



Co-operative Under
Mandates

Viewing the World through a Wider Lens: Māori and Council Planning Documents

by

Nathan Kennedy

PUCM Māori Report 6

July 2008



IGCI
University of Waikato



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FRST-funded Research Program
on the Quality of Environmental
and Community Planning and
Governance in New Zealand

MIHI

Ko Moehau te Maunga,
Tikapa te Moana,
Hauraki te Whenua
Marutuahu te Tangata ē

Tihei mauri ora

E tapu te rangi nā Io te ātua E tapu te rangi ruānuku Kia rere mai te maramara Kua piri, kua tau Kia rere mai te kongakonga Kua piri, kua tau Torotika ē!

Kei te karanga atu ki a Io, ki a Ranginui, ki a Papatūānuku, kia tū mai anō ngā āhuatanga o te taiao. Kua te tukuna hoki ngā whakaaro ki te wāhi ngaro, ki a rātou mā, nā rātou te whenua i poipoiā i te wā i noho tahi ai te tangata me anā uri, arā ngā uri o Rangi rāua ko Papa.

He tīmatanga kōrero tēnei i a mātou e rapu nei e kimi nei i ngā kōrero, otirā ngā mātauranga hei āwhina i a mātou, otirā i a tātou te hunga e noho kuare anā ki ngā āhuatanga Māori.

Ko te wawata, te tūmanako, kia mārama ake ai tātou, ngāi Māori i ngā tikanga, ngā kaupapa, me ngā kōrero a ngā mātua, tūpuna, kia kaha ake ai tātou ki te tiaki, poipoi, manaaki hoki i te taiao e noho nei tātou.

No reira

Tēnā koutou, tēnā koutou, tēnā koutou katoa

Nathan Kennedy

Environment Officer, Ngāti Whanaunga
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Preface

This report provides a resource kit to post-graduate students of planning, Maori development, and related disciplines. It highlights the need for a “wider lens” in local government planning; one that encompasses “an iwi perspective,” as provided for in planning legislation. This paper is one of several that derives from 5 years of work by the PUCM Maori research project, which aimed to develop a Kaupapa Māori environmental outcomes and indicators framework and methodology. The project was led by Richard Jefferies, director of KCSM Consultancy Solutions Ltd, Opotiki. Research took place within a wider research programme on Planning Under a Cooperative Mandate (PUCM), led by the International Global Change Institute (IGCI), a self-funding research institute within Te Whare Wānanga o Waikato – The Waikato of University, in association with several partners.

PUCM is a FRST-funded programme that since mid-1995 has been sequentially examining the quality of policies and plans (Phase 1), plan implementation (Phase 2), and environmental outcomes (Phase 3) under the 1991 Resource Management Act (RMA) and more recently the 2002 Local Government Act (LGA). An important part of this planning and governance research was consideration of the interests of Māori as Government’s Treaty partner.

Following Phase 1 analysis of RMA plan quality, Richard Jefferies of Ngāti Tukorehe and his firm, KCSM Consultancy Solutions Ltd were brought onto the PUCM research programme in 2002 to lead the Māori component of the research. KCSM staff initially assisted with interpretation of findings relating to plan implementation and Māori interests. Nathan Kennedy, an environmental officer for Ngāti Whanaunga iwi and with experience working in local government, was employed at the beginning of PUCM Phase 3 to undertake research on Māori environmental outcomes.

The PUCM Māori team has published a series of working papers and reports as a means for making public its research findings, and in an effort to influence change in response to observed issues with plan quality and implementation, and the environmental results, especially as they relate to Māori. These documents are downloadable from <http://www.waikato.ac.nz/igci/pucm>.

Located in grey in Figure 0.1 next page is the Phase 3 Māori RMA Objective with its published reports identified in the lower row of boxes; the one shaded grey being this report.

Neil Ericksen

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IGCI Associate

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Hamilton

1 June 2008

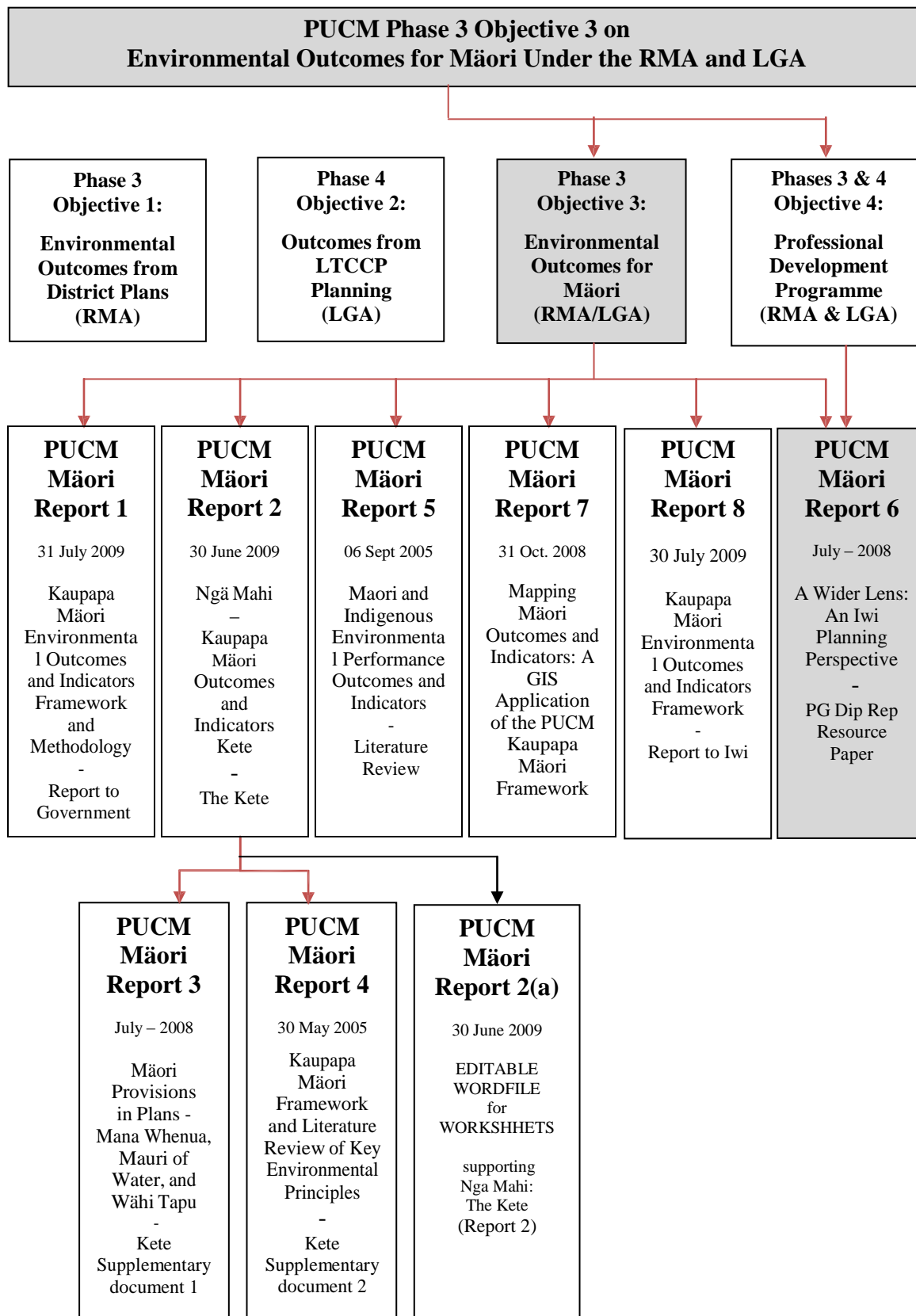


Figure 0.1. Māori Report 6 in context of the PUCM Research Programme on Planning Under Co-operative Mandates RMA (1991) and LGA (2002)

