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IWI INTERESTS AND THE RMA: AN EVALUATION OF THE QUALITY OF FIRST GENERATION COUNCIL PLANS

by

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MIHI

He hōnore, he korōria, he maungārongo ki runga i te mata o te whenua.

Ka huri hoki ngā whakaaro ki te wāhi ngaro, ki a rātou kua whetūrangitia.
Ko rātou hoki i para i tēnei huarahi ā tātou, te kaupapa e kōrerohia nei kei roto i tēnei pukapuka. Heoi anō, ko rātou ki a rātou, ko tātou te hunga ora ki a tātou.

Kei te mihi atu mātou ki a koutou ngā kaihautū ō ngā kaunihera a rohe puta noa ki te motu nei - nā koutou ngā mahere i hanga, i tuhituhi. Nō reira, kei te mihi atu nei ki a koutou. Tēna koutou, tēna koutou, tēna koutou katoa.

Nā mātou iti nei,

Nā,
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PREFACE

The FRST-funded programme of research on *Planning Under a Co-operative Mandate* (PUCM) has been sequentially examining the quality of: policies and plans; plan implementation; and environmental outcomes under the RMA since mid-1995. A key component of this planning and governance research has focused on the interests of iwi as Government's Treaty partner.

In 2002, Kōkōmuka Consultancy Ltd (Opotiki) joined the PUCM team -- which is based at the International Global Change Institute (IGCI), University of Waikato -- with the goal of developing a kaupapa Māori research framework for examining environmental (and other) outcomes for Māori.

The IGCI and Kōkōmuka partnership sees merit in establishing a Māori Working Papers Series, as an alternate means for not only making results from the PUCM research on hapū/iwi interests in resource management available to interested parties, but also for critical comment on papers prior to publication. As well, others who wish to test their research ideas and results may submit to the Series, which will be posted on the PUCM Website. Feedback from readers on the series, and the papers posted to it, is welcomed.

The following Māori Working Paper titles will be posted on the PUCM Website during April 2003:

1. Iwi Interests and the RMA: Evaluation of the Quality of Council Plans
2. Iwi Interests and the RMA: Evaluation of Hapū and Iwi Participation in the Resource Consents Processes of Six District Councils
3. Developing a Kaupapa Māori Framework for Assessing Environmental Outcomes for Māori from District Plans
4. From Rhetoric to Reality: Achieving Māori Aspirations of Kaitiakitanga (RMA ss33 & 34)
5. Reflections on Relationship-building between Tangata Whenua and Local Government: Notes from Research and Practice

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EXECUTIVE SUMMARY

Planning Under a Cooperative Mandate (PUCM) was established in mid-1995 with a grant from FRST-PGSF. It focussed on the quality of planning and governance under the *Resource Management Act* (RMA), including iwi interests. The Māori/iwi research was strengthened in 2000 and further enhanced in 2002 with Kōkōmuka Consultancy joining the PUCM team. As Kōkōmuka had not been involved in the plan quality research for PUCM Phase 1 (1995-1998) and only the final stage of the plan implementation quality research of Phase 2 (1998-2002), it was worthwhile having its team conduct an assessment of plan quality (iwi interests) from a Māori perspective. Parts 1 and 2 of this working paper bring together findings from PUCM Phase 1 (Ericksen et al., 2001) and the Kōkōmuka evaluation of district plans, respectively.

In essence, findings from the Phase 1 research on plan quality show that policy statements and plans prepared under the RMA do not adequately address the role of Māori in land use and resource management (Ericksen et al., 2001). Overall scores for plan quality principles (i.e., Treaty of Waitangi, fact basis behind the issues, clarity of issues, and internal consistency of the plan) were moderate to low. The mean score for 34 district plans was only 47 percent. Scores ranged from 90 percent (Waitakere City Council) to 25 percent (Stratford). A number of major influences were found to affect the potency of policy statements and plans in addressing Māori interests. Among them were: partnership building and consultation; organisational capability; capacity building; and interpretation of the RMA mandate.

The Kōkōmuka evaluation sought to determine the extent to which provisions for Māori/iwi in the RMA were incorporated into the first generation of plans that had been analysed in detail by the PUCM Phase 1 team. The evaluation was precipitated by concerns that Māori issues were not being well addressed or implemented.

Kōkōmuka evaluated Māori 'plan quality' by applying assessment criteria that identified the extent to which key sections of the RMA (6, 7, 8, 33, 34, 35, 74 and 93) were reflected in district council plans. The quality criteria developed and applied were based on what Kōkōmuka's expectations were in relation to the content of plans (issues, objectives, policies, methods, rules and anticipated results) and benchmarks set by the models of good practice in the plans themselves. The evaluation was not on the extent to which Māori were involved in the planning process per se, although this could be inferred from the quality of the content. (The Phase 2 Māori Working Paper No. 2 will go into more detail with respect to Māori, iwi, and hapū participation in the plan implementation through the resource consents process).

