cultural significance. This includes not only historical sites, such as areas of previous battles, but can often involve major landmarks which are related to by whakapapa or otherwise. In that regard the concept of being able to develop parallel protocols to recognise these cultural interests represents a way forward for parties in this area when they are faced with such conflicts.*

73 Refer **www.tkm.govt.nz**.

74 For example, section 7(a) requires persons exercising functions under the RMA to have particular regard to kaitiakitanga, where kaitiakitanga means "the exercise of guardianship by the tāngata whenua of the area in accordance with tikanga Māori..." [Emphasis added]

75 The Whanganui River Report, at paragraph 2.5.1.

76 *Nga Uri o Wiremu Moromona Raua ko Whakarongohau Pita Inc v Far North District Council* A14/08 (EC).

77 In the relevant resource consent conditions. Refer Waiareka Valley at paragraph [131].

78 Waiareka Valley at paragraph [129].

79 *Kaiawha v Bay of Plenty Regional Council* (A119/2009).

It is also relevant to understand the context of 'taura here' or 'urban Māori authorities'. With the advent of urbanisation, many Māori moved away from their ancestral lands to the urban centres. Thus, many Māori were located in areas where they did not have mana whenua for the particular area in which they resided. 'Taura here' are entities which represent iwi or hapū affiliations. For example, Waikato-Tainui has taura here affiliated entities in Auckland, Wellington and Melbourne (among other urban centres). Urban Māori authorities represent wider Māori interests, and are not affiliated to particular iwi or hapū. These groups may, nonetheless, be involved in RMA processes. While they may not have mana whenua interests, this does not necessarily limit their ability to invoke the provisions of the RMA which recognise Māori values.[80]

Customary rights and activities

Section 6(g) of the RMA requires decision-makers to recognise and provide for the protection of recognised customary activities as a matter of national importance.

This provision relates to a foreshore and seabed customary rights order granted under the Foreshore and Seabed Act 2004.[81] This section has not yet been the subject of substantive judicial consideration.

Customary activities may include a variety of customs and practices undertaken by Māori. For example:

- Schedule 3 to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 provides a list of customary activities relating to the Waikato River, including the launching and use of waka and support craft for ceremonial, customary, recreational, competition and sporting purposes; the collection of river stones, shingle, and sand for customary practices; use of the river for bathing and cleansing; and use of the river for spiritual and cultural health and wellbeing.
- Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 recognises customary food gathering by Māori, and the special relationship between tāngata whenua and places which are of customary food gathering importance (including tauranga ika and mahinga mataitai).

While the range of customary rights and activities do not have express provision in the RMA, they may be recognised and provided for under the relevant Part 2 provisions which recognise Māori values.

80 For example, refer *Kororareka Marae Society Inc v Far North District Council* A51/2002 (EC).

81 Section 2 of the RMA defines:
- 'customary rights order as having "the same meaning as in section J of the Foreshore and Seabed Act 2004"; and
- 'recognised customary activity as "an activity, use or practice carried on, exercised or followed under a customary rights order."

Key Points

- The RMA provisions recognise that Māori customary values and practices are relevant considerations.
- The judicial approach to interpreting Māori values has developed over time and reveals varying approaches.
- The High Court has stated the need for RMA decision-makers to use a 'wider lens' than that of Western culture when addressing Māori values.
- The Environment Court has confirmed that Māori values must be approached from the Māori world view in accordance with tikanga Māori.
- The legal tests relating to evidence do not always accommodate Māori customs, and conflicts often arise in this context.
- The Court generally requires 'probative evidence' to establish findings of fact, including findings on Māori values.
- Tohunga and kaumātua, as the repositories of knowledge of a whānau, hapū or iwi, may provide evidence of that group's values.
- If kaumātua or tohunga evidence is challenged, there are various legal methods to address any such challenge.
- A common mechanism for addressing Māori interests in respect of wāhi tapu or their tāonga is the use of discovery protocols.
- Contests between tāngata whenua groups as to mana whenua sometimes arise in the RMA context.
- As a general approach, the Environment Court avoids making determinations of mana whenua between competing Māori interests, and has consistently stated that the appropriate forum for such determination is the Māori Land Court.
- Decision-makers will, on occasion, be required to make determinations which may directly or indirectly go to competing mana whenua rights.
- It is necessary to recognise the distinction between 'iwi authorities' and 'tāngata whenua/mana whenua'.
- Recognised customary activities are specifically protected under the RMA. Other customary activities may be provided for pursuant to the Part 2 provisions of the RMA.

MĀTAURANGA MĀORI – TECHNICAL EVIDENCE

The Environment Court has acknowledged the role of technical evidence in addressing mātauranga Māori,[82] citing with approval the following methodology from the Waitangi Tribunal:

> *It is one thing for a Māori to give evidence in terms of their customs and quite another thing again to give evidence that explains them. It is how customary evidence is interpreted that is the more crucial matter. The Tribunal uses expert evidence, Māori or Pākehā, for that purpose. Today, we have the benefit of anthropologists who provide just that. Anthropology was but a fledgling discipline in 1958, and Māori studies had still to receive independent recognition in universities. Moreover, today there are Māori who are able to clarify the meaning behind the symbols and to impart knowledge of their customs in terms comprehensible to Europeans.*

The use of technical Māori evidence is becoming more common, particularly in the resource consent context. However, the use of technical evidence does not always sit comfortably with Māori, particularly where it conflicts with tāngata whenua views. The following factors are relevant in this context:

- Mātauranga Māori is imbedded in the customs, practices and experiences of iwi, hapū and whānau – it is based on whakapapa and immersion in the culture. Mātauranga and tikanga also varies between different iwi and hapū. Tāngata whenua are therefore the experts in the mātauranga and tikanga particular to them.[83] There is a mutual respect between iwi and hapū for each other's tikanga, and determining tikanga for other iwi or hapū may cause grave offence.
- The benefit of technical input is to interpret the values and concepts in terms comprehensible to non-Māori. It cannot redefine the tāngata whenua values and beliefs.
- The use of technical evidence may undermine the role of kaumātua.

These are issues that commissioners may face in the decision-making process, and it is important to recognise the distinct roles of Māori historians (who may give evidence from a Western paradigm), technical experts (on mātauranga Māori) and tāngata whenua experts (such as kaumātua).

In a related vein, Māori have raised concerns that mātauranga Māori is not afforded the same treatment as Western sciences. The need for Western sciences to link with tāngata whenua science was discussed in the Tongariro Power Development (TPD) case.[84]

The Waitangi Tribunal has considered a process for hearing and considering customary evidence,[85] designed to enable tāngata whenua to present their oral traditions in a manner more aligned with tikanga Māori. The process involves:

- Identification of the themes for discussion prior to the hearing (hui).
- Advance notification of the nominated speakers by each of the parties. Speakers would each have the opportunity to make an oral presentation on the topic.

82 *Land Air Water Association v Waikato Regional Council* A110/01 (EC) at paragraph [396]. The Court went on to record at paragraph [397]: We feel it important to set out the above. It provides an appropriate methodology for this Court's role in interpreting concepts of tikanga Māori. It answers the criticism which, at the outset of this case, was levelled by one or more of the parties, at the end of a lengthy hearing, by Ms Maxwell, that the Court, being a specialist Court, was without an expert in tikanga Māori. By applying the above methodology the Court can make a determination on the evidence just as it has to make determinations on many matters which are outside the professional expertise of its members.

83 Mason Durie (Durie, Mason, (10 – 12 March 2004) 'Exploring the Interface between Science and Indigenous knowledge,' an unpublished paper presented to the 5th APEC Research and Development Leaders Forum, convened during the 4th APEC Ministers' Meeting on Regional Science and Technology Cooperation (10–12 March 2004)) has described Māori knowledge as follows: The relationship between people and the environment therefore forms an important foundation for the organisation of indigenous knowledge, the categorisation of life experiences, and the shaping of attitudes and patterns of thinking. Because human identity is regarded as an extension of the environment, there is an element of inseparability between people and the natural world. The individual is a part of all creation and the idea that the world or creation exists for the purpose of human domination and exploitation is absent from indigenous world-views.

84 *Ngāti Rangi Trust v Manawatu-Wanganui Regional Council* A67/04 (EC).

85 Te Rohe Potae District Inquiry – WAI 898 – document #2.5.46.

- No cross-examination, except for questions of clarification.
- Oral traditions presented in the Māori language would be simultaneously translated.
- Following each round, an opportunity to respond to other speakers would be provided.

The parties involved noted that the process allows for recognition of the status and mana of oral traditional evidence, which has on occasion been overwhelmed by technical evidence; and that it was appropriate for oral traditions to be presented in a tikanga Māori context, thus allowing appropriate recognition and participation by tāngata whenua.

Key Points

- The Environment Court has acknowledged the role of technical evidence in addressing mātauranga Māori.
- The use of technical evidence does not always sit comfortably with Māori, particularly where it conflicts with tāngata whenua beliefs.
- It is important to recognise the distinct roles of technical experts and tāngata whenua experts.

TREATY OF WAITANGI

Treaty principles

Section 8 of the RMA requires persons exercising functions under the RMA to take into account the principles of the Treaty of Waitangi. There are no guidelines in the RMA as to how these principles are to be applied or what constitutes the principles.

The Environment Court has expressed the section 8 imperative as follows:[86]

> *"[418] … requiring us to "take into account" the Treaty principle with all other matters and effect a balance. We are required to assess the facts as they relate to Māori issues in the light of the Treaty principles, as ascertained by the superior courts and the Waitangi Tribunal.*
>
> *[419] Section 8 of the Act is to be read with the more specific imperatives contained in sections 6(e) and 7(a). Those provisions should not, in our view, be read with a limiting pedantry. Nor should they be bogged down in legal niceties, as for example – the precise meaning and manner of application of the Treaty principles. The imperatives ensure recognition of, but not exclusive recognition of, Māori cultural issues in the resource management process."*

There is some overlap between section 8 and other Part 2 Māori provisions. The Environment Court has stated that sections 6(e) and 7(a) actively incorporate the substantive and active protection aspects of the Treaty principles which are most relevant to the management of natural and physical resources.[87]

The High Court[88] has extracted principles from Waitangi Tribunal decisions and superior courts for incorporation into the RMA context. Some principles include:

- Partnership.
- Mutual obligations to act reasonably and in good faith.
- Active protection – Under this principle, the Crown has an obligation to actively protect Māori interests. The Environment Court has stated that the establishment of a marae can advance Māori culture and the principles of the Treaty, such as active protection.[89] This principle may also require applicants to investigate alternative options which do not affect Māori relationships with resources.[90]
- Mutual benefit – This incorporates enabling aspects for both Māori and non-Māori.
- Development – The Treaty is to be adapted to modern, changing circumstances.
- Rangatiratanga – Recognising iwi and hapū rights to manage resources or kaitiakitanga over, their ancestral lands and waters.

86 *Ngāti Rangi Trust v Manawatu-Wanganui Regional Council* A67/04 (EC).

87 *Land Air Water Association v Waikato Regional Council* A110/01 (EC).

88 For example, *Carter Holt Harvey v Te Runanga o Tuwharetoa ki Kawerau* [2003] 2 NZLR 349 (HC).

89 *Kororareka Marae Society Inc v Far North District Council* A151/02 (EC).

90 *Te Runanga o Taumarere v Northland Regional Council* [1996] NZRMA 77 (EC). The Environment Court in Beadle (at paragraph [672]) has stated that the principle in Taumarere may not apply to all cases.

The principles are not exhaustive, and further principles may be enunciated depending on the circumstances of the case.

The enablement of Māori economic, social and cultural aspirations is an important aspect of the Treaty principles that has not received much attention in the RMA context to date. Particular principles include 'mutual benefit' and 'active protection'. For example, the Ngāi Tahu Sea Fisheries Report states that the principle of mutual benefit:

> *"... recognises that benefits should accrue to both Māori and non Māori as the new economy develops ..."*

This aspect will become more relevant as iwi and hapū seek to develop their resources in order to sustain their economic, social and cultural wellbeing. This matter is discussed further below.