Acknowledgements

A version of this report was presented to a WINFO seminar on *Mātauranga, Māori Knowledge, Information and Indicators* and to students in the *Post-Graduate Diploma in Resources and Environmental Planning* in the Department of Geography, Tourism and Environmental Planning at The University of Waikato. We are grateful for the feedback from participants in helping to shape the report.

Information in the report is based largely on research carried out under the *Planning Under Co-operative Mandates* (PUCM) Research Programme (Phases 3 and 4), which was funded by FRST-PGSF under contract number UOWX0308 with the University of Waikato, and subcontracts to Planning Consultants Ltd (Auckland), KCSM Consultancy Solutions Ltd (Opotiki), Lawrence Cross Chapman and Co. Ltd (Planning and Resource Management Consultants, Thames), and Lincoln University. We appreciate the support of FRST and that of the PUCM team

Special thanks are due to the many peer reviewers in two tangata whenua working groups who contributed to the Māori component of the overall PUCM Research Programme, and the Māori project in particular. The “Māori experts group” was comprised mostly of Māori working within councils and Crown agencies. The “Iwi Practitioners group” was comprised of iwi environmental officers. The following peer reviewers have participated in these two groups at different times: Hori Parata, David Taipari, Tikitu Tutua-Nathan, Nassah Steed, Antoin Coffin, Reg Profit, Garth Harmsworth, Todd Taiepa, Waaka Vercoe, Beverley Hughes, Vaughan Payne, Rhonda Cooper, Barney Thomas, Nick Tupara, Saul Roberts, and Te Warena Taua.

We also give special thanks to the staff of our partner iwi, Ngāti Awa and Ngāti Maru, for assistance and guidance with both developing and trialling the environmental outcomes and indicators framework and outcomes and indicators kete. And, we thank staff of Matamata-Piako District Council and Environment Bay of Plenty and members of the tribal representatives on the Mana Whenua forum of Matamata-Piako District Council for their assistance and feedback.

We wish to acknowledge members of the wider PUCM team, who have contributed valuable advice throughout the research period, especially: Jan Crawford, Maxine Day, Neil Ericksen, and Lucy Laurian. Also thanks to Katarina Simons, IGCI PhD candidate, for insightful conversations. We give special thanks to Neil Ericksen, PUCM Research Programme leader, who supported our desire to develop a kaupapa Māori research approach and then encouraged us throughout the research endeavour. We are also grateful for him having reviewed and commented on drafts of this report.

Richard Jefferies – Ngāti Tukorehe

Nathan Kennedy – Ngāti Whanaung

He Timatanga - Introduction

This paper was originally prepared for students in the Post-Graduate Diploma for Resources and Environmental Planning. I am grateful to Mairi Jay, Director of the PG-Dip-REP, for inviting me each year for 3 years to speak with her post-graduate planning students and to provide teaching resources for them. By publishing this report it is hoped that other planning students may benefit from its perspective on planning from a Maori perspective.

My effort to convey an iwi perspective on environmental resource management - what we call kaitiakitanga – should highlight for new planners about to enter the profession that the environmental perspectives of hapū and iwi (which are provided for in the RMA), are currently not well covered in either mainstream local government planning or education.

In the decision of *Ngati Maru Iwi Authority Inc v Auckland City Council* (2002) Judge Baragwanath granted the iwi leave to go to the Appeal Court to appeal previous Environment Court and High Court decisions in which arguments based largely on Māori values had not prevailed. The Judge said that tikanga Māori (Maori customs and values) and mātauranga Māori (knowledge) had been accorded insufficient weight in those court deliberations. He observed that: *“It is unnecessary on a leave application to do more than allude to the evolving international recognition that indigenous issues must now be viewed through a wider lens than that of western culture.”*

The wider lens to which Judge Baragwanath refers takes in Māori perspectives in addition to Western ones. The recognition includes international conventions to which New Zealand is a signatory, such as Agenda 21, and a substantial and ever-growing case law establishing the need to give meaningful recognition to, and to provide for, Māori rights and values at all levels of environmental resource management. The RMA, and many of the planning documents produced under it, contain some impressive Māori provisions which, on the face of it, would safeguard Māori values relating to the environment. But the reality in terms of the implementation of statutory plans (regional, coastal and district) and the outcomes for Māori is entirely different.

It is important to note at the outset that there is not a universal Māori environmental view. There are variations between the traditions of different iwi (tribes) and hapū (sub-tribes) around Aotearoa (New Zealand). It is, however, for tangata whenua (indigenous people of the land) to determine the tikanga (values) within their particular rohe (area). I offer you a Ngāti Whanaunga perspective.

This paper is based on my experience as an environment officer for my iwi, Ngāti Whanaunga, over the last decade to 2008. In this time, I have written and presented numerous submissions to resource consents hearings relating to plans and plan-changes. I have also given evidence at various Environment Court appeals, both on behalf of Ngāti Whanaunga and as an expert witness for other groups. It also draws on lessons learnt in my capacity as a research officer for the International Global Change Institute (IGCI) at The University of Waikato, over the last 5 years, where I was employed to investigate the environmental outcomes of RMA planning documents for Māori. This work is described in detail in a series of PUCM Māori Reports (1 to 8, see Figure 0.1 in Preface) and Māori Working Papers (1-5).

Ngāti Whanaunga

I am of Ngāti Whanaunga descent, one of the Hauraki iwi descended from the Tainui tupuna (ancestor) Marutuahu. Below are included two maps, the first showing our lands centred on the Coromandel Peninsular and the second the extent of our rohe (area) in relation to the boundaries of territorial local authorities (TLA), i.e., regional and district councils.

The first map (Figure 1) shows the fragmented nature of Ngāti Whanaunga lands, which are interspersed with those of our Marutuahu kin and other neighbouring hapū (Figure 2, second map). However, the straight lines conceal complex relationships to lands and resources, many of which reflected tribal relationships and had been developed over centuries prior to European colonisation in the 19th century.