Kōkōmuka concluded that overall, 'Māori Plan Quality' was poor. Most of the 28 district councils whose plans were reviewed need to do a better job at identifying Māori issues and incorporating these into their plans. The findings suggest that while some good plans have emerged from district councils in regard to Māori/iwi issues, most district plans had very limited reference to, or content associated with, issues of importance to Māori/iwi.

In terms of Māori/iwi issues, much of the effort during the first round of plans was focussed on the implications of Section 8 — taking account of the principles of the *Treaty of Waitangi*. Faced with the Treaty principles, district councils and iwi grappled with the implications of a very open-ended, broadly worded, Section 8 of the RMA. Some district councils, which had better quality plans and plan implementation, went to considerable effort to develop effective relationships with Māori. Other district councils were slow to implement any effective involvement or relationship-building with Māori. District council plans in general lacked formal consultation guidelines.

PUCM Phase 1 revealed the lengths some district councils went towards developing new relationships with iwi only to feel the wrath of other segments of their constituency who saw it as 'special treatment' or to otherwise get into inter-iwi conflicts. Most of these councils under-estimated the difficulties they would face trying to recognise the intent of the RMA in developing council — iwi relationships and ended up reverting back to standard paraphrasing of the RMA. As a result, much of the hard work done by some councils was not well enough reflected in the first generation plans.

Kōkōmuka found that kaitiakitanga, Section 7(a) of the RMA, was very poorly done. On the other hand, they found that sites of significance under Section 6(e), especially wāhi tapu and papakainga, had better provisions in plans and thus scored well. Councils that funded Māori participation in the plan preparation process had clear identification of issues and scored well in that regard. Overall, however, the RMA provisions for iwi interests are truncated so that many issues of concern to Māori, iwi and hapū are not identified. This is reflected in the narrow treatment of iwi interests in district plans.

In order to make quality plans councils need to be clear about the ramifications for Māori, iwi, and hapū of Sections 6(e), 7(a), and 8 under Part II Principles and Purpose of the RMA. The PUCM team had already revealed that plan-makers found most sections of Part II to be unclear. This suggests that the RMA ought to be amended, but with input from learned Māori with respect to their iwi and hapū interests.

Other provisions in the RMA allow iwi / tangata whenua to not only be part of the plan preparation process, but also its implementation through the resource consents and monitoring processes (Sections 33, 34, 35, 74, and 93). Although Māori have used section 93 to insist that councils better inform them of consents affecting their interests, only one district plan in the 28 assessed referred explicitly to section 93.

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. No plan gave an iwi authority powers (s33) or functions (s34) under the RMA, and only five plans made any reference Section 33.

The review and evaluation shows that there is a need to identify issues and concerns for iwi and hapū that lie within the jurisdiction of district councils and have appropriate objectives, policies, and methods within the district plan for dealing with them.

Overall, there is a need to formulate better procedures and processes for determining building better council and iwi/hapū relationships and according responsibilities and accountabilities of the partners in the preparation and implementation of district plans, including the evaluation and monitoring of the processes, plans, and outcomes. There needs to be a two-way process of education so that iwi and hapū understand what the RMA can do for their interests and how councils can better understand this from a Māori perspective.

INTRODUCTION

In 1995, the Foundation of Research, Science and Technology (FRST) funded a project called *Planning Under a Co-Operative Mandate* (PUCM). It aimed at evaluating the quality of policy statements and plans being prepared by regional and district councils under the *Resource Management Act*, 1991 (RMA). Part of the research focused on how well councils used relevant sections of the RMA to plan for iwi interests. This Phase 1 of PUCM research was extended in 1998 to an evaluation of the quality of plan implementation through the resource consents process, and the study of iwi interests was continued (Phase 2). The IGCI-based[1] PUCM Programme sub-contracted Kōkōmuka Consultancy Ltd (Opotiki) in 2002 to complete the Māori component of the research and then examine ways in which it could be extended to an evaluation of environmental outcomes for Māori from district plans through kaupapa Māori research.

This working paper integrates results from Phase 1 plan quality and governance for iwi interests with an analysis by Kōkōmuka Consultancy Ltd of RMA provisions for Māori/iwi/hapū interests in district plans. The first part of the paper examines key assumptions underpinning the RMA as a devolved and co-operative mandate, explains the intentions of the Phase 1 research, and then summarises the principal results. The second part of the paper includes an analysis of key provisions of the RMA with respect to iwi interests as found in 28 district plans.