Consultation

Section 36A of the RMA confirms that there is no obligation for applicants or local authorities to consult in respect of resource consent applications or notices of requirement. Consultation with tāngata whenua is, however, specifically required in respect to the policy and planning instruments by virtue of clause 3(1)(d) of the First Schedule to the RMA. These provisions are discussed further below.

In any event, consultation can be an important means of achieving the RMA Part 2 (and other) Māori considerations. The High Court in Waikato-Tainui[91] commented as follows:

> *[86] The points made ... reflect to some extent the provisions of ss 5–8 of the RMA. The importance of those sections in the context of consultation obligations was underscored by the Environment Court in Land Air Water Association v Waikato Regional Council EnvC Auckland A110/01, 23 October 2001. At [447] the Court said:*
>
> *[447] The essence of consultation is such that, at the end of the day, we can make an informed decision. That is, one that is sufficiently informed as to the relevant facts and law, so that we can say we have had proper regard to the provisions of ss 6(e), 7(a) and 8 of the Act...*

91 *Waikato Tainui Te Kauhanganui Inc v Hamilton City Council* CIV2009-419-1712, Allan J, 3 June 2010 (HC).

Local authorities and Treaty obligations

The Environment Court has consistently held that, while local authorities must take the Treaty principles into account in exercising RMA functions, they are not subject to the Crown obligations under the Treaty.[92]

By contrast, the Waitangi Tribunal has stated that local authorities are effectively agents of the Crown in respect of honouring Treaty obligations.[93]

More recently, the High Court has made similar statements in the RMA context:[94]

> *[57] It is the responsibility of successors to the Crown, which in the context of local government includes the Council, to accept responsibility for delivering on the Article 2 promise. Nowadays the Crown is a metaphor for the Government of New Zealand, here delegated by Parliament to the Council, which is answerable to the whole community for giving effect to the Treaty vision. That includes "avert[ing] the evil consequences which must result from the absence of the necessary Laws and institutions" needed to secure justice to all New Zealanders.*

These statements acknowledge the role of local authorities in giving effect to and implementing the Crown's Treaty obligations, including in the RMA context.

Treaty settlements

The RMA and the Treaty of Waitangi Act 1975 regimes are separate processes, and Treaty claims will not impede legitimate RMA processes.[95] However, there are examples of links between these processes. For example, Treaty claims have been incorporated into the RMA processes as iwi and hapū reach settlements with the Crown. Such incorporation can come in the form of co-management arrangements, statutory acknowledgements or agreed protocols, or the vesting of resources.

92 *Seatow Limited v Auckland Regional Council* [1994] NZRMA 204 (EC); *Hanton v Auckland City Council* [1994] NZRMA 289 (EC).

93 Manukau Report WAI-7, p 95; cf Orakei Claim WAI-9, pages 147-148; Muriwhenua Fishing Report WAI-22, pages 190-192; Ngawha Geothermal Resources Report WAI304; Whanganui River Report WAI 167.

94 *Ngāti Maru ki Hauraki Inc v Kruithof* [2005] NZRMA 1 at paragraph [57] (HC).

95 *Ngāti Rangi Trust v Manawatu-Wanganui Regional Council* A67/04 (EC).

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 provides for a powerful co-management regime for the Waikato River, including reviews of regional and district plans and resource consents. Similar outcomes are in motion for other 'River Iwi' (Ngāti Raukawa, Ngāti Maniapoto, Te Arawa and Ngāti Tuwharetoa).

Statutory acknowledgements which arise from Treaty settlements have procedural implications on RMA processes.[96] This ensures that tāngata whenua are consulted and involved as interested persons in RMA processes which affect sites of significance to the iwi or hapū.[97]

As a result of the Te Arawa Lakes Deed of Settlement, a protocol was issued by the Crown (through the Minister for the Environment) to Te Arawa, which sets out guidelines on how the Minister will interact with the iwi in relation to the Ministerial functions under the RMA that may affect the Te Arawa Lakes.

The High Court in Waikato-Tainui highlighted the significance of resources which are vested in iwi through Treaty settlements:

> *[90] … It does not matter that The Base was not formerly land of exceptional significance to Tainui … Much of the Waikato was formerly Tainui land in a general sense, but The Base has now become an area of particular importance to the plaintiff by reason of the terms of the Raupatu settlement. In other words, there is a direct nexus of significant importance between the plaintiff and The Base: see in a somewhat different context the observations of Holland J in* The Royal Forest and Bird Protection Society Inc v W A Habgood Ltd HC *Wellington M655/86, 31 March 1987 at 8-9.*

Such interests will thus be important considerations pursuant to the Māori provisions of the RMA.

Where Treaty claims are ongoing and not yet settled, it is possible to provide mechanisms in the RMA context in anticipation of iwi or hapū settlements. For example, conditions in resource consents may provide for a future review of a resource consent to take into account matters arising from a finalised Treaty settlement.[98]

Key Points

- The RMA and the Treaty of Waitangi Act 1975 regimes are separate processes, and Treaty claims will not impede legitimate RMA processes.
- Treaty principles include partnership, obligations to act reasonably and in good faith, active protection, mutual benefit, development and rangatiratanga.
- There is no duty to consult in relation to resource consents and notices of requirement. However, consultation may be an important means of addressing the Māori values and interests provided for in Part 2 of the RMA.
- Consultation with iwi is required during the preparation of policy and planning instruments.
- Local authorities have a role in giving effect to the Crown's treaty obligations.
- More recently, Treaty claims are being incorporated into the RMA processes as iwi and hapū reach settlements with the Crown.
- Where Treaty claims are ongoing and not yet settled, it is possible to provide mechanisms in the RMA context in anticipation of iwi or hapū settlements.
- There is an important link between Treaty settlements and the development aspirations of iwi and hapū.

96 Refer for example, section 274(6) and Schedule 11 of the RMA.

97 *Kemp v Queenstown Lakes DC* [2000] NZRMA 289 (EC), at paragraph [59]: So the statutory acknowledgements are expressly stated to have no substantive effect under the RMA. Parliament intended that their effect was to be procedural: to ensure that TRoNT was always an interested person and should be consulted whenever land referred to in one of the relevant schedules of the NTCSA was the subject of an application. Section 274 RMA was amended to provide TRoNT with special status, but its substantive interests (and those of other iwi) are protected by Part II of the Act – ss 6, 7 and 8 in particular.

98 See, for example, *Ngāti Rangi Trust v Manawatu-Wanganui Regional Council* A67/04 (EC).

INTEGRATION OF MĀORI VALUES ACROSS ALL FUNCTIONS

Introduction

The RMA encompasses three broad components to managing New Zealand's natural and physical resources. These are:

- Policy development processes, which include the development of: national environmental standards and national policy statements by the Government; regional policy statements and regional plans by regional councils; and district plans by district councils.
- Consenting processes associated with resource consents, heritage orders and designations, which are managed and decided on by regional and district councils.
- Compliance processes, including: monitoring of resource use activities and environmental outcomes which are managed by regional and district councils; and enforcement to ensure compliance with the RMA, regulations, plans and resource consent conditions.

There is a hierarchical order to the above functions, whereby policy development processes provide a framework for decision-making associated with consenting processes, and both of these provide a framework for compliance activities.

Policy and regulatory instruments developed at the national level inform and influence planning processes at the regional level, and regional instruments in turn inform and influence planning processes at the district level. For example, sections 67(3) and 75(3) of the RMA require regional and district plans to give effect to national and regional policy statements. Furthermore, section 75(4) of the RMA stipulates that district plans must not be inconsistent with regional plans.

The preceding parts of this chapter relate primarily to the consideration of resource consents. The following section focuses on the policy and planning functions.

Need for practical provision

Effective integration of Māori values into the administration of the RMA requires:

- Integration of Māori values across all aspects of the RMA regime.[99]
- A balanced approach to Māori aspirations, reflecting the enablement of economic, social and cultural aspirations of Māori, as well as the need to protect matters of significance to Māori.

Commentators have observed that the RMA provisions that recognise Māori values have not been adequately supplemented through policy statements and plans.[100] Rather, with some exceptions,[101] there can be a tendency for policy and planning instruments to mimic the relevant RMA provisions.

As illustrated through earlier parts of this chapter, there can at times be a disjunct between the recognition of Māori values and the statutory framework. Judicial determinations can occur in a context of little practical policy and planning guidance. In this regard, effective policy and planning provisions can provide practical guidance and help focus the issues to be resolved. This could include, for example, defining wāhi tapu,[102] recognising important tāonga (including intangible tāonga), and developing the Treaty principles and how they might be applied.

Specific RMA provisions require policy statements and plans to implement the provisions that recognise Māori values. Substantive consultation provisions[103] incorporated into the RMA in 2005 provide stronger direction to local authorities to incorporate Māori values in policy and planning instruments.

99 *McGuire v Hastings District Council* [2001] NZRMA 557 (PC).

100 There may be capacity and capability issues affecting effective participation of Māori in the planning processes, but these matters are beyond the scope of this paper. In any event, there is a responsibility on local authorities to ensure that the policy and planning instruments reflect the various RMA matters and promote the sustainable management purpose of the RMA, including the provisions in sections 6, 7 and 8.

101 Jeffries and Kennedy, A Report to Iwi on the Kaupapa Māori Environmental Outcomes and Indicators Kete – PUCM Māori Report 8, 30 June 2009 at pages 1–2.

102 For example, in Living Earth, Puketutu Island was classified as a wāhi tapu in the Manukau District Plan. This resulted in greater focus on addressing or mitigating this matter rather than dealing with definitions as to the tapu status of the island.

103 For example, clause 3B of Schedule 1 of the RMA.

The nature and extent of the obligation to consult with iwi during the preparation of policy statements or plans (ie, before notification) has been reinforced by the High Court:[104]

> *[73] ...The obligation to consult with iwi about proposed plans is an important principle, protected by the RMA. Its purpose is to facilitate good faith discussions which might influence the drafting of such plans ... The right to be consulted is conferred primarily in order that iwi have a prior opportunity to influence the drafting of the plan...*
>
> *[90] The obligation to consult with the relevant iwi authority is mandatory and unconditional. All that is required is that tangata whenua be "affected" by the proposal...*
>
> *[91] ...An iwi authority has the right under the RMA to be consulted partly by way of recognition of the rights of Māori under the Treaty, and partly in order that the Council may obtain appropriate and accurate information on the effects of a proposed plan, variation or change on affected Māori interests.*

The High Court has also recognised the need for planning methods to address Māori values. In a case which considered potential impacts on a sacred waterway, the High Court stated:[105]

> *[59] A significant contributor to the problem has been past failures within the public sector of the need to recognise Ngāti Maru's interests in the manner now required by the RMA...*
>
> *[61] For the future, it may be appropriate to record in planning documents the significance of the stream and whatever provision is needed to provide sensitively and sensibly in respect of development affecting its immediate surrounds. Given the past failings of the public sector, and since the Council alone has access to public funding, it may consider assisting resolution by both its planning skills and experience...*

[104] *Waikato Tainui Te Kauhanganui Inc v Hamilton City Council* CIV2009-419-1712, Allan J, 3 June 2010 (HC).

[105] *Ngāti Maru Ki Hauraki Inc v Kruithof CIV*-2004-485-330 (HC).

Enabling economic aspirations

Sections 5 and 8 of the RMA contain elements which promote Māori economic development. As noted above, specific Treaty principles in this regard include 'mutual benefit' and 'active protection'. In the past, Māori participation has focused on the protective features of the RMA. However, the balance between the enabling aspects of the RMA and the protection features are becoming more relevant as more iwi and hapū reach Treaty settlements and become more involved in developing their resources.