The maps should suggest the importance of plan provisions that address the cross-boundary issues that councils are directed to address under the 1991 *Resource Management Act* (RMA). Addressing these issues through provisions in the RMA is essential, in order for iwi, such as Ngāti Whanaunga, to have any ability to push for a degree of consistent and integrated management across ancestral lands.

Section 6.e requires those administering the RMA to recognise and provide for, as a matter of national importance, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu (sacred), and other taonga (treasures). The maps in Figures 1 and 2 are intended to give some idea of what this means for Ngāti Whanaunga. Our lands lie across four regional councils and 12 district and city councils.

This overlapping of iwi and council boundaries is significant for several reasons in relation to RMA planning. On a purely practical level, Māori need to participate in planning activities with numerous agencies and across a vast area. This brings with it challenges for iwi, including difficulties in being not only familiar with the planning instruments of so many councils, but also in establishing relationships with politicians, senior managers, and especially planning staff in multiple councils (Neill, 2003).

Most iwi environment units operate on an almost entirely voluntary basis, and with minimal resources (Ericksen, et al., 2001; 2003; 2004 and Jefferies, et al., 2003/2). That said, my iwi is well-equipped in comparison to many hapū and iwi, in that we have several experienced environmental and planning practitioners. Significantly, we have a track record of taking environment court decisions to appeal and higher level prosecutions, and this is possible because of tribal members being in senior partnerships in some of the country's largest law firms who are willing and able to act on a *pro bono* basis.

The sad thing about this last statement – and I return to it again later – is that despite impressive provisions within many of the planning instruments of some of the councils within our rohe, our overall experience is that councils do little to protect Māori interests – particularly at a resource consents level, and our willingness and ability to proceed to court remains our most important card. This in turn is part of an overall RMA implementation problem; the disjunction between good intentions in policy in plans and poor outcomes due to poor plan implementation through the resource consents process (Bachurst, et al., 2002; 2004; Chapman, et al., 2003; Day, et al., 2004; 2005).

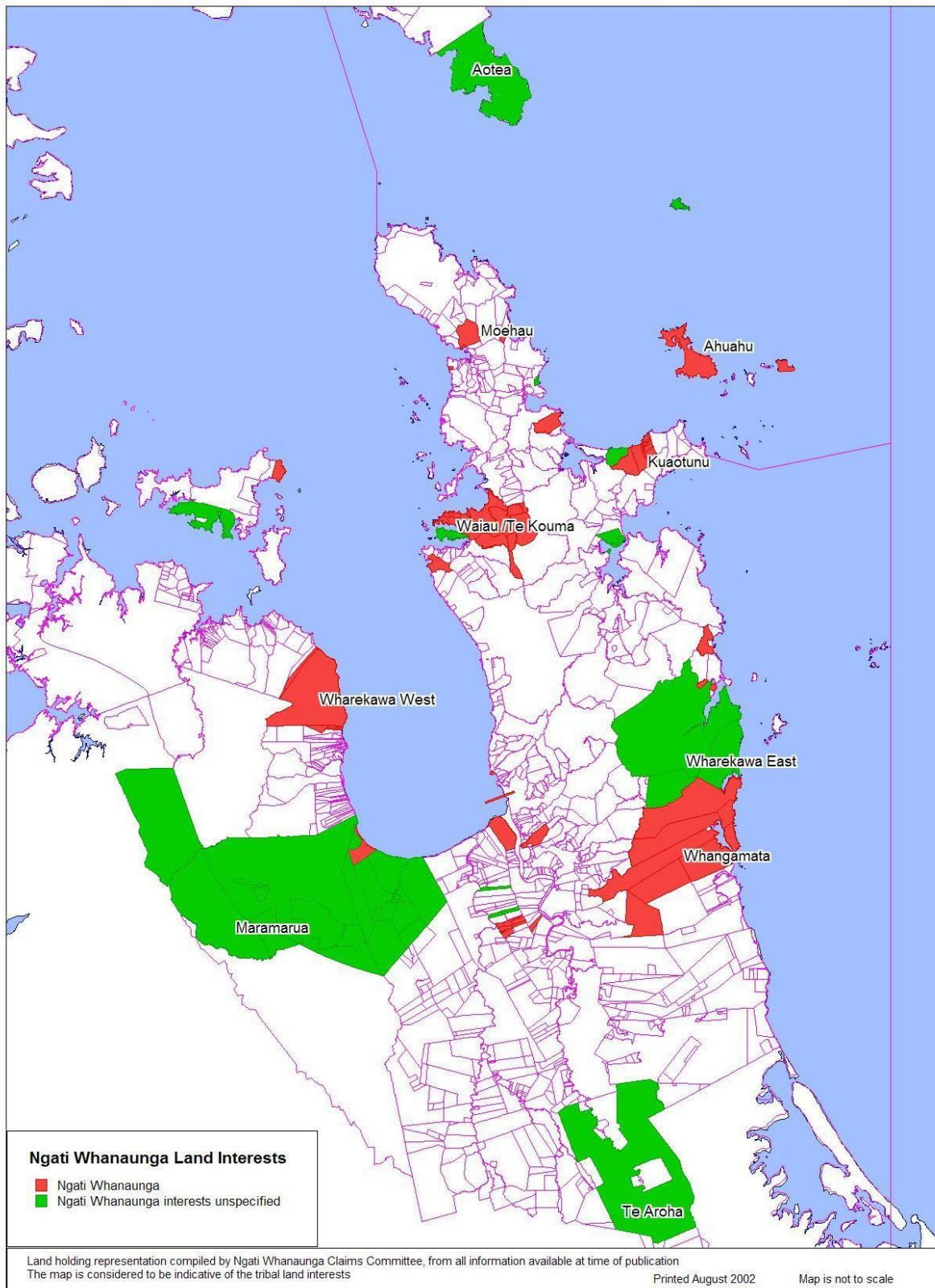


Figure 1. Ngāti Whanaunga lands within the Hauraki Claims area as determined by the early Native Land Court. The court created artificial boundaries that ignored long-standing intertribal relationships.