In this respect, policy and planning instruments can play an important role in enabling the social and economic aspirations of iwi and hapū. Iwi and hapū have historically had very limited resources available to enable their economic, social and cultural wellbeing, and are now acquiring resources through settlement processes for these purposes. However, Treaty settlements occur at a national level, and in some cases, the ability to develop resources which are vested in iwi may be limited at the regional and/or district levels. For example, Te Uri o Hau sought to develop a parcel of coastal land (Te Arai) it had obtained through the Treaty settlement process. However, its applications were turned down by the local authorities.[106]

In Waikato-Tainui, the local authority sought to promulgate a proposed variation which restricted further development on a commercial site which was vested in Waikato-Tainui as part of its Raupatu claims settlement. In overturning the variation due to the failure to consult with Waikato-Tainui, the High Court commented:

> *[88] At this point it is appropriate to say something about the status of The Base. ... Although the land upon which The Base is situated was not Māori land as such, the property formed part of the historic settlement achieved with the Crown in 1995. The background history is set out in the preamble to the Waikato Claim Settlements Act 1995. Mr Wetere describes The Base and its importance as an asset that is able to further the goals and policies of Tainui by providing a future income stream for the tribe.*

[106] Rodney District Council Decision Report Number PC105/V62/2000 – Te Arai Private Plan Change and Variation, dated 2 July 2009.

Profits from The Base are returned to marae and to Tainui members by way of educational grants and as distributions made for cultural and health purposes. The Base is valued at approximately $200 million and forms about one-third of the total value of the Raupatu settlement. It is the jewel in the settlement crown for Tainui. Anything which tends to reduce the value of The Base and therefore the plaintiff's ability to care for tribal members from the income The Base produces, is of the gravest concern to the plaintiff.
For these reasons, the interests of the plaintiff in its capacity as a significant landholder affected by Variation 21, and its iwi authorities are closely related, and indeed are largely inseparable.

The above cases illustrate some issues that need to be worked through in this regard, for example:

- There may be a mismatch between settlement processes (and associated expectations as to how settlement lands may be used) and regional and district RMA processes.
- Iwi development proposals may be constrained by previous development due to, for example, potential cumulative impacts or effects on existing activities. This is a real issue as Māori are only now acquiring resources to enable their economic development.

Similarly, much multiply-owned Māori land has remained undeveloped for various reasons and there is the potential for Māori to enable their economic, social, and cultural aspirations through the use and development of such land. The relationship between Māori and their ancestral lands is specifically recognised in the RMA.[107] A joint management agreement between Taupo District Council and the Tuwharetoa Māori Trust Board (executed pursuant to s36B of the RMA), which provides for Ngāti Tuwharetoa iwi to perform joint resource consent or private plan change decision-making functions in respect of Ngāti Tuwharetoa Māori land,[108] empowers the iwi to use this land in a way it considers appropriate.

[107] Refer section 6(e). Note also that the Te Ture Whenua Māori Act 1993 recognises Māori land as a tāonga tuku iho.

[108] Joint Management Agreement between Taupo District Council and Tuwharetoa Māori Trust Board pursuant to the RMA 1991 (17 January 2009).

Regional policy statements

In addition to the Part 2 provisions, section 62(1)(b) requires regional policy statements to set out the resource management issues of significance to iwi authorities in the region; and clauses 3 and 3B of Schedule 1 require regional councils to consult with tāngata whenua when preparing a policy statement.

Clause 3B[109] is particularly relevant and requires substantive and meaningful consultation with tāngata whenua. This clause provides:

3B Consultation with iwi authorities

For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority-

(a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and

(b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and

(c) consults with those iwi authorities; and

(d) enables those iwi authorities to identify resource management issues of concern to them; and

(e) indicates how those issues have been or are to be addressed.

National, regional and district planning instruments can play an effective role in promoting economic, social and cultural aspirations of iwi and hapū.

Regional policy is particularly important given that iwi and hapū are, by their nature, regional.

An example of a case where recognition of Māori values has been provided for (ie, in *Te Awatapu o Taumarere v Northland Regional Council*) the Environment Court directed the regional council to insert a policy into the policy statement to recognise the kaitiaki status of Nga Puhi in relation to the Taumarere River.

[109] This clause was inserted into the RMA in August 2005.

Regional and district plans

Sections 66(1) and 74(1) require regional and district councils to prepare plans in accordance with the provisions in Part 2, which include the Māori cultural considerations. Sections 67(3) and 75(4) require plans to give effect to policy instruments. Clauses 3 and 3B of Schedule 1 require consultation with tāngata whenua when preparing plans.

As with regional policy, regional and district plans have the advantage of providing for iwi and hapū variants as to tikanga and values, and interests of particular importance to them.

In the context of a private plan change, the High Court emphasised the importance of providing for Māori values and participation in the 'forward looking' planning framework as follows:[110]

> *[67] It is arguable that the Environment Court's focus on the specifics of the past, rather than Ngāti Maru's future relationship to the land, especially whether they will have involvement during the crucial period of planning decisions that will determine the long-term future of this significant area, has adopted the "frozen right" approach to the law's recognition of custom taken by the majority of the Supreme Court of Canada in R v Van Der Peet (1996) 137 DLR (4th) 289 rather than the "dynamic rights" approach preferred by L'Heureux-Dube J AT 345-350 and the Law Commission in NZLC SP9 Māori Custom and Values in New Zealand Law (2001) page 3. Which should be selected by New Zealand law is a question of considerable importance; as is whether, and if so how, it should be applied in this case.*

Iwi management plans

Under sections 61(2A), 66(2A) and 74(2A) of the RMA, regional and territorial authorities must, when preparing or changing a regional policy or regional and district plans, take into account any relevant planning document recognised by an iwi authority which has been lodged with the council. Such plans are generally referred to as 'iwi management plans',[111] and include any qualifying planning documents, including policies and strategies in relation to natural resources.

Iwi planning documents are not statutory instruments. While they therefore do not carry the same recognition as such instruments, this allows them the unique advantage of addressing mātauranga Māori from a Māori paradigm, unconstrained by the scope of the RMA.[112] They can encompass the Māori cultural knowledge of traditional practices relevant to environmental management and development.

An Environment Court Judge has listed (extra-judicially[113]) some matters that may be clarified by iwi planning documents, including:

> *(i) Who to talk to;*
>
> *(ii) Who has tāngata whenua (people who have customary authority over an area) status in which area;*
>
> *(iii) Identify the natural resources that are of cultural significance to Māori and why?*
>
> *(iv) Identify and explain relevant concepts of Māori Tikanga (Māori custom) as understood by the local Māori;*
>
> *(v) Identify wāhi tapu (sacred) sites;*
>
> *(vi) Identify any tāonga (treasured gift/ belonging) in the area;*
>
> *(vii) Identify sites of particular cultural significance;*
>
> *(viii) Identify the values and goals of iwi in environmental management.*

111 While this is the common term for such plans, they can come in various forms and descriptions. The key test is that they meet the criteria in sections 61, 66 and 74 (discussed further below). We refer to such documents as Iwi Planning Documents.

112 They are not subject to the overriding RMA purpose in the way that regional and district policy and plans are.

113 Judge R G Whiting, Te Ao Māori (The World of Māori) and the Resource Management Act (conference paper).

110 *Ngāti Maru Iwi Authority v Auckland City Council* AP18-SW01 (HC).

It should be noted that the above list is not an exhaustive list of factors that can be included in iwi planning documents. There are other matters, such as policies and practices for management of specific resources, which may also be recognised as iwi planning documents. What is included is ultimately up to the relevant iwi to determine.

There are essentially two requirements for iwi planning documents to be recognised as such under the RMA: They must be recognised by an iwi authority, and lodged with the relevant Council.

There is no set RMA process as to how a document is to be recognised by an iwi authority. This may occur by providing a copy of a resolution of the iwi authority, which indicates that the document has been recognised by that authority, or via a letter from the iwi authority to that effect.

There is also a grey area surrounding what "lodged with the Council" involves. Where the council has a specific process in place which relates to the receipt, acknowledgement and, in some cases, the making available of iwi planning documents, then lodgement would be in accordance with that process. Where the council does not have a specific process in place, then determining whether a document has been lodged, and the weight to be given to it, may be more difficult.

It is recommended that at the beginning of a hearing, in relevant cases, the commissioners ask the council to confirm whether it has a lodgement process, and if so, what documents have been lodged in accordance with that process; and if there is no process, what the council and the iwi authority say on the matter.

Key Points

- The RMA encompasses three broad components to managing New Zealand's natural and physical resources: Policy development processes, consenting processes and compliance processes.
- Effective integration of Māori values and world views in the administration of the RMA requires:
  - implementation of Māori values and world views across all aspects of the RMA process
  - a balanced approach to Māori aspirations.
- The Māori values and interests provided for in the RMA have not been adequately supplemented through the policy and planning instruments.
- Some gaps can be bridged by policy and planning instruments.

MECHANISMS FOR MĀORI INVOLVEMENT IN ENVIRONMENTAL MANAGEMENT

The RMA contains specific provisions which enable the transfer of functions or powers (in whole or in part) to tāngata whenua, such as:

- section 33 transfer of powers
- sections 187-188 heritage protection authorities
- section 36B joint management agreement.

Other mechanisms, such as the appointment of commissioners with knowledge of mātauranga Māori, are discussed in chapter 4.

Transfer of functions

Section 33 of the RMA provides the ability for a local authority to transfer its functions to another public authority, which includes an iwi authority.[114] Such transfer must occur by agreement and the Environment Court does not have jurisdiction to direct a council to transfer planning functions to Māori.[115] Before such transfer can occur, the relevant council must satisfy the administrative requirements set out in section 33(4), including:

- The local authority must use the special consultative procedure set out in the Local Government Act 2002.
- The respective authorities agree to the transfer.
- The authority to which the transfer is made represents the appropriate community interests.
- Efficiency, and technical or special capability or expertise of the authority.

If used, this provision would allow Māori to exercise local decision-making on various matters, such as:

- Deciding resource consents[116]
- Joint involvement for policy statements and plans.[117]

This provision provides for real practical effect to be given to tāngata whenua values and interests, particularly kaitiakitanga, in respect of resources that they have a strong relationship with.[118] However, to date, this provision has not been used to transfer powers to tāngata whenua. The experience to date with these decision-making processes has been discussed as follows:[119]

> *A survey in 1998–1999 of all local authorities in New Zealand found that while there had been a number of transfers of power between local authorities, there had been no transfers to iwi authorities despite over 12 requests. Factors inhibiting transfers included local authority concerns about the status of iwi groups, lack of specificity in applications, and concern over structure, financial resourcing and technical capacity of the applicant groups.*

The 'lack of uptake' of section 33 transfer powers appears to be gaining some attention and, more recently, local authorities have included provisions in their plans which acknowledge the use of the section 33 powers to transfer functions to tāngata whenua.[120]

114 Refer subsection (2).

115 In Hauraki Māori Trust Board v Waikato Regional Council CIV-2003-485-999 (HC), the Court stated:
It is beyond jurisdiction of the Environment Court to direct that a local authority (whether a regional council or territorial authority) must transfer its powers under this section. Apart from anything else, an essential prerequisite to the transfer of powers is the agreement of the transferor and the transferee. The Environment Court has no power to force an unwilling local authority to transfer its powers.

116 Section 33.

117 With a local authority having final decision-making power under section 33.

118 *Whakarewarewa Village Charitable Trust v Rotorua District Council* W61/94 (EC).

119 Janet Stephenson: Recognising Rangatiratanga in Resource Management for Māori Land: A Need for a New Set of Arrangements? [2005] 2 NZJEL 159 at 188.

120 For example:
- The Waikato Regional Plan (September 2007) contains the following implementation method:
2.3.4.24 Transfer of Powers to Tāngata whenua
Environment Waikato will where appropriate and able to be justified under the tests of s33 of the RMA, transfer RMA functions, powers or duties, in relation to the management of resources which are identified as being of special value to the tāngata whenua.
- The Bay of Plenty Regional Water and Land Plan contains the following method:
2.1.4 – Method 5 – Consider the transfer of water, land and geothermal resource management functions, duties or powers to iwi authorities where this is appropriate to the circumstances, subject to the requirements of section 33 of the Act.

Local authorities and tāngata whenua may collaborate outside the statutory instruments process in an effort to invoke the transfer of functions under section 33 of the RMA.[121]

Some commentators (Rennie et al, 2000; Rennie and Thomson, 2004) have identified the following situations where it would be desirable to consider a section 33 transfer:

- Zoned hapū land.[122]
- Mauri-related monitoring.[123]
- Management of recognised special places.[124]
- Management of areas under claim with the Waitangi Tribunal.
- Joint management and delegated committees.
- Monitoring the implementation of section 8 responsibilities.

Heritage protection orders

Sections 187 and 188 of the RMA were established to enable iwi and hapū to issue requirements for heritage orders to protect places of special significance on spiritual and cultural grounds.

To date, Māori experience with the various RMA transfer functions has perhaps been informed by a case involving the heritage protection provisions of the RMA. In *Te Runanga o Ngāti Pikiao v Minister for the Environment*,[125] an iwi applied to the Minister for the Environment to be approved as a Heritage Protection Authority for part of the Kaituna River.

While the iwi application was considered to have merit, the relevant district council issued a notice of requirement over the river to protect it, thus superseding the iwi application.[126] The Minister ultimately declined the iwi application on the basis that there was not sufficient detail about the place to be protected, and that there were other bodies capable of protecting the place; in particular the district council which had issued a notice of requirement to protect the river. The following events subsequently occurred:

- The council withdrew its notice.
- The High Court upheld the iwi's judicial review application, ordering that the Minister reconsider his decision.
- The RMA was amended to prevent heritage protection orders being made in respect of water.

Joint management agreements

The joint management provisions[127] were incorporated into the RMA in 2005 and provide a mechanism for joint council and iwi/hapū RMA decision-making functions.

The first and only agreement of this type, to date, was executed between the Taupo District Council and the Tuwharetoa Māori Trust Board in January 2009.[128] This agreement provides for joint decision-making on resource consent and private plan change applications in relation to multiply-owned Māori land within the traditional rohe of Ngāti Tuwharetoa Iwi and within the Taupo District. The agreement provides for each of the parties to appoint two commissioners each to the hearing committee, and to jointly appoint a fifth commissioner and the chairperson.

121 For example the 2020 Taupo-nui-a-Tia Action Plan for the Lake Taupo catchment derived between Ngāti Tuwharetoa and the relevant national (Department of Conservation and Department of Internal Affairs (Harbourmaster), regional (Environment Waikato) and district (Taupo District Council) authorities sets out a clear action to enable a potential section 33 transfer of powers to tāngata whenua, containing the following provision:
Identify the process required (with a guideline of expectations, responsibilities to be met and risks involved) to enable an RMA section 33 Transfer of Powers. This could provide hapū with the opportunity to undertake management responsibilities for a specific resource, where the resource issue would be identified on a case-by-case basis.

122 Such as matters relating to marae/hapū land that has received special zoning.

123 Such as the monitoring of effects on the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other tāonga.

124 Such as functions places the subject of statutory acknowledgements, or recognised customary activity sites, or heritage sites.

125 *Te Runanga o Ngāti Pikiao v Minister for the Environment* CP 113/96 (HC).

126 The council automatically attained Heritage Protection Authority status under the RMA.

127 Sections 36B – 36E.

128 Joint Management Agreement between Taupo District Council and Tuwharetoa Māori Trust Board executed on 17 January 2009.

Key Points

- The RMA encompasses three broad components to managing New Zealand's natural and physical resources: Policy development processes, consenting processes and compliance processes.
- Effective integration of Māori values and world views in the administration of the RMA requires:
  - implementation of Māori values and world views across all aspects of the RMA process
  - a balanced approach to Māori aspirations.
- The Māori values and interests enshrined in the RMA have not been adequately supplemented through the policy and planning instruments.
- Some gaps can be bridged by policy and planning instruments.

SCHEDULE 1
REFERENCE IN THE RMA TO MĀORI TERMS AND CONCEPTS

SECTION REF	PROVISION
PART 1 INTERPRETATION AND APPLICATION	
2(1)	Customary rights order has the same meaning as in section 5 of the Foreshore and Seabed Act 2004.
	Historic heritage— (b) includes— (iii) sites of significance to Māori, including wāhi tapu; and
	Iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
	Joint management agreement means an agreement that— (a) is made by a local authority with 1 or more— (ii) iwi authorities or groups that represent hapū;
	Kaitiakitanga means the exercise of guardianship by the tāngata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.
	Mātaitai means food resources from the sea and mahinga mātaitai means the areas from which these resources are gathered.
	Mana whenua means customary authority exercised by an iwi or hapū in an identified area.
	recognised customary activity is an activity, use, or practice carried on, exercised, or followed under a customary rights order.
	Tāngata whenua, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area.
	Tāonga raranga means plants which produce material highly prized for use in weaving.
	Tauranga waka means canoe landing sites.
	Tikanga Māori means Māori 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.

SECTION REF	PROVISION
PART 2 PURPOSE AND PRINCIPLES	
6	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 recognise and provide for the following matters of national importance:
(e)	the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other tāonga:
(g)	The protection of recognised customary activities.
7	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 have particular regard to—
(a)	kaitiakitanga:
8	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).
PART 3 DUTIES AND RESTRICTIONS UNDER THIS ACT	
11(1)	No person may subdivide land, within the meaning of s218, unless the subdivision is—
(c)	effected by the establishment, change, or cancellation of a reserve under section 338 of the Te Ture Whenua Māori Act 1993...
(2)	Subsection (1) does not apply in respect of Māori land within the meaning of the Te Ture Whenua Māori Act 1993 unless that Act otherwise provides.
14(3)	A person is not prohibited by subsection (1) from taking, using, damming, or diverting any water, heat, or energy if—
(c)	in the case of geothermal water, the water, heat, or energy is taken or used in accordance with tikanga Māori for the communal benefit of the tāngata whenua of the area and does not have an adverse effect on the environment;
17A(1)	A recognised customary activity may be carried out despite—
(a)	sections 9 to 17; or
(b)	a rule in a plan or a proposed plan.
(2)	Subsection (1) applies to a recognised customary activity only if that activity is carried out—

SECTION REF	PROVISION
(a)	in accordance with any controls imposed by the Minister of Conservation under Schedule 12; and
(b)	by any member of the whānau, hapū, or iwi or of the group, as the case may be, entitled to do so under section 52 or section 76 of the Foreshore and Seabed Act 2004; or
(c)	by a person authorised by the holder of the customary rights order to carry out the activity under section 53(1)(a) or section 77(1)(a) of the Foreshore and Seabed Act 2004.
PART 4 FUNCTIONS, POWERS AND DUTIES OF CENTRAL AND LOCAL GOVERNMENT	
33(1)	A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.
(2)	For the purposes of this section, public authority includes any local authority, iwi authority, board of a foreshore and seabed reserve, Government department, statutory authority, and joint committee set up for the purposes of section 80.
35A(1)	For the purposes of 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; 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.
(2)	For the purposes of subsection (1)(a) and (c),—
(a)	the Crown must provide to each local authority information on—
(i)	the iwi authorities within the region or district of that local authority and the areas over which 1 or more iwi exercise kaitiakitanga within that region or district; and
(ii)	any groups that represent hapū for the purposes of this Act within the region or district of that local authority and the areas over which 1 or more hapū exercise kaitiakitanga within that region or district; and
(iii)	the matters provided for in subparagraphs (i) and (ii) that the local authority has advised to the Crown; and
(b)	the local authority must include in its records all the information provided to it by the Crown under paragraph (a).

SECTION REF	PROVISION
(3)	In addition to any information provided by a local authority under subsection (2)(a)(iii), the local authority may also keep a record of information relevant to its region or district, as the case may be,—
(a)	on iwi, obtained directly from the relevant iwi authority; and
(b)	on hapū, obtained directly from the relevant group representing the hapū for the purposes of this Act.
(4)	In this section, the requirement under subsection (1) to keep and maintain a record does not apply in relation to hapū unless a hapū, through the group that represents it for the purposes of this Act, requests the Crown or the relevant local authority (or both) to include the required information for that hapū in the record.
(5)	If information recorded under subsection (1) conflicts with a provision of another enactment, advice given under the other enactment, or a determination made under the other enactment, as the case may be,—
(a)	the provision of the other enactment prevails; or
(b)	the advice given under the other enactment prevails; or
(c)	the determination made under the other enactment prevails.
(6)	Information kept and maintained by a local authority under this section must not be used by the local authority except for the purposes of this Act.
36B(1)	A local authority that wants to make a joint management agreement must—
(b)	satisfy itself—
(i)	that each public authority, iwi authority, and group that represents hapū for the purposes of this Act that, in each case, is a party to the joint management agreement—
(A)	represents the relevant community of interest; and
(B)	has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the local authority; and
39(2)	In determining an appropriate procedure for the purposes of subsection (1), the authority shall—
(b)	recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori and the Māori Language Act 1987 shall apply accordingly;

SECTION REF	PROVISION
42(1)	A local authority may, on its own motion or on the application of any party to any proceedings or class of proceedings, make an order described in subsection (2) where it is satisfied that the order is necessary (a) and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.
(a)	to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu;
PART 5 STANDARDS, POLICY STATEMENTS, AND PLANS	
44	The Minister must not recommend to the Governor-General the making of any national environmental standard unless the Minister has—
(a)	notified the public and iwi authorities of—
(i)	the proposed subject matter of the standard; and
(ii)	the Minister's reasons for considering that the standard is consistent with the purpose of the Act; and
(b)	established a process that—
(i)	the Minister considers gives the public and iwi authorities adequate time and opportunity to comment on the proposed subject matter of the standard; and
45(2)	In determining whether it is desirable to prepare a national policy statement, the Minister may have regard to—
(h)	anything which is significant in terms of section 8 (Treaty of Waitangi);
46	If the Minister considers it desirable to issue a national policy statement, the Minister must—
(a)	seek and consider comments from the relevant iwi authorities and the persons and organisations that the Minister considers appropriate; and
58	A New Zealand coastal policy statement may state objectives and policies about any 1 or more of the following matters:
(b)	the protection of the characteristics of the coastal environment of special value to the tāngata whenua including wāhi tapu, tauranga waka, mahinga mātaitai, and tāonga raranga:
61(2)	In addition to the requirements of section 62(2), when preparing or changing a regional policy statement, the regional council shall have regard to –
(a)	any—(iii) to the extent that their content has a bearing on resource management issues of the region; and
(iii)	regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mātaitai, or other non-commercial Māori customary fishing); and

SECTION REF	PROVISION
(2A)	A regional council, when preparing or changing a regional policy statement, must—
(a)	take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region; and
62(1)	A regional policy statement must state—
(b)	the resource management issues of significance to—
(i)	iwi authorities in the region; and
65(3)	Without limiting the power of a regional council to prepare a regional plan at any time, a regional council shall consider the desirability of preparing a regional plan whenever any of the following circumstances or considerations arise or are likely to arise:
(e)	any significant concerns of tāngata whenua for their cultural heritage in relation to natural and physical resources:
66(2)	In addition to the requirements of section 67(3) and (4), when preparing or changing any regional plan, the regional council shall have regard to –
(c)	any—(iii) to the extent that their content has a bearing on resource management issues of the region; and
(iii)	regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mātaitai, or other non-commercial Māori customary fishing); and
(2A)	(2A) A regional council, when preparing or changing a regional plan, must—
(a)	take into account any relevant planning document recognised by an iwi authority and lodged with the council, to the extent that its content has a bearing on resource management issues of the region; and
74(2)	In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to –
(b)	any—(iii) to the extent that their content has a bearing on resource management issues of the region; and
(iii)	regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mātaitai, or other non-commercial Māori customary fishing),
(2A)	A territorial authority, when preparing or changing a district plan, must—
(a)	take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and

SECTION REF	PROVISION
PART 6 RESOURCE CONSENTS	
108(9)	In this section, financial contribution means a contribution of—
(b)	land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Māori land within the meaning of the Te Ture Whenua Māori Act 1993 unless that Act provides otherwise;
141B(2)	In deciding whether a matter is or is part of a proposal of national significance, the Minister may have regard to any relevant factor, including whether the matter—
(h)	is or is likely to be significant in terms of section 8 (Treaty of Waitangi).
146(4)	In appointing members, the Minister must have regard to the need for the board to have available to it, from its members, knowledge, skill, and experience relating to—
(c)	tikanga Māori
PART 7 COASTAL TENDERING	
154	The Minister shall as soon as practicable—
(b)	cause a notice of the making of the Order in Council and its effect to be served on—
(iv)	the tāngata whenua of that region, through iwi authorities; and
PART 7A OCCUPATION OF COASTAL MARINE AREA	
165R(1)	In conducting a tender of authorisations under this Part, a regional council must give effect to any preferential right to purchase a proportion of the authorisations.
(2)	Subsection (1) applies to preferential rights conferred by—
a	section 316 of the Ngāi Tahu Claims Settlement Act 1998
b	section 119 of the Ngāti Ruanui Claims Settlement Act 2003
c	section 79 of the Ngāti Tama Claims Settlement Act 2003
d	section 106 of the Ngā Rauru Kītahi Claims Settlement Act 2005
e	section 118 of the Ngāti Awa Claims Settlement Act 2005
f	section 92 of the Ngāti Mutunga Claims Settlement Act 2006.