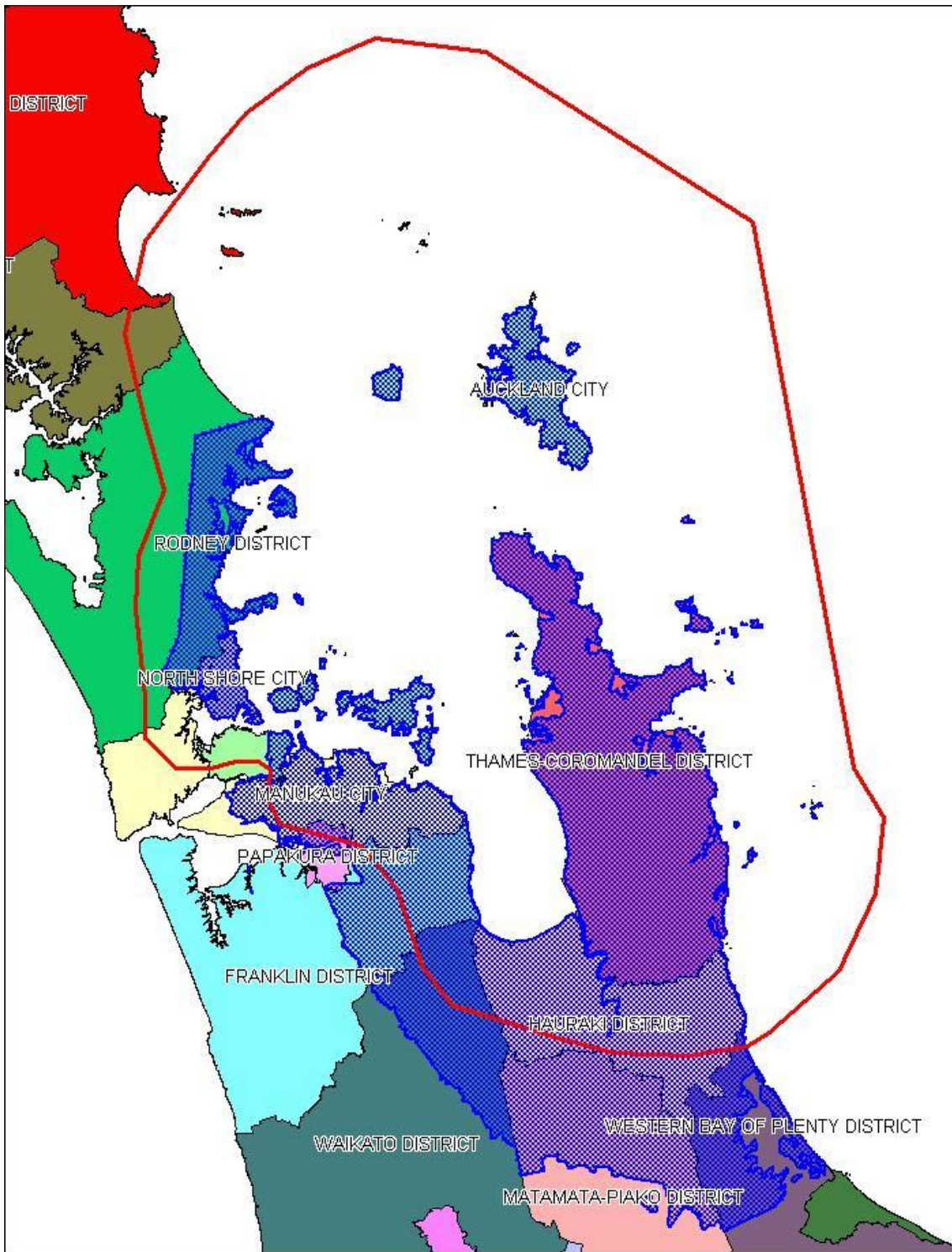


Figure 2. The Marutuahu Rohe (shown in dark blue outline), in relation to district boundaries and the Hauraki Gulf Marine Park (red lines)

Māori Environmentalism

Māori have been the managers of the natural environment in Aotearoa (New Zealand) for over 1,000 years. Indigenous peoples world-wide, including Māori in Aotearoa, have finally been recognised at the highest level for the unique role they can play in contemporary environmental resource management. For example, Principle 22 of the Rio Declaration of the UN Conference on Environment and Development (UNCED, 1992) proclaims that:

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Māori believe they are genealogically related to all aspects of the natural world through descent from Ranginui – the sky father - and Papatūānuku – the earth mother. It is through Ranginui and Papatūānuku, and their children that all parts of the natural world descend. Māori believe they have a familial relationship with their environment and all its component parts. This understanding is critical in shaping Māori management and use of the natural environment and its resources.

The relationships between Ranginui, Papatūānuku, and their descendants also establish precedents for the dynamics of relationships between different lines of descent. This establishes the basis by which humans may use the natural resources. The prevailing belief that all parts of the natural world are genealogically related brings with it a strongly felt duty of care toward those other parts of the natural world that are considered to be kin. The right to use natural resources is, therefore, subject to strict obligations of wise use and guardianship – kaitiakitanga.

There are manifestations within Te Reo Māori – the Māori language - of the intrinsic relationship between tangata whenua (people of the land) and the rest of the natural world. The word whenua refers to the earth, but also to the birthing placenta, and the bond between people and their ancestral lands is recognised and maintained by the tikanga of burying the placenta within ancestral land. A similar relationship is reflected by the common use of the word iwi meaning bones, which are also interred within papatūānuku, and also being the name for the tribal unit, and the word hapū meaning both pregnant and (loosely) sub-tribe.

Before explaining contemporary planning in Aotearoa, I will briefly note several tikanga (customs and values) that are important for Māori environmentalism, in order to assist those not already familiar with these tikanga to understand their philosophical foundations.

Kaitiakitanga

Kaitiakitanga is widely considered to be the overarching environmental principle for many Māori. The word kaitiakitanga is an extension of kaitiaki, which in turn derives from the base word 'tiaki.' McCully and Mutu (2003) provided the following explanation of kaitiaki:

The word kaitiaki is derived from tiaki, which Williams (1997) translates insufficiently as 'guard, keep, watch for, wait for'. The prefix 'kai' denotes the doer of the action and, according to Williams, should be translated as 'guardian, keeper, someone who watches for or waits for'. Kaitiakitanga is the noun derived from kaitiaki and therefore should be translated as 'guardianship' or something similar (McCully and Mutu 2003)

While kaitiaki are traditionally spiritual guardians with responsibility for protecting particular elements, resources, or places, contemporary kaitiaki responsibilities fall largely to tangata whenua (indigenous people of the land). Some commentators have suggested that kaitiakitanga is itself a modern construct (Jefferies 2008), that has come to be in common use as a reference to the guardianship functions and actions of tangata whenua.

The literature on kaitiakitanga relates primarily to contemporary environmental management, and is therefore concerned with the role of tangata whenua as kaitiaki. Roberts describes the role of kaitiaki as “the overriding Māori environmental ethic.” (Roberts,1995).

Kaitiakitanga is specifically recognised in the RMA, but this principle incorporates numerous other tikanga that determine the manner in which tangata whenua treat their environment. Primary amongst these are mana (including mana whenua), tapu (sacred), mauri (life force), taonga (treasure), whakapapa (ancestry), and utu (balance). It is not my purpose to discuss each of the tikanga in this paper, but I would like to comment on taonga. For other tikanga, refer to Kennedy and Jefferies, 2005/2009, PUCM Māori Report 4).