SECTION REF	PROVISION
PART 8 DESIGNATIONS AND HERITAGE ORDERS	
187	heritage protection authority means—
(b)	a local authority acting either on its own motion or on the recommendation of an iwi authority:
189(1)	A heritage protection authority may give notice to a territorial authority of its requirement for a heritage order for the purpose of protecting—
(a)	any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tāngata whenua for spiritual, cultural, or historical reasons; and
PART 9 WATER CONSERVATION ORDERS	
199(2)	A water conservation order may provide for any of the following:
(c)	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 Māori.
204(1)	As soon as practicable after its appointment, a special tribunal shall ensure that—
(c)	notice of the application is served on—
(iv)	the relevant iwi authorities
208(1)	As soon as reasonably practicable, a special tribunal shall prepare a report on the application for a water conservation order and give notice in accordance with subsection (2).
2	A notice for the purposes of subsection (1) shall—
(c)	be sent to the applicant, the Minister, the regional council, the relevant territorial authorities, the relevant iwi authorities, and every person who made a submission on the application.
PART 11 ENVIRONMENT COURT	
253	When considering whether a person is suitable to be appointed as an Environment Commissioner or Deputy Environment Commissioner of the Environment Court, the Attorney-General shall have regard to the need to ensure that the Court possesses a mix of knowledge and experience in matters coming before the Court, including knowledge and experience in—
(e)	matters relating to the Treaty of Waitangi and kaupapa Māori

SECTION REF	PROVISION
269(3)	Environment Court shall recognise tikanga Māori where appropriate
276(3)	The Environment Court may receive evidence written or spoken in Māori and the Māori Language Act 1987 shall apply accordingly.
PART 14 MISCELLANEOUS PROVISIONS	
353	Part 10 of the Te Ture Whenua Māori Act 1993 shall apply to the service of notices under this Act on owners of Māori land, except that in no case shall the period fixed for anything to be done by the owners be extended by more than 20 working days under section 181(4) of that Act, unless otherwise provided by the local authority.
SCHEDULE 1 PREPARATION, CHANGE AND REVIEW OF POLICY STATEMENTS AND PLANS	
2(2)	A proposed regional coastal plan must be prepared by the regional council concerned in consultation with—
(b)	iwi authorities of the region; and
3(1)	During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—
(d)	the tāngata whenua of the area who may be so affected, through iwi authorities; and
3B	For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—
(a)	considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and
(b)	establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
(c)	consults with those iwi authorities; and
(d)	enables those iwi authorities to identify resource management issues of concern to them; and
(e)	indicates how those issues have been or are to be addressed.
5 (4)	A local authority shall provide 1 copy of its proposed policy statement or plan without charge to—
(f)	the tāngata whenua of the area, through iwi authorities
20(4)	The local authority shall provide 1 copy of its operative policy statement or plan without charge to—
(f)	the tāngata whenua of the area, through iwi authorities

SECTION REF	PROVISION
SCHEDULE 11 ACTS THAT CONTAIN STATUTORY ACKNOWLEDGEMENTS	
	Ngā Rauru Kītahi Claims Settlement Act 2005
	Ngāi Tahu Claims Settlement Act 1998
	Ngāti Awa Claims Settlement Act 2005
	Ngāti Ruanui Claims Settlement Act 2003
	Ngāti Tama Claims Settlement Act 2003
	Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005
	Pouakani Claims Settlement Act 2000
	Te Uri o Hau Claims Settlement Act 2002
SCHEDULE 12 RECOGNISED CUSTOMARY ACTIVITY	
4	The Minister of Conservation, when considering whether to impose controls on a recognised customary activity,—
(b)	may have regard to
(v)	any relevant planning document lodged with the regional council and recognised by an iwi authority, to the extent that the content of the document has a bearing on the resource management issues of the region.
9	A regional council, in carrying out an adverse effects assessment of a recognised customary activity,—
(b)	may have regard to
(v)	any relevant planning document lodged with the regional council and recognised by an iwi authority, to the extent that the content of the document has a bearing on the resource management issues of the region.

SCHEDULE 2
RELEVANT RMA
PART 2 PROVISIONS

Sections 6(e), 7(a) and 8 are set out as follows:

6. Matters of national importance –
   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 recognise and provide for the following matters of national importance:
   (e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other tāonga.

7. Other matters –
   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 have particular regard to -
   (a) Kaitiakitanga:

8. Treaty of Waitangi –
   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).

SCHEDULE 3
EXAMPLES OF RESOURCE CONSENT CONDITIONS ADDRESSING MĀORI VALUES

Accidental discovery conditions in Motiti Island regional permits[129]

Sites of archaeological, historic or cultural significance

1. In the event of any artefacts, bones or any other find of potential archaeological, historic or cultural significance being uncovered during the exercise of this consent, the consent holder shall immediately cease all activities which may damage the site of the discovery and shall notify the Regional Council of the find within 72 hours. Prior to recommencing such activities, the consent holder shall consult with the New Zealand Historic Places Trust and the relevant local iwi, and, subject to further definition of site boundaries by a registered archaeologist, shall not recommence works in the area of the discovery until any necessary authority to destroy or modify the site has been obtained (see advice note).
2. The owner of...[the site] shall fence off that part of the [waahi tapu] site contained within the subject lot, and as defined on [the]... plan... with stock proof fences and shall maintain such fences in good and stock-proof order and condition. The site shall be grazed only by light hoofed animals such as sheep. This condition shall be registered on the Certificate of Title... by covenant or other suitable legal mechanism.

Advice Notes:

1. This consent does not authorise the holder to modify or disturb any archaeological or historic sites within the area affected by this consent. Should any artefacts, bones or any other sites of archaeological or cultural significance be discovered within the area affected by this operation, written authorization should be obtained from the Historic Places Trust before any damage, modification or destruction is undertaken.
2. The Regional Council is able to advise of contact details for the relevant iwi authority.

Accidental discovery conditions in Te Rere Hau land use consent[130]

Cultural and archaeological

1. If at any time during the site excavations authorised by this Consent potential historic artefacts or cultural remains or kōiwi items are discovered, then all work shall stop and the Consent Holder shall immediately advise the ... Council, the Historic Places Trust (to determine whether a consent from the Historic Places Trust is required), [and the relevant iwi]. The Consent Holder shall also call its archaeological advisor to the site to verify whether or not the objects form archaeological evidence. Further excavation work at the site shall be suspended should tangata whenua wish to carry out their procedures and tikanga for removing tāonga. In the interim the contractor, supervising engineer or Consent Holder shall secure the site until approval to proceed has been granted. Work at the site shall not recommence until approval to do so has been given by the ... Council.

[129] Conditions for Resource Consent No.64868 by the Bay of Plenty Regional Council as recorded in *Wills v Bay of Plenty Regional Council* (C098/10), unreported, Environment Court, Tauranga, Smith J, 24 March 2010.

[130] Conditions for land use consent granted by independent commissioners in relation to the eastern extension of the Te Rere Hau windfarm, February 2010.

Advice Note: The Consent Holder is reminded of its obligations under the Historic Places Act 1993.

2. If Historic Places Trust consent is required pursuant to condition [1], work may only recommence once the appropriate consent has been obtained and a copy provided to the ... Council.
3. Where tangata whenua have nominated that sites of significance exist in relation to this site, the Consent Holder shall invite tāngata whenua to be present at times excavations are being undertaken in these nominated sites, in order that they may observe the excavations to identify if any historical artefacts or cultural remains or kōiwi are uncovered.

Advice Note: Any discussion regarding reimbursement for representatives of tāngata whenua being present on the site is a matter that is between the Applicant and tangata whenua.

4. Prior to the commencement of any works on the application site, the Applicant will provide to Council for certification an Accidental Discovery Protocol to be adhered to during the construction phase ... This will include, but not be limited to, procedures to respond to any discovery of archaeological or cultural artefacts as described in Condition [1] above.

Tauranga Wastewater Treatment Plants Decision[131]

18 Wastewater Management Review Committee

18.2 The Wastewater Management Review Committee Management Plan shall address:

a) the membership of the Review Committee
b) the frequency that the Review Committee shall meet
c) the meeting protocols of the Review Committee having regard to the customary practices of the tangata whenua of Tauranga Moana and shall operate in accordance with the principles of the Treaty of Waitangi (especially the principles of consultation, active participation and partnership).
d) the functions of the Review Committee

19 Environmental Mitigation and Enhancement Fund

19.1 The permit holder shall establish a fund, to be entitled the Environmental Mitigation and Enhancement Fund, of not less than $250,000 (comprising one payment of $50,000 one month after the commencement of the permit, and four further such payments the second, third, fourth and fifth anniversary of the commencement of the permits).

The purpose of the fund shall be to fund and facilitate measures and initiatives (particularly in the Upper Tauranga Harbour) to:

a) Avoid, remedy or mitigate the actual or potential effects of the Wastewater Scheme (in its broadest sense);or
b) To acknowledge and provide mitigation by way of environmental compensation for ongoing adverse environmental effects (including by way of offence to tangata whenua cultural and spiritual values) associated with the Wastewater Scheme.

Initiatives which the fund may be applied to may include but are not limited to:

c) Providing opportunities for promoting and/or implementing initiatives for capacity building of tangata whenua; and
d) The carrying out by tangata whenua of monitoring the cultural effects associated with the operation of the Wastewater Scheme.
e) Providing opportunities for promoting and/or implementing involvement of tangata whenua in sampling, testing and monitoring.
f) Research into issues relevant to water quality and ecological issues, particularly in the Upper Harbour.
g) Research into the health and size of shellfish populations and the relocation and/or re-seeding of such populations where appropriate.

131 Environment Bay of Plenty, Tauranga City Council and Department of Conservation Joint Hearing Committee Decision (9 April 2006) on No.62878 – Tauranga City Council coastal permit application for discharging treated wastewater from two wastewater treatment plants into the Coastal Marine Area

19.2 The fund shall be applied by the permit holder in accordance with recommendations of the Review Committee established pursuant to Condition 18 of this permit.

19.3 The permit holder shall review the effectiveness of the application of the fund at least two months prior to the third anniversary of the commencement of these permits with a view to making further funds available on the same basis as Condition 19 hereof, having regard to the reports of the Review Committee.

Port of Tauranga Decision[132]

7 Tangata Whenua Engagement

7.1 The Consent Holder shall, within six (6) months of the granting of this consent and Consent No 65806 and in advance of any dredging and disposal activities authorised by both consents commencing, invite members of the hapū, iwi and the Customary Fisheries Committee of Tauranga Moana to join a Tangata Whenua Reference Group (TWRG). The purpose of this group is to:

7.1.1 Enable the free flow of information between the Consent Holder and the Tangata Whenua of the Tauranga Moana; and

7.1.2 To acknowledge, enable and provide for the value of hapū traditional environmental knowledge of Te Awanui with respect to all relevant research, planning and decision making processes in relation to this consent; and

7.1.3 Assist the Consent Holder to initiate benchmark and monitoring surveys, as detailed below, and to provide information to assist in decision making in relation to sustainability of kaimoana; and

7.1.4 Assist the Consent Holder with the ongoing monitoring activities authorised by this consent; and

7.1.5 Advise and assist the Consent Holder with respect to the Kaimoana Restoration Plan described in Condition 12.

7.2 The Consent Holder shall, not less than one month prior to, and at least once per month when dredging and disposal activities are being undertaken in accordance with this resource consent and Consent No 65806, convene a meeting with the TWRG, to discuss any matter relating to the exercise and monitoring of the consents.

7.3 The Consent Holder shall, whenever the plans in 6.1, 9.9, 11.7, 11.9 and 15 of Consent No 65806 and 6.1, 11.10, 12.1, 16 and 20 of this consent are to be submitted to the Regional Council, or when monitoring or research activities are being planned, or when results are to be submitted in accordance with this resource consent, convene a meeting with the TWRG to discuss any matter and share this information prior to submitting the plan to the Regional Council. The information shall be provided to the TWRG sufficiently in advance of the meeting so that the Group has time to review and consider it.

7.4 Notwithstanding Conditions 7.2 and 7.3 the Consent Holder shall, at least once per calendar year, convene a meeting with representatives of the Bay of Plenty Regional Council and the TWRG to discuss any matter relating to the exercise and monitoring of this consent. At this time the consent holder shall in addition to any matters relating to the exercise and monitoring of this consent, use its best endeavours to inform the TWRG of the likely dredging to be undertaken in the following year

7.5 The Consent Holder shall keep minutes of the meetings held in accordance with Conditions 7.2, 7.3 and 7.4 and shall forward them to all attendees and to the Regional Council.

7.6 The meetings required by Conditions 7.2, 7.3 and 7.4 need not occur if the TWRG advise the Consent Holder (Conditions 7.2 and 7.3) or the Bay of Plenty Regional Council (Condition 7.4) that the meeting is not required.

7.7 The Consent Holder shall provide final copies of the reports prepared in accordance with Conditions 11.2, 11.3, 11.4, 11.12, 11.13, 11.14 and 11.15 to the TWRG concurrently with them being submitted to the Bay of Plenty Regional Council.

132 Environment Bay of Plenty Independent Hearing Panel Decision (31 May 2010) on No.65807 – Port of Tauranga application coastal permit application for activities associated with the dredging of Tauranga Harbour.

12 Kaimoana Restoration Plan

12.1 The Consent Holder shall prepare and submit a Kaimoana Restoration Plan (KRP) to the Chief Executive of the Bay of Plenty Regional Council or delegate, for approval, within 12 months of this consent and Consent No 65806 being granted. The purpose of the KRP is to determine and mitigate the actual and potential loss of accessible kaimoana by identifying methods and techniques to ensure the ability of Tangata Whenua to collect the kaimoana species that are affected by the works authorised by the consents is maintained. The KRP will:

- Take into account the results of the monitoring undertaken in accordance with this consent.
- Develop research and monitoring criteria to remedy or mitigate the effects on kaimoana. _Include baseline surveys to identify the abundance and diversity of kaimoana of the areas close by and affected by the proposed dredging, comprising Te Paritaha o Te Awanui, Mauao rocky reefs (Tanea Shelf), Motuotau and Moturiki Islands and surrounding rocky reefs.
- Include annual monitoring of the main kaimoana species, their locations, abundance, size health and harvesting pressure within the vicinity of dredging and disposal sites comprising Te Paritaha o Te Awanui, Mauao, Tanea Shelf, Motuotau and Moturiki Islands and surrounding rocky reefs. During capital dredging, photographic monitoring to record the effect on pipis of any slumping.

12.2 Restoration projects within the KRP shall include the following;

- A research project to be established to determine the feasibility of reseeding in alternative areas to provide an area equivalent to the area of accessible pipis lost through the dredging. The research project to commence immediately after the consent has been granted. If the conclusion of the research project is that such reseeding is feasible, then work on such reseeding shall commence immediately. Annual monitoring surveys of the reseeded area shall then be carried out to record the success of the reseeding.
- Enhance existing kaimoana population in the vicinity of Tanea Shelf by extending and
- enhancing the rocky habitat area and reseeding if possible.

12.3 The annual monitoring described above in 12.1 and 12.2 shall continue for a period of five (5) years after the completion of the capital dredging.

Te Mihi Decision – Environment Waikato Consents[133]

General Conditions

2. Kaitiakitanga

2.1 Upon advice satisfactory to the Waikato Regional Council from the Wairakei- Tauhara hapū regarding Kaitiaki representation and mandate, the consent holder shall forward a copy of the annual Peer Review Panel report to the nominated hapū representative(s) each year and will meet with the Peer Review Panel Hapu Representative(s) at yearly intervals to discuss and provide feedback to the Peer Review Panel on any cultural impact issues arising from the material presented in the annual Peer Review Panel report.

2.2 The consent holder shall develop and implement a Mitigation Package for the purpose of recognising the relationship of Mana Whenua Hapu within the Wairakei consent area with the ancestral lands, water, sites, waahi tapu and other taonga and to maintain their ancestral connection to their waahi tapu and other taonga affected by the activities consented under these resource consents.

[133] The Decision of the Board of Inquiry into the Te Mihi Geothermal Power Station Proposal (3 September 2008). Contact Energy resource consent applications 104706, 104707, 104711, 104712, 104718, 116786 and 116787.

Advice Note: The consent holder intends to comply with this condition by providing annual funding for an education scholarship and for cultural projects as set out in a Heads of Agreement signed between Contact and hapū representative committees dated 27 February 2004.

2.3 The consent holder shall advise Waikato Regional annually on the measures taken in compliance with conditions 2.1 and 2.2."

Te Mihi Decision – Taupo District Council Consent[134]

General Conditions

3. The consent holder shall ensure the Cultural/Archaeological Sites Protocol attached as Schedule Two shall be adhered to.

Advice note: In addition to the above protocol, the consent holder is also subject to the legal requirements of the Police, Historic Places Act 1993, Antiques Act 1975 and any other governing legislation."

Cultural Condition

37. The consent holder shall ensure no operations or maintenance of the Te Mihi Geothermal Power Station is undertaken within 100 metres of Te Mihi Maunga, Raparapa Maunga or the rock art features as identified on the plan entitled Te Mihi – Cultural Exclusion Zones attached in Schedule One of these conditions."

Schedule Two – Cultural/Archaeological Sites Protocol

1.0 Introduction

This Cultural/Archaeological Sites Protocol (the Protocol) is an Appendix to the Cultural Impact Assessment and has been prepared by Gayle Leaf on behalf of Ngāti Te Rangiita hapū ki Ōruanui. Ngāti Te Rangiita hapū ki Ōruanui have manawhenua status over the Ōruanui No. 5 Block where the proposed Te Mihi geothermal power station is to be located. Ngāti Te Rangiita hapū ki Ōruanui adopted the Protocol at a hui on 17th November 2007.

2.0 Aims of the Protocol

The Protocol sets out the process that Contact Energy Limited (Contact Energy) must follow if there is a discovery of a cultural/archaeological site (e.g. Waahi Tapu site that might include historic pā, canoe landing sites, buried whakairo [carvings], kōiwi tāngata [human remains], tohu such as landmarks, pou, urupā [burial sites, where the whenua [placenta] was returned to the earth, or where a certain type of valued resource is found), during the construction, operation and maintenance of the Te Mihi geothermal power station.

The Protocol is intended for use only by Contact Energy for the construction, operation and maintenance of the Te Mihi geothermal power station.

3.0 Known Cultural/Archaeological Sites

An Archaeological Assessment of the Te Mihi geothermal power station site was undertaken in May 2007 by Clough and Associates. The assessment confirmed that one archaeological site is recorded adjacent to the southern banks of the upper Te Rau-o-te-huia Stream. The rock art and shelter site (U17/17) are located to the north of the Te Mihi project area. Two similar rock art sites (U17/16 and 21) are also recorded approximately 1.5km to the north of the Wairakei Geothermal Power area, on the southern flanks of Ngangiho hill. *Note that these sites are considered by Ngāti Te Rangiita hapū ki Ōruanui as sites of cultural and spiritual value. The term 'Archaeological Sites' is used in this protocol purely to reference the Clough and Associates Archaeological Report prepared for the Te Mihi geothermal power station resource consent application and also the relevant statutory legislation such as the Historic Places Act 1993.*

[134] The Decision of the Board of Inquiry into the Te Mihi Geothermal Power Station Proposal (3 September 2008). Contact Energy land use resource consent application RM070304.

4.0 Protocol

4.1 Discovery of Cultural/Archaeological sites

During the construction, operation and/or maintenance of the Te Mihi geothermal power station a cultural/archaeological site may potentially be discovered. In the event that a site is discovered, the Protocol provides Contact Energy with a clear process to contact Ngāti Te Rangiita hapū ki Ōruanui and the necessary statutory bodies to collectively arrive at an appropriate and culturally sensitive action plan for dealing with the discovered site.

4.2 Cease operations

If a site is discovered, Contact Energy shall direct the contractor to suspend all, and any, ongoing operations and physical works in the immediate vicinity of the discovered site. The contractor must mark the site and undertake any necessary temporary measures to protect the site from further exposure to the elements (if uncovered) or damaged from machinery (through removal or repositioning of machinery). This may include, but is not limited to the covering of the site to provide temporary shelter and/or the removal of equipment where this will not further damage the site. Operations can continue elsewhere, provided that the continuation of operations will not directly or indirectly affect the discovered site. If there is doubt as to whether the continuation of operations will directly or indirectly affect the discovered site, all operations should cease until discussions with representatives of Ngāti Te Rangiita hapū ki Ōruanui and any relevant statutory body can take place, and an action plan is formulated for dealing with the discovered site.

4.3 Contact representatives of Te Rangiita hapū ki Ōruanui and relevant statutory agencies

Once operations have ceased and any necessary measures to protect the discovered site have been undertaken, Contact Energy shall inform in the first instance the representative of Ngāti Te Rangiita hapū ki Ōruanui, and following consultation with the representative of Ngāti Te Rangiita hapū ki Ōruanui, any relevant statutory agency. In the event that kōiwi are discovered, Contact Energy shall contact and consult with the representative of Ngati Te Rangiita hapū ki Oruanui and advise the Strategic Communications Officer of the Taupo District Council, and then contact the Historic Places Trust, the New Zealand Police on the advice of the representative of Ngati Te Rangiita hapū ki Oruanui. As set out in Section 4.4 of this Protocol, a Plan of Action will be developed for the discovery of kōiwi.

Contact Energy will engage an archaeologist to provide expert advice and recommendations to the Historic Places Trust as to the significance of the discovered site.

4.4 Assessment by Archaeologist

The archaeologist engaged by Contact Energy will undertake a detailed assessment of the discovered site to determine its significance and will, in consultation with Ngāti Te Rangiita hapū ki Ōruanui, inform the Historic Places Trust of the discovered site (if this has not already occurred). As part of the assessment process, the archaeologist, in consultation with Ngāti Te Rangiita hapū ki Ōruanui, can direct Contact Energy to remove any temporary measures put in place to protect the discovered site. In consultation with Contact Energy, the archaeologist and Ngāti Te Rangiita hapū ki Ōruanui will put in place an agreed *Plan of Action* to appropriately and sensitively deal with the remediation or protection of the discovered site (if this is required). The archaeologist, in conjunction with Ngāti Te Rangiita hapū ki Ōruanui and Contact Energy will provide a recommendation to the Historic Places Trust as to the significance of the discovered site including the agreed *Plan of Action* for appropriately and sensitively dealing with the remediation or protection of the discovered site, and whether any Authorities are required under the Historic Places Act 1991. Refer to Section 5.0 of this Protocol for the *Plan of Action* framework. In the event that Ngāti Te Rangiita hapū ki Ōruanui and the archaeologist are satisfied that the discovered site is not of any cultural significance or is not an archaeological site and does not require an Authority from the Historic Places Trust, Contact Energy can recommence operations as per the requirements of any resource consents granted for the construction, operation and maintenance of the Te Mihi geothermal power station.

4.5 Application for Authority to the Historic Places Trust

In the event that an Authority is required pursuant to the Historic Places Act 1991, Contact Energy, in consultation with Ngāti Te Rangiita hapū ki Ōruanui, is responsible for developing all such applications to the Historic Places Trust. It is envisaged by Ngāti Te Rangiita hapū ki Ōruanui that any agreed *Plan of Action* to appropriately and sensitively deal with the remediation or protection of the discovered site will provide the basis of any application for an Authority to the Historic Places Trust.