Taonga

The RMA specifically states that taonga (an all encompassing principle) are to be protected under the Act. Taonga have most often been considered to be tangible resources, but they also include intangible concepts as described in the following Waitangi Tribunal extract:

In the Māori idiom “taonga” relation to fisheries equates to a resource, to a source of food, an occupation, a source of goods for gift-exchange, and is a part of the complex relationship between Māori and their ancestral lands and waters. The fisheries taonga contains a vision stretching back into the past, and encompasses 1,000 years of history and legend, incorporates the mythological significance of the gods and taniwha, and of the tipuna and kaitiaki. The taonga endures through fluctuations in the occupation of tribal areas and the possession of resources over periods of time, blending into one, the whole of the land, waters, sky, animals, plants and the cosmos itself, a holistic body encompassing living and non-living elements.

This taonga requires particular resource, health and fishing practices and a sense of inherited guardianship of resources. When areas of ancestral land and adjacent fisheries are abused through over-exploitation or pollution the tangata whenua and their values are offended. The affront is felt by present-day kaitiaki (guardians) not just for themselves but for their tipuna in the past.

The Māori “taonga” in terms of fisheries has a depth and breadth which goes beyond quantitative and material questions of catch volumes and cash incomes. It encompasses a deep sense of conservation and responsibility to the future which colours their thinking, attitude and behaviour towards their fisheries (Waitangi Tribunal, 1988).

Taonga and other tikanga - and their significance in terms of environmental management - are now widely discussed in the literature. There is insufficient time in a lecture to elaborate on each of them. As part of the PUCM Māori research, Richard Jefferies and I wrote a literature review of published material on environmentally significant tikanga. At time this of completion it was likely the most comprehensive report of its kind, and I encourage you to download it at this location

<http://www.waikato.ac.nz/igci/pucm/downloads/dkmflrkp.pdf>

Māori and Environmental Resource Management

Indigenous peoples throughout the world struggle to find “space” within the hegemony of the majority – and colonising – culture to express, acknowledge, and expand their own knowledge, values, and beliefs. This holds true for knowledge domains that are now widely espoused as environmental management, resource management, and sustainable management.

In Aotearoa/New Zealand, the first *Town and Country Planning Act* (TCP) was enacted in 1953, but planning as a discipline and practice was already existent for some decades prior to that. There was nothing for Maori in the *Town Planning Act* of 1926. The *Town and Country Planning Act* of 1953 did refer to Maori, but in a very detrimental manner. It prevented building on land that remained in Māori title. This forced tangata whenua to migrate away from ancestral lands, mainly into the cities. Thus, the first TPC (1953) had a massive negative impact on Māori society.

Māori values and rights were entirely absent within New Zealand planning and environmental management regimes until the TPC Act was revised in 1977. It added Maori provisions to the Act. Since then, there has been gradual progress in recognising Māori values in a wide array of legislation, including the *State Owned Enterprises Act* (1986), *Conservation Act* (1987), *Environment Act* 1986), *Resource Management Act* (1991), and amended 1974 *Local Government Act*.

Nevertheless, by the 1990s, and despite recognition of Māori values in New Zealand planning legislation, it was still the widely held view of Māori that decision-makers in local and regional councils within their rohe and iwi planners were talking past each other regarding Tikanga Māori.

The intention of the PUCM Māori research was to clarify and define key Māori environmental concepts so that stakeholders (including council planners) would have a terms of reference against which they could begin to compare desired environmental outcomes from different perspectives and be better placed to integrate Māori environmental outcomes into the planning process.

Māori Provisions in the RMA

There are Māori-specific provisions within more than 30 sections within the 1991 RMA (*Resource Management Act*). There are also Māori values and participation provisions within various other pieces of contemporary environmental and resource management-related legislation. You may be aware that foremost among the RMA's Māori provisions are requirements that those administering the Act:

- recognise and provide for, as a matter of national importance, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6e);
- have particular regard to Kaitiakitanga (section 7a); and
- take into account the principles of the 1840 *Treaty of Waitangi* - Te Tiriti o Waitangi (Section 8).

Principles of the Treaty of Waitangi

Section 8 of the RMA requires all those administering it to take into account the *Treaty of Waitangi*, but what does this mean, and how can councils give effect to this requirement in plans?

Te Puni Kokiri (The Ministry of Māori Development) describes Treaty principles as being primarily concerned with the way in which the Crown and Māori behave in their interactions with one another (Te Puni Kokiri, 2001). While there is debate as to exactly what the principles of the *Treaty of Waitangi* are, the courts and Waitangi Tribunal (established in 1975/76 to hear historic claims for redress) have confirmed at least the following principles: partnership; reciprocity; mutual benefit; active protection; and redress.

While there is debate as to whether it is in itself a Treaty principle or a duty inherent within other principles, the courts and tribunal have also recognised a duty on the parties to act reasonably, honourably, and in good faith (for example *Te Runanga o Whare Kauri Rekohu v Attorney-General* (1993) and the *Orakei Report* (Waitangi Tribunal, 1987).

Some other Māori provisions

Local authorities with “functions, powers, or duties” under the RMA may transfer (section 33) or delegate (Section 34) these to another “public authority” which includes an “iwi authority,” government department, or other statutory authority. To date, 2008, on transfers to iwi has taken place.

Section 39(2)(b) provides for a local or consent authority "to recognise tikanga Māori where appropriate", and district and regional councils are required to have regard to relevant planning documents recognised by an iwi authority when preparing or changing a district plan (Section 74(2)(b)(ii)), regional policy statement (Section 61(a)(ii)) or regional plan (Section 66(2)(c)(i)).

I not spend much time here discussing the *Local Government Act* (2002), but it does contain some similar Māori provisions to the RMA. For tangata whenua, however, there are numerous deficiencies in the LGA. For example, it includes provision only for "Maori", with no recognition for either tangata whenua, iwi, or mana whenua. However, the Act does refer to tikanga, and to ancestral lands, thereby providing an implicit obligation on councils to respect mana whenua. The following LGA extr, when compared with RMA Section 6(e), shows the similarities between the Māori provisions in the two acts:

77.1(c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

It is clear that the Crown has made substantial provision for not only the recognition of Māori values in the management of New Zealand's natural and environmental resources, but also Māori participation in their management.

This apparent empowerment through the inclusion of traditional environmental management principles in the legislation seems entirely positive. Whether this has resulted in meaningful advances for Māori, by maintaining integrity in terms of a Māori management approach is doubtful. Anecdotal evidence and my own experience suggest that there is a wide gulf between statutory intent and actual practice. The PUCM Māori research project has set out to address this gap in knowledge, which is discussed further below.

Treatment of Māori Provisions by Courts

While this is not the principle area of concern for this PG-Dip REP post-graduate class, I include brief consideration of two cases dealing with Māori values, one an environment court appeal the other a judicial review to the high court.

I now refer to Blue Mountain Lumber case (2004) because not only did it include a significant evaluation of Māori values, but also Judge Bollard's decision refers to the relevance of the Māori provisions in the *Thames Coromandel District Plan*. I hope this case gives a useful glimpse at the way in which plan Māori provisions are interpreted and applied within the appeal process

The case was notable from our iwi perspective because the application to build a timber mill (which had been granted by the district and regional councils), was turned down by the Environment Court. This was largely on the basis of the Māori cultural values that had been successfully argued. This is a rare event.