4.6 Completion of Archaeological Field Work

In accordance with any Authority granted by the Historic Places Trust, or in accordance with the agreed *Plan of Action* for discovered sites that do not require an Authority from the Historic Places Trust, the archaeological field work required to remediate or protect the discovered site will be completed. Contact Energy will accept and make allowances for all tikanga in accordance with Ngāti Te Rangiita hapū ki Ōruanui kawa.
For example if kaumātua are required to bless a site, the representative of Ngāti Te Rangiita hapū ki Ōruanui will organise this process and inform Contact Energy of the necessary arrangements.
If the representative of Ngāti Te Rangiita hapū ki Ōruanui elects not to be present during the completion of the archaeological field work, Contact Energy will advise the representative of Ngāti Te Rangiita hapū ki Ōruanui when the archaeological field work has been completed, or at any stage that has been previously agreed to during the fieldwork.

4.7 Recommencement of Operations

Following the completion of the archaeological field work to remediate or protect the site, and all formal processes conducted by Ngāti Te Rangiita hapū ki Ōruanui, Contact Energy can recommence operations as per the requirements of any resource consents granted for the construction, operation and maintenance of the Te Mihi geothermal power station.

4.8 Submission of Archaeological report to Historic Places Trust

Following the completion of the archaeological field work to remediate or protect the site, and all formal processes conducted by Ngāti Te Rangiita hapū ki Ōruanui, the archaeologist shall submit a report to the Historic Places Trust detailing:

The discovery of the site; and

- The agreed plan of action (including consultation with Contact Energy and Ngāti
- Te Rangiita hapū ki Ōruanui); and
- The outcome of the archaeological assessment; and
- Any Authorities that have been applied for under the Historic Places Act 1991
- (including the outcome of this process); and
- The remediation or protection of the site; and
- Any other issues that the archaeologist deems necessary to include in this report.

A copy of the report sent to the Historic Places Trust will also be sent to the representative of Ngāti Te Rangiita hapū ki Ōruanui.

5.0 Plan of Action Framework

In the event that a discovered site is of cultural significance to Ngāti Te Rangiita hapū ki Ōruanui a Plan of Action will be developed to map out the process for remediating or protecting the site.
The Plan of Action will include:

- Location of the discovered site; and
- Description of the discovered site; and
- Photographic record of the discovered site; and
- Agreed process to remediate or protect the discovered site including tikanga in
- accordance with Ngāti Te Rangiita hapū ki Ōruanui kawa; and
- Assessment of the discovered site undertaken by Archaeologist.

It is envisaged by Ngāti Te Rangiita hapū ki Ōruanui that any Plan of Action developed for a discovered site will form the basis of information submitted to the Historic Places Trust as part of any reporting or application for any Authority required under the Historic Places Act 1993."

FACILITATING TIKANGA MĀORI AT RMA HEARINGS

CHAPTER 4

INTRODUCTION

This chapter addresses procedural considerations and methods of integrating Māori values into RMA processes and decision-making. It is intended to provide commissioners with practical suggestions on how they can facilitate tikanga Māori at hearings.

This chapter begins by outlining the provisions in the RMA which enable commissioners to facilitate tikanga Māori at RMA hearings. It then moves on to discuss practical ways in which tikanga Māori can be incorporated into hearings processes. These include: appointing people with appropriate knowledge and expertise to the hearing panel and staff; incorporating mātauranga Māori into the planners' report; incorporating pōwhiri, whakatau or mihimihi into the hearings process; allowing sufficient time for Māori evidence to be presented; encouraging the use of Māori language at the hearing; ensuring protection against disclosure of sensitive information; and being flexible on the location and layout of the hearing venue.

RMA FACILITATES INCORPORATION OF TIKANGA MĀORI

In addition to the requirements in Part 2 of the RMA for decision-makers to "recognise and provide for" (section 6(e)), "have particular regard to" (section 7(a)) and "take into account" (section 8) specific cultural considerations, decision-makers also have a requirement under section 39(2)(b) to incorporate tikanga Māori into hearings processes:

> *...Recognise tikanga Māori where appropriate and receive evidence written or spoken in Māori and the Māori Language Act 1987 shall apply accordingly...*

A paper by the Ministry for the Environment on fair hearings processes (Ministry for the Environment, 2001, p 18) suggests councils should have an internal policy which states how the principles of the Treaty are to be addressed, and when tāngata whenua and/or Māori should be represented on hearings panels.

Other suggestions for the ways in which commissioners and other decision-makers can incorporate tikanga are discussed in the remainder of this chapter.

Key Points

- The RMA specifically requires decision-makers to recognise and provide for tikanga Māori where appropriate.
- Council policies and plans can include similar requirements and guidelines.

METHODS OF INCORPORATING TIKANGA MĀORI

The methods discussed in this section are organised to follow the hearing process sequence, beginning with the preparation of the staff report, through to the conduct of the hearing itself.

Incorporating mātauranga Māori into staff report

A local authority has the power under section 42A of the RMA to commission a planning report on a proposal before it proceeds to hearing. Where the application is complex, the planning expert often seeks inputs from other experts as to the effects of the proposal (Ministry for the Environment, 2001, p 11). Where the proposal involves substantive cultural or spiritual issues, it may be appropriate for the planner to also seek input on these issues from an independent Māori expert – for example from a local tertiary institute – or commission a cultural impact assessment from tāngata whenua, if that has not already occurred.

Physical location and layout

Where a hearing involves tāngata whenua, commissioners should consider whether it is practical to hold the hearing (or part of the hearing) at a location not considered intimidating to tāngata whenua. This may be a local marae (Ministry for the Environment, 2001, p 20) or a location (such as a conference centre) close to the land or water body which is subject of the hearing. Holding a hearing at such a location can enable tikanga Māori concepts, such as pōwhiri, karakia and waiata, to be properly accommodated.

In some cases, the RMA instruments may be relevant. For example the Waikato Regional Plan contains provision to consider using marae for resource consent hearings:

> *2.3.4.21 Marae-Based Hearings*
>
> *Environment Waikato will consider the use of the marae where appropriate for all or part of resource consent hearings. In deciding whether or not such a venue is appropriate Environment Waikato will consider the impartiality of venue, the comfort of the parties involved, and participants and the logistics involved.*

Where it is not practical to hold the hearing at one of these locations, consideration can be given to holding the hearing, or part of the hearing, at a location not associated with the formalities of council process.

Appointing people with appropriate knowledge and expertise

Where tāngata whenua groups are involved in a hearing, or a hearing involves cultural considerations, it can be useful to appoint commissioner(s) and/or hearing staff who have a good understanding and knowledge of tikanga Māori, subject to any conflicts of interest.[135] This will help to ensure that tikanga Māori considerations are appropriately recognised and provided for in hearings processes. It may be useful to consult with tāngata whenua before appointing commissioners and hearing staff.

It should be noted that the role of a Māori commissioner or person appointed to the panel because of their expertise in tikanga Māori is that of an independent commissioner. The role is not that of an advocate, and nor is it limited to advising only on tikanga Māori matters.

However, having a person on the hearing panel with expertise in tikanga and kaupapa Māori is useful and important. This helps to avoid some of the cross cultural/language difficulties experienced by decision-makers. For example, the following extra-judicial commentary provides a list for consideration (Whiting, 2005):

(i) The difficulty of conceptualising Māori concepts in the English language;

(ii) The fluid nature of customary law;

(iii) The multiplicity of different iwi (tribes) perceptions of Māori concepts;

(iv) The uncertainty regarding the limits of the operation of customary law in competition or conflict with English law;

(v) Applying some of the artificial tests recognised in English law;

(vi) Recognising a neo revisionist adaptation of Māori culture to suit a particular issue.

As an alternative example, the Environmental Risk Management Authority (ERMA), which decides applications under the Hazardous Substances and New Organisms Act 1996, has a specialist Māori advisory committee (Ngā Kaihautū Tikanga Taiao) to assist ERMA with its consideration of and decision-making on Māori values. As a further measure, which was also the subject of a recommendation by the advisory committee, ERMA consists of a member who is a recognised and respected expert in tikanga Māori so as to augment and complement the knowledge base of ERMA. This, in turn, provides necessary guidance for ERMA members and enhances the credibility of the decision-making process.

Incorporating pōwhiri/whakatau/mihimihi

The importance of the pōwhiri process to Māori, and the usual steps in that process, are outlined in chapter 2. In essence, a pōwhiri allows the appropriate respect and acknowledgements to be made (to those who have gone before as well as the other parties), and it also ensures the way is cleared spiritually for the hearing to proceed.

While, under the RMA, generally only the applicant, reporting staff and submitters have speaking rights (Ministry for the Environment, 2001, p 26), the hearing panel may allow a non-submitter, such as a kaumātua, to speak for the purposes of introductory formalities.

[135] For example iwi or hapū affiliations.

If a pōwhiri is to be included, it should be incorporated at the beginning of the hearing, so that it lays a foundation for the rest of the hearing. A useful approach to assist non-Māori in these processes may be adopted from the Waitangi Tribunal forum. There, the Crown representatives are accompanied by an 'advisory' kaumātua, who guides them through the process and in relation to any tikanga Māori matters. The Tribunal itself, being a bi-cultural body, consists of members who are recognised and respected experts in tikanga Māori.

Other alternatives to pōwhiri include less formal processes, such as whakatau, where the hearing is opened with karakia, mihimihi and waiata, or mihimihi.

Where there is more than one hapū or iwi attending the hearing, each may wish to have a role in the pōwhiri, whakatau or mihimihi process, and time should be allowed for this to occur. The hearings coordinator should seek agreement among tāngata whenua as to conducting such process.

Encouraging use of the Māori language

As noted in chapters 2 and 3, translating Māori values and concepts into the English language does not always capture the real meanings. For example, the meaning of kaitiakitanga to Māori is much broader than the meaning given to that term (guardianship/stewardship) in the RMA.

Because of these issues, some Māori often prefer to present their evidence in the Māori language so as to retain the content, idiom and nuances that come with the Māori language. Further, Māori might insist on having important provisions recorded in the Māori language in addition to, or in preference to, the English language.

The exercise of tikanga Māori and the use of Māori language are recognised by the RMA and are facilitated by most local councils. Accordingly, where tāngata whenua have indicated that they will be attending a hearing, the hearings coordinator should ask whether any member of the group intends on giving evidence in Māori. Where evidence is proposed to be given only in Māori, an interpreter should be made available to assist the hearings panel. Because of the difference in dialects between different hapū and iwi groupings, a local interpreter, or one who speaks the local dialect, should (wherever possible) be engaged. For example, the Waitangi Tribunal prefers interpreters who are familiar with the local idiom, history, custom and tradition, and encourages interpreters to explain as well as interpret, and to enter into discussions with the witness where this clarifies the witness's intention. The hearings coordinator should liaise with the person intending to give their evidence in Māori to select an appropriate interpreter (Ministry for the Environment, 2001, p 20).

Protecting against disclosure of sensitive information

The hearings panel may be asked to protect against the disclosure of sensitive cultural information, such as wāhi tapu locations, in the hearing. This is because, to Māori, knowledge itself may be tapu and in many cases is strongly guarded and kept secret by those (such as kaumātua and tohunga) in whom it is entrusted.[136]

Māori view themselves as kaitiaki of information relating to wāhi tapu, mahinga kai or sites of cultural significance and may be reluctant to disclose knowledge which is particular to the iwi, hapū or whānau. The Waitangi Tribunal has commented on this customary practice as follows (in the Te Roroa Report):

> *There were two lots of burial caves: at Kohekohe and Piwakawaka situated at the two ends of a cliff face on the ridge known as Kaharau. There were many other caves in between. Until the land fell into the hands of James Morrell, the existence of the caves was a secret to all but their kaitiaki, who handed down information on them by word of mouth.*

136 In the *Wananga Capital Establishment Report*, the Waitangi Tribunal recorded accounts of the practice of whare wananga recognising the tapu nature of knowledge:

Māori society valued knowledge and maintained various institutions for its preservation and dissemination at different levels.

Certain types of knowledge were regarded as tapu, and whare wananga and other institutions closely guarded access to tapu knowledge. Whare wananga, and in some areas more advanced institutions known as whare kura, facilitated higher learning for those of higher rank and standing.

Through wananga Māori educated their historians, keepers of whakapapa, tohunga with their specialist knowledge, teachers, manual labourers, conservationists, and leaders. The proper maintenance and transmittal of knowledge to succeeding generations was vital to the survival of iwi and hapū.

Section 42 of the RMA recognises the tapu nature of Māori knowledge, enabling local authorities to make orders to restrict the publication or communication of information where it is necessary:

> *... to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu*

It is not uncommon for Māori to seek confidentiality orders to maintain the integrity of the knowledge entrusted to them. Such confidentiality orders may relate to the location of wāhi tapu, mahinga kai and sites of cultural significance (among other matters), and are intended to protect the information from public disclosure, both during the hearing and any subsequent decisions report.

Allocating sufficient time for Māori submitters

In allocating time for submitters and other groups at the hearing, commissioners should take into account the time required for pōwhiri and similar processes, as well as the extra time that may be required by Māori to outline their whakapapa/linkage to the land, before moving on to discussing their views on the proposal.

Seating arrangements and room layout should also be discussed with tāngata whenua. While the recommended room layout indicated in Module 4 of the *Making Good Decisions* workbook (Ministry for the Environment, 2008, p 97) may be appropriate for most situations, hearings commissioners need to be open to changing this format, where necessary, to better provide for hearing participants, and, in particular, tāngata whenua. For example, an arrangement where some of the attendees had their backs towards the speaker, or where tāngata whenua were separated from each other, may not be appropriate.

Recognising tikanga

The Environment Court is required by section 269(3) of the RMA to recognise tikanga in proceedings, where appropriate. There is a similar obligation on commissioners by virtue of section 39(2)(b) of the RMA, which states:

(2) In determining an appropriate procedure for the purposes of subsection (1), the authority shall...

(b) Recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori and the Māori Language Act 1987 shall apply accordingly...

In determining the circumstances in which allowing mihi, karakia and other tikanga practices may be appropriate, the Environment Court has provided some guidance. In *Tiakina Te Taiao Ltd v Tasman District Council*,[137] the Court stated:

[5] In the circumstances we consider we should outline the principles we consider should usually be applied by the Court on applications to have karakia and/or mihi said at the preliminary stages of proceedings in the Environment Court.

1 The Environment Court is a secular Court. The Environment Judges and Commissioners are not required to make an affirmation to any deities. It is not a religious Court, like a Consistory Court or a Sharia Court.

2 The Court's over-riding obligations are fairness and rationality especially when there are conflicts between cultural values.

3 Despite its status as inferior Court, even the Environment Court is strictly to be kept separate from the Legislature and the Executive. One consequence of the separation of powers' convention is that complaints to Ministers should be ignored when coming to any decision in the course of proceedings.

4 Each Environment Court regulates its own procedure on each occasion 'in such manner as it thinks fit' but 'shall recognise tikanga Māori where appropriate'. In particular the Court recognises the importance of karakia in Māori protocol.

5 However, we should record that Justice Baragwanath (now of the Court of Appeal) has written guidelines for all Courts which include the statement:

[137] 14 ELRNZ 232 (EC).

It is important that the work of the courts, already overloaded, be performed efficiently and without the interruption of any unstructured participation. It is, therefore essential that any request for the inclusion of karakia be communicated in good time to the Registrar with particulars of what is proposed. It would accord with the nature of karakia for the request to be supported by all parties. [The request] should be in writing and contain particulars of what is intended. If the karakia is to be delivered by a party or the supporter of a party, that should be disclosed.

[6] In an attempt to avoid future offence we should add that the Environment Court usually sits – in substantive hearings anyway – as a Court with three members. So while the Court, or a Judge, may approve the giving of a karakia, it is for
each of the members of the Court to decide for themselves whether they wish to be present when a karakia is given. Some may choose not to, and such an action should not be taken as a sign of a lack of (proper) empathy or respect. Nor is it unfair. To the contrary, it appears to be more scrupulously fair than listening to a karakia, or acknowledging a mihi, at least where the Crown is not a party.

The hearings panel should also be aware that some tikanga practices differ between different iwi and hapū, and the panel should be prepared to accommodate these differences where appropriate.

Key Points

There are a number of ways that tikanga Māori can be incorporated into RMA hearings. These include:

- Incorporating mātauranga Māori into the staff report.
- Being flexible on the location and layout of the hearing.
- Appointing people with appropriate knowledge and expertise to the hearing panel and staff, after consultation with tāngata whenua.
- Incorporating pōwhiri or less formal whakatau or mihimihi processes into the hearings process, as appropriate.
- Encouraging the use of Māori language at the hearing.
- Ensuring protection against disclosure of sensitive information.
- Allowing sufficient time for Māori evidence to be presented;
- Recognising tikanga of different tribes.

GLOSSARY OF MĀORI TERMS

APPENDIX A

GLOSSARY

This glossary sets out translations of words used within this Supplement. Where terms are used which are defined elsewhere in the Making Good Decisions (Ministry for the Environment, 2008) workbook, the definitions are reproduced below for convenience. The source of each definition is footnoted.

Ahi kā roa	rights of occupation or use of resources in an area.[138]
Aituā	disaster or accident occurring in a particular area; also means misfortune, unlucky and ill omen.[139]
Atua	god or supernatural being.[140]
Hākari	entertainment or feast.[141]
Hakuturi	meaning kaitiaki of the forest;[142] also a figurative expression for 'old man'.[143]
Hapū	tribe; pregnant.[144]
Hau	return present by way of acknowledgement for present received; property, spoils.[145]
Haumiē tiketike	atua of uncultivated foods.[146]
He tangi ki ngā mate	this is a part of the pōwhiri process and involves time to remember and show respect for the dead.[147]
Hui	means a coming together of people; a meeting, assembly or group.[148]
Huahua	bird captured for food; game.[149]
Iwi	tribe; bone.[150]
Kai	food; consume, eat.[151]
Kaimoana	seafood.[152]
Kaitiaki/kaitiakitanga	guardian/guardianship; intergenerational responsibility inherited through whakapapa and whanaungatanga at birth to care for the environment.[153]
Karakia	most commonly known as a prayer;[154] also includes charms, spells, pleas and incantations to the gods.[155]

138 For further information, refer to chapter 2 of this Supplement.
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Karanga	begins a pōwhiri process; means to call, summon, welcome.[156]
Kaumātua	adult; old man or woman.[157]
Kaupapa	plan scheme or proposal; also means platform, surface and layer.[158]
Kawa	ritual or ceremonial actions or protocols which guide the way Māori life is ordered.[159]
Kōiwi	bone or corpse; also includes person, spirit, strength and descendents.[160]
Kōkōwai	red ochre.[161]
Kuia	old woman; mother, grandmother or other elderly female relative.[162]
Kūpapapapa	sulphur.[163]
Mahinga kai	seafood gardens or other traditional sources of food.[164]
Mana	authority; control; influence; prestige; power.[165]
Mana atua	sacred power of the gods.[166]
Mana moana	power associated with sea.[167]
Mana whenua	power associated with possession of lands.[168]
Manāki or Manākitanga	showing hospitality towards people.[169]
Manuhiri	visitor or guest.[170]
Marae	community meeting place or surrounds.
Maramataka	Māori calendar.[171]
Mātauranga Māori	Māori world views which are based on the values, traditions and experience of Māori.[172]
Mātaitai	fish or other foodstuff obtained from the sea or lakes.[173]

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173 For further information, refer to chapter 2 of this Supplement.

Mauri	life force, or essence of living things.[174]
Mihimihi	greet or acknowledge.[175]
Noa	ordinary; free from restriction.[176]
Pākehā	a person of predominately European descent.[177]
Papatūānuku	mother Earth.[178]
Pepeha	a set form or words; figure of speech; formal utterance.[179]
Poroporoaki	final part of the pōwhiri process; means to thank and farewell, or take leave of the hosts.[180]
Pou	post or pole.[181]
Pounamu	greenstone or jade; weapon or implement made from greenstone or jade.[182]
Pōwhiri	welcome ceremony.[183]
Rāhui	form of restriction placed on resources or specific areas to prohibit use of that resource or area for a particular period of time.[184]
Ranginui	sky father.[185]
Rangatira	chief; well born, noble; can be either male or female.[186]
Rangatiratanga	political sovereignty; chieftainship; leadership; self determination, self management.[187]
Rohe	boundary/tribal boundary.[188]
Rongo Mātāne	atua of cultivated foods.[189]
Rūaumoko	atua of earthquakes.[190]
Rūnanga	assembly or council.[191]

174 For further information, refer to chapter 2 of this Supplement.

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190 For further information, refer to chapter 2 of this Supplement.

191 Williams, H.W. (1971). *Dictionary of the Māori Language*. 7th Edition. Wellington: GP Publications, at page 352.

Taiapure	local fishery.[192]
Takiwā	district; space; interval of time.[193]
Tāmaki Makaurau	often translated as the Auckland region, but it covers a slightly different area. It stretches from South Kaipara in the north, to the southern reaches of the Manukau Harbour.[194]
Tāne Mahuta	atua of the forests.[195]
Tangaroa	atua of the seas.[196]
Tangata	person, human being.[197]
Tāngata	people, human beings (macron denoting plural)
Tāngata whenua	people of the land.[198]
Taniwha	a spiritual being, tribal guardian or monster, usually found in or near a waterway that protected tribes or enforced tribal restrictions.[199]
Tāonga	treasures or property which is highly prized.[200]
Tāonga tuku iho	gift of the ancestors; precious heritage.[201]
Tapu	sacred; subject to restriction.[202]
Taura Here	literally meaning 'bound ropes', but is often used to represent urban iwi groups linked to the home tribe.[203]
Tawhirimātea	atua of wind.[204]
Te Ao Marama	the world of light, which existed after Ranginui and Papatūānuku were separated.[205]
Te Kore	the nothingness, which existed before the world was created.[206]
Te Pō	the world in darkness when Ranginui and Papatūānuku were still joined together.[207]

192 For further information, refer to chapter 2 of this Supplement.

193 Williams, H.W. (1971). *Dictionary of the Māori Language*. 7th Edition. Wellington: GP Publications, at page 373.

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207 Hyland, Q.R. (2002). Paki Waitara. *Myths & Legends of the Māori*. Auckland: Reed, at page 13.

Te Wai Pounamu	most of the South Island.[208]
Tikanga Māori	Māori custom, rule or method; the right way of doing something.[209]
Tohunga	skilled person; wizard or priest.[210]
Tūāhu	sacred place used for the purposes of divination and other mystic rights.[211]
Tuakana/tuākana	elder brother of a male or elder sister of a female;[212] when combined with (tanga), also refers to an acknowledgement of seniority between whānau, hapū and iwi groups.[213]
Tupuna/tipuna	ancestor or grandparent.[214]
Tūpuna/tīpuna	ancestors or grandparents (macron denoting plural)
Tūmatauenga	atua of war and of people.[215]
Tūrangawaewae	home or place where a person comes from.[216]
Urupā	grave or burial site.[217]
Utu	used here as meaning reciprocity; also means return for anything, satisfaction, ransom, reward, price and reply[218]
Wāhi tapu	sacred place.[219]
Waiata	Māori song.[220]
Wairua	spirit of a living thing.[221]
Waka	canoe; descendents of a particular canoe.[222]
Whaikorero	formal speech.[223]
Whakaeke	term to describe the visitors' slow walk in formation onto the marae as part of the pōwhiri process.[224]

208 Te Puni Kokiri, Te Waipounamu, **http://www.tpk.govt.nz/en/region/te-waipounamu**

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Whakapapa	genealogy of all things.[225]
Whakaratarata	term to describe the hongi between tāngata whenua and manuhiri on a marae as part of the pōwhiri process.[226]
Whakatau	address in formal speech.[227]
Whānau	extended family; birth.[228]
Whanaungatanga	relationship or kinship.[229]
Whare wānanga	university or school of higher learning.[230]
Whenua	land/country; also means placenta/afterbirth.[231]

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