In *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 the High Court found that the reference to taonga in the *Hazardous Substances and New Organisms Act* included intangible spiritual and cultural aspects such as whakapapa, mauri and te reo Maori. This finding was supported in a case under the RMA in *Friends and Community of Ngawha Incorporated and Others v The Minister of Corrections* (High Court Wellington Registry AP110/02 Judgment 20 June 2002). There is a growing jurisprudence associated with Māori values and a substantial body of writing on this.

In the Blue Mountain Lumber case, which considered whether a timber mill should be allowed to be constructed in a rural valley near Whangapoua, Chief Environment Court Judge Bollard gave the following comprehensive comments regarding the consideration the court had taken of the Māori provisions in the *Thames Coromandel District Plan* in the decision:

Maori traditional and cultural values [93] We have earlier noted the acknowledgement made in clause 204 of the district plan concerning the strengthening of the relationship of Maori and their culture and traditions with ancestral lands, water, sites, waahi tapu and other taonga. We have also noted the reference to Maori values contained in chapter 214 headed "Heritage Resources". The matters listed in that part of the plan whereby "activities and development can adversely affect heritage" are relevant to this case. Emphasis was laid in the case presented for the society on the presence and role of Motutere in the context of the Opitonui valley and its setting. Associated with that emphasis was an assertion of strong cultural and traditional links of tangata whenua with the mountain, the river, and the valley overall linking to the estuary and the harbour.

[94] Reference has been made to the evidence of Mr Kennedy concerning an "ancestral pathway" through the valley and a cultural landscape. What he had to say concerning the ancestral association of Maori with the area and their traditional and cultural links was unchallenged by any counterpart witness knowledgeable in Maori tikanga, and familiar with the relevant background. We perceive no good reason for rejecting his evidence, and find that Maori values associated with Motutere, the river, and the valley are very much concerned with protection of the natural character of the landscape within which the proposed sawmill would be placed. It is relevant to note that the plan's provisions regarding Maori values are aimed at achieving outcomes described in clause 215.7 of the plan under the heading "Environmental Results Anticipated". Included amongst the results is "resource management decision making which is sensitive to tangata whenua values and interests". Another anticipated result echoes s.G(e) of the RMA which, of course, is a matter legislatively recognised as nationally important.

While these observations may seem complimentary regarding the plan's Māori provisions, the Judge commented on several occasions that the plan was not clearly written. As well, its intentions were difficult to interpret largely due to a lack of methods against which those within council could realistically expect to implement the intentions of the plan. There were not the prescribed means by which plan-outcomes could be evaluated. Importantly, Judge Bolard commented on the need, therefore, to take an overview of the plan and to carefully consider its intentions.

There are numerous other important cases where Māori values are considered, but this is not the place to comment on them here. However, I encourage you to bear the previous comments relating to the way in which the courts consider Māori provisions in planning instruments as we proceed to further investigate them.

Māori Provisions in RMA Plans

Given the apparently strong Māori provisions in the RMA, Māori had high expectations of council planning documents. This was because plans are intended to give effect to the Act and to do so while incorporating the values and aspirations of local communities, including Māori. Other developments that provided comfort for Hauraki Māori were the *NZ Coastal Policy Statement* and the enactment of the *Hauraki Gulf Marine Park Act*, which is accorded the weight of a national policy statement. Both statutes have impressive recognition of Māori values in them.

While content is not mandatory, the RMA does require lower order plans to be not inconsistent with higher plans and policies. For example; Section 62.3 requires that a regional policy statement “must not be inconsistent” with any water conservation order and must give effect to a national policy statement or *New Zealand Coastal Policy Statement*. Section 75(2)(c) requires that a district plan shall not be inconsistent with the regional policy statement or any regional plan in matters of regional significance or for which the regional council has primary responsibility.

The PUCM research team developed and applied a method for evaluating the quality of regional policy statements and district plans (Ericksen, et al., 2003; 2004; Chapman, et al., 2003). The research found plan quality varied, but that most plans were of only fair to poor quality. For Māori, they found low scores for how well plans addressed the role of Māori in land use and resource management. Just over half of councils understood the mandate with respect to the *Treaty of Waitangi* and Māori interests philosophically, but they failed to follow through with policy due to lack of political commitment and capacity to act. Further, while gains had accrued to Māori due to the co-ordination and consultation provisions of the RMA, there was still considerable disenchantment for Māori when, for example, good faith efforts were undercut by more powerful stakeholder groups (Ericksen, et al., 2003 chapters 5 and 8).

Additionally, the research found that poor mandate design had impeded progress in recognition of Maori values and resources in plans and that the failure by central government to clarify relationships between the Crown, Māori and local government, has considerably weakened local government implementation of provisions in the RMA in respect of Maori interests (Ericksen, et al., 2003; 2004).

The PUCM researchers found that lower order plans regularly replicated the wording in the RMA or in other higher level documents, such as national policy statements. This is particularly the case in relation to Māori provisions, which regularly included weak provisions in plans or adopted the wording of the RMA (Ericksen, et al., 2003, Chapter 5).

Our analysis revealed that the strong RMA mandate had not been reflected well in the 28 district plans we reviewed, as they either largely paraphrased or failed to acknowledge key sections of the RMA (Jefferies, et al., 2002).

Moreover, we observed a tendency for some plans to include wonderful high-level recognition of Māori values (as in introductory chapters and the identification of issues), but this recognition diminished down the plan cascade so that often there were minimal methods for helping to deal with them.

The following section describes aspects of an assessment of the Māori provisions in planning instruments. It is not a comprehensive list.

What Māori look for in plans

Things tangata whenua are interested in plans include similar aspects as with general plan evaluation. The quality and range of plan Māori provisions is important, but also the cascade through identification of Issues, through Objectives, Policies, and Methods. Of particular importance are plan Anticipated Environmental Results and the basis by which these are to be assessed, because it is only these that provide the tangible means by which tangata whenua (or council staff) can evaluate the extent to which plan provisions are being implemented, and ultimately the environmental outcomes of that implementation.

Below are just some of the Māori-specific aspects of plans that are of interest to tangata whenua when evaluating planning instruments for the quality and likely effectiveness of their Māori provisions.

Policy for determining affected parties and consultation with tangata whenua

The 2005 amendments to the RMA made clear that there is no obligation for consultation with tangata whenua in relation to resource consents, although the same amendments strengthened obligations for participation by Māori in other processes, such as plan changes. Accordingly, iwi often rely on recognition by councils as affected parties to consent applications in order to secure participation.

Some councils still advocate for consultation with tangata whenua for all consent processes, and others inform iwi of all applications and provide an opportunity for iwi to indicate whether they consider themselves to be affected parties. However, such arrangements are often dependent upon strong relationships having been established between iwi and council staff. These arrangements can falter with either staff changes or council elections changing attitudes toward Maori.

This being the case, in many instances tangata whenua rely on the strength of council guidelines or policies for determining affected Parties are of course preferred because of the greater obligation they impose on the agency. Some RMA plans do include useful policy guidance. However, the LGA requirements that councils provide for Māori participation in decision-making have resulted in more councils adopting consultation policies, which often function in relation to all council activities.

The *Environment Waikato Regional Coastal Plan* includes these provisions (Waikato Regional Council, 2001):

2.3.2 Policy – **Participation:** Participation of tangata whenua in decision-making and the management of resources in the CMA will be encouraged.

Implementation Methods - Other Methods

- 4) Consultation on Consent Applications
- 5) Marae-Based Meetings
- 7) Identification of Iwi Authorities

Environmental Results Anticipated - Ongoing involvement of tangata whenua in the management of coastal resources. Historical, spiritual, cultural and traditional values of tangata whenua recognised and provided for.

The *Environment Waikato Consultation Policy* (2003) is a good example. Released under the LGA, this policy includes specific provisions for Māori. Under the heading Vision and Key Principles it states:

To achieve this Vision for consultation, Environment Waikato will:

- 6. acknowledge the special position of Maori within the Region and the requirement to involve Maori in decision-making*
- 7. be supportive of the principles of the Treaty of Waitangi*

In addition to the general community consultation provisions, which will often capture Māori, the policy requires that when consulting with members of the community Environment Waikato will:

- 5. Ensure any relevant information is provided to Māori to enable them to participate.*
- 6. Foster the development of Maori capacity to contribute.*

Presently, the quality of council policies and guidelines for Māori consultation vary substantially, to date we have not completed a comprehensive assessment of them.

Mātauranga and Western Scientific Knowledge

One of the most widely articulated concerns by Māori regarding our participation in RMA processes is the tendency by decision-makers to prefer Western scientific knowledge to Mātauranga Māori – Māori traditional and cultural knowledge. This issue is also fairly well reported in the literature, and international developments including jurisprudence are slowly causing a change in attitudes. A recent WINFO meeting called by Environment Waikato was on the theme of *Mātauranga Māori* and is an example of this change. I co-authored a paper and presented it at the meeting, which is available on the PUCM website. This gives a good point to start for discussion on mātauranga.

Few plans specifically refer to mātauranga Māori, some refer to Māori knowledge, but in most the need to recognise and understand Māori values and knowledge paraphrases the RMA and is implicit. For example:

Environment Waikato RCP - 2.3.1 Policy - Tangata Whenua Values

Recognise and take into account historical, spiritual, cultural and traditional values of tangata whenua in relation to activities in the CMA.

Explanation and Principal Reasons for Adopting: *Tangata whenua have traditional practices to ensure the sustainable management of coastal resources.*

The RMA provides significant opportunities for the involvement of tangata whenua and recognition of their relationship, and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. Environment Waikato needs to recognise this and take it into account in decision-making.

Linked to the issue of mātauranga Māori is the extent to which councils value Māori information. Some plans include practical provisions recognising the value of Māori input, including the need for council to pay for this at a rate equivalent to other forms of similar specialist and expert information.

Environment Waikato RMA planning instruments include such provisions but in the limited time available I have not been able to locate these here.

Permitted baselines

A recent addition to the RMA – and one that is of particular concern to Māori - is that of permitted baselines. As you may know, the permitted baseline principle allows (but does not require) decision-makers under the RMA to disregard effects of a proposed activity where a similar activity (in terms of effects) is either allowed as a matter of right, or is allowed by consents already granted. I paraphrase obviously.

It is problematic attempting to evaluate whether effects on intangible matters such as values (Māori or otherwise) are equivalent to those of a proposed activity. To date, we have encountered application of the permitted baseline by councils with the result that significant negative effects to our iwi occur where consents have been granted on a non-notified basis, thereby preventing the iwi from arguing for protection of iwi values.

Given the recent nature of these amendments, few plans yet have permitted baseline provisions, but we will be monitoring these with interest to see how cultural issues are dealt with.

Mana whenua and tangata whenua

A major concern for tangata whenua relates to the deficiency within the RMA to deal with issues of competing claims to mana whenua – authority over particular lands. As a result, in most instances where there are competing claims to being the appropriate group in relation to particular council issues or activities councils refuse to get involved. While this might seem to be a safe approach the result is hapū and iwi coming into conflict within RMA arena.

There have been a few examples of councils taking disputes over tribal authority in relation to resource consents to the Māori Land Court for determinations under Section 30 of *Te Ture Whenua Act*, but these are rare.

It is therefore of interest whether a council and its plans recognises particular iwi groups as holding mana whenua, or include policies for dealing with competing claims to mana whenua. In our experience few plans do this. However, some councils are setting up Māori committees, including standing committees, of council. I am a member of one such committee – a standing committee of Matamata Piako District Council. While a formal policy has not yet been developed there, the practice has been adopted of placing disputes relating to mana whenua before the Māori council for determination.

We will be looking for the formalisation of this type of practice within planning instruments.

Nature and distribution of Māori plan provisions

As described above, tangata whenua are concerned with the quality and extent of Māori provisions within plans. Often Māori provisions are collected into dedicated chapters under headings such as Tangata Whenua or Treaty of Waitangi. This approach, if these sections are sufficiently comprehensive, can be adequate.

However, there are important Māori values associated with many activities regulated by planning instruments, such as the maintenance of water quality and disposal of waste water. For this reason it is important to determine whether Māori values are recognised and provided for in other relevant sections of plans. For example, in relation to earthworks, subdivision, stormwater, and waste water.

The Māori Kaupapa Māori Outcomes and Indicators Kete provides examples relating to mauri, wāhi tapu, and mana whenua (Jefferies and Kennedy, 2009b, PUCM Maori Report 2).

Cross-boundary issues

As previously explained in relation to the Ngāti Whanaunga rohe, a critical aspect of plans is their ability to deal with cross-boundary issues. Councils have dealt with cross-boundary issues in various ways, some identifying this issue as a plan Issue, others developing specific policies, or Environment Waikato Regional Policy Statement, including provisions within other plan provisions, which in this case considers cross-boundary issues to be a determinant of regional significance:

*Regional significance means one or more of the following:
d. the existence of significant cross boundary issues and cumulative effects, where resources or effects cross administrative boundaries, and where co-ordination or integration of policies, actions or decision-making is required (Waikato Regional Council, 2000).*

Thames Coromandel District Council has a sub-section dedicated to cross-boundary issues (224). Under the heading Background the plan says (at 3.):

The Hauraki iwi area covers a great many authorities which have various resource management roles. The activities of these authorities are seldom coordinated, and this has the potential for adversely affecting the Tangata Whenua, which itself has an holistic view of the environment.

And specific methods are provided, for iwi (224.5.1):

Establish protocols or processes with the Regional Council and any other agency, including Hauraki Iwi, for dealing with issues that overlap with or affect the other agency's functions, roles or responsibilities.

As previously said, our Māori research project sought to evaluate the outcomes of planning instruments and followed earlier investigations into plan quality and implementation by other members of the PUCM team. As part of our work, we compiled a document called *Māori Provisions in Plans* (Kennedy and Jefferies, 2008, PUCM Māori Report 3).

This is just what the name suggests – extracts of Māori provisions from numerous RMA and LGA plans. These extracts are compiled according to the tikanga to which they relate, and listed according to plan structure; that is, Issues, Objectives, Policies, Methods, and Anticipated Results, plus Outcomes and Indicators for LTCCPs (Long-term Council Community Plans) prepared under the LGA. I recommend that you refer to that document in order to familiarise yourselves with Māori plan provisions.

Plan Implementation Evaluation

Section 35 of the RMA requires councils to monitor and report on environmental outcomes and also on the efficiency and effectiveness of their policies, rules, and other methods at no more than 5-yearly intervals.

This obligation of course includes the requirement that councils monitor and report on the effectiveness of their plans' Māori provisions. However, the Ministry for the Environment has reported that plan effectiveness evaluation is rarely carried out by councils (Ministry for the Environment, 2000; 2005) and our research has confirmed that this is certainly the case in terms of evaluation of Māori provision in plans.

PUCM Phase 2 (1998-2002) sought to evaluate plan implementation by six councils chosen for their range of plan quality and capacity to plan (i.e., pairs of high, medium, and low quality plans and capacity). Plan implementation can be considered as the extent to which the intentions in a plan are being met in practice. Results for the topics of urban amenity, storm-water management and Māori interests showed a significant gap between intent in the plan and practice on the ground. Too often, conventional methods were used through the resource consents process, rather than the more environmentally friendly methods specified in the plans.

An in-depth investigation into factors influencing plan evaluation has been undertaken and reported by other members of the PUCM team. The following extract concisely describes this issue:

Plan monitoring and evaluation may be the forgotten step in planning activity because planners may be less interested in evaluating past interventions than in writing new plans. It is also more politically rewarding for elected officials to launch a new plan or programme than to evaluate past actions. Political constraints and organizational culture can also hinder plan evaluation. Evaluating planning outcomes increases accountability, but may also reveal failures, errors or inadequacies or embarrass government officials, and thus represents a political risk for high-level decision-makers. Institutions have little incentive to disclose unsuccessful results, and therefore to conduct thorough evaluations of their actions (Laurian, et al., 2008).

From a Māori perspective, the PUCM Phase 2 research found that the six councils selected for study had minimal evidence of iwi consultation in resource consents. Few councils undertook capability-building and few had clear lines of communication with Māori and there was little capability building to assist Maori and councils in improving plans. Issues of concern to tangata whenua were found to be poorly dealt with through the iwi consultation process, despite rhetorical commitment to the Treaty of Waitangi within district plans.

Alarmingly, in the vast majority of consents (94%), no evidence of iwi consultation could be found. Disturbing results also emerged from the council interviews and iwi surveys regarding the different perceptions iwi and councils have regarding participation in consultation. The researchers concluded that the two parties are talking past each other (Bachurst, et al., 2002).

Regarding plan evaluation provisions the PUCM investigations found these to be wanting, and that this was certainly the case regarding Maori;

The PUCM team found that overall, monitoring was poorly written into plans, most failing to specify methods that would be used. Kōkōmuka found that while some of the 28 plans it reviewed mentioned monitoring and encouraged iwi participation, they did not acknowledge how or with whom they would participate with in the monitoring process.

Environmental Outcomes

The third phase of the PUCM research investigated environmental outcomes from council plans. Only a short summary of relevant points is given below.

The RMA provides a statutory basis for the development of environmental indicators (including Māori indicators), although it does not refer to outcomes and indicators. Instead, it requires councils to identify the Anticipated Environmental Results of their plan provisions, which are similar to environmental outcomes; and requires them to undertake monitoring to evaluate whether these results have been achieved. Councils are also required to evaluate the effectiveness of their plans. Some councils have expressed the measures by which they will monitor in terms of indicators, but few have undertaken any credible monitoring.

The LGA requires that Councils in combination with their communities develop Community Outcomes, with the statutory definition of community including the environment. The Act does not refer to indicators, but does require Councils to monitor progress on behalf of the community toward achieving its outcomes. Schedule 10, Part 1 of the LGA requires, amongst other things, local authorities to state measures in their LTCCP to assess progress towards the achievement of community outcomes. Section 92 (1) states: *“A local authority must monitor and, not less than once every 3 years, report on the progress made by the community of its district or region in achieving the community outcomes for the district or region”*.

While few councils have undertaken meaningful evaluation of their RMA plans, there is a greater emphasis being placed on LGA monitoring. It is as yet early days in this regard, but it is hoped that this will at least engender a culture in which councils are open and prepared to undertake evaluation of their plans and activities.

The PUCM Kaupapa Māori Outcomes and Indicators Framework offers a useful set of tools for evaluating – amongst other things – Māori provisions in council plans, the implementation of these, and finally environmental outcomes resulting from both of these things (Jefferies and Kennedy, 2009a, PUCM Māori Report 1).

In Conclusion

Across the country I believe it is fair to say that RMA policies and plans can be characterised as having fairly strong Māori provisions. Having said that, it has been widely reported that these largely paraphrase the Māori provisions of the RMA itself and consequently often fails to address local circumstances for Māori. Another widely observed deficiency is that plans include strong high-level recognition of Māori values and issues, but fail to translate these into effective and viable methods that councils and tangata whenua can use.

Furthermore, evaluation measures are generally weak for Māori provisions as well as for plan evaluation generally. And perhaps most importantly, councils almost universally do not monitor or evaluate either the quality of their plans or the environmental outcomes of them. While the Ministry for the Environment has repeatedly reported that almost all councils completely fail in their statutory obligations to monitor and report on the effectiveness of their plans and the outcomes of them, the Ministry has done nothing whatsoever to enforce these requirements. This is also the case for Māori plan provisions.

I hope this paper provides some insight into an iwi environmental perspective, both of environmental resource management in Aotearoa and of RMA planning instruments. It is also hoped that the paper contains some useful advice on how to interpret and evaluate statutory planning instruments for the quality of their Māori provisions. If councils are not going to do so it remains up to others to undertake such evaluation.

The overall PUCM team has been systematically developing and testing methods for evaluating the quality of plans, plan implementation and plan outcomes. This is ground-breaking research generally, and useful for evaluation of Māori provisions and plans in particular. This body of work can be found on the PUCM website at <http://www.waikato.ac.nz/igci/pucm/Publications.htm>

As you enter the world of professional planning it is hoped you retain an open mind to alternative perspectives to the western planning models that dominate planning in Aotearoa and therefore view the world through a wider lens than that of western Culture.

No reira, Tēnā koutou, tēnā koutou, Kiaora mai tātou katoa

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