PART 1:
PLAN QUALITY RESEARCH

PUCM Phase 1 focused on the quality of policy statements and plans prepared by councils and the inter- and intra-organisational factors that influence plan-making and thereby plan quality. From the international literature and interviews with 40 planning professionals in New Zealand, eight principles that define plan quality were identified (e.g., Baer, 1997; Berke and French 1994; Berke, 1995; Kaiser, Godschalk and Chapin, 1995). Drawing on these principles, coding protocols were developed for evaluating 16 regional policy statements, 34 district and combined plans, and eight coastal policy statements that had been notified by March 1997. The coding included evaluating iwi interests within policy statements and plans. Organisational factors (commitment, capacity, and institutional arrangements) that influence plan-making, and thereby plan quality, were also evaluated, including governance and iwi interests. This evaluation of planning and governance was achieved through use of postal questionnaires to the senior planner in councils; face-to-face interviews with key plan-makers, both staff and councillors, in all 86 councils; and contextual information through various sources, including the New Zealand census. As well, detailed case studies were carried out in four district councils aimed at illustrating how the forces of devolution, managerialism, and inter-governmental co-operation and capacity-building affected the preparation and quality of plans. Each case focused on a specific topic, one being on Māori, iwi and hapū interests (Berke, Dixon and Ericksen, 1997; Ericksen, Crawford, Berke and Dixon, 2001; Ericksen, Berke, Crawford and Dixon, in press). Before summarising key findings from Phase 1 as they pertain to these interests, the RMA is characterised so that key assumptions and expectations underpinning the mandate are made clear.

[1] Until 1997, IGCI was known as CEARS (Centre for Environmental and Resource Studies). PUCM started in 1995 as a joint project between University of Waikato (IGCI) and Massey University (Department of Planning). From 1998, administration was through Waikato. In 2001, Massey was no longer able to participate in the programme.

Planning Under a Co-operative Mandate

Prior to the RMA, land use planning in New Zealand was undertaken under a multitude of statutes and without an integrated framework to govern the use, development and protection of environmental resources (Williams, 1997). In the late 1980s, New Zealand had over 50 separate laws governing management of the country's natural and physical resources. These were often conflicting, overlapping or inconsistent in their purpose. The enactment of the RMA on the 1st October 1991 "affected over 50 statutes and repealed a number of major pieces of existing legislation" (Williams, 1997, p.67), including the *Town and Country Planning Act* (1977), the *Water and Soil Conservation Act* (1967), and laws governing geothermal resources, air and noise pollution, and coastal management. RMA provisions managing the use of land, air and water resources emphasised the *effects* a proposed resource use or development activity might have on the environment.

The RMA is a national mandate for promoting the sustainable management of natural and physical resources, while at the same time taking heed of the economic, social and cultural well-being of communities (s5). Further, it requires regional and district councils to consider matters of national importance and other matters when developing policy statements and plans (s6 and 7), including iwi interests. What is more, RMA (s8) requires councils to take the *Treaty of Waitangi* (1840) into account when planning for the use, development, and protection of resources within their areas. (See Appendix 1 for key provisions of the RMA.)

The RMA is characterised as a *devolved* mandate, because Government gave local government the main responsibility for implementing it with respect to resolving issues over the sustainable management of natural and physical resources within their boundaries. The underlying assumption is that governing bodies that are closest to the resources govern the appropriate use of the resource. Thus, while there is a role for national government in guiding local government, the practical decisions are made by regional and district councils (Kerr et al., 1997, pg 8). The RMA is also characterised as a *co-operative* mandate, because its implementation was to be carried out through a partnership between regional and district councils in association with central government agencies. What is more, councils were to give effect to partnership principles in the Treaty of Waitangi when dealing with matters of importance to iwi (Ericksen, 1994; Boston, Martin, Pallot, and Walsh, 1996, Ch. 8; Martin, 1991; and May, Burby, Ericksen, Handmer, Dixon, Michaels and Smith, 1996).

A key assumption underpinning a devolved and co-operative mandate is that sub-national government (regional and district councils in the case of New Zealand), are willing to comply with the national statute, but may not have the capacity to do so (Ericksen, 1994; May et al., 1996).[2] The expectation is that central government will work to ensure that all councils have the capacity to implement its mandate. This can be achieved by amalgamating small councils into larger units (as was done under amendments to the *Local Government Act* in the late 1980s), inducements to foster commitment, and/or capacity building to develop human capital (McDonnell and Elmore, 1987; Ericksen et al., in press). Another expectation is that because of the time lag in developing capacity in weaker councils, the quality of planning (i.e., the preparation and implementation of plans) will vary across the country until such time that capacity is improved (May et al., 1996).

For its iwi partner, the expectation is that Government will ensure that intergovernmental arrangements are appropriate for local government to work with iwi and hapū in implementing the mandate and that they have the capacity to effectively participate (O'Reilly and Wood, 1991). Thus, Government made iwi a statutory consultee under the RMA requiring councils to consult

[2] On the other hand, a centralised and coercive mandate assumes that sub-national government may have the capacity to comply, but not the commitment to do so.

effectively with them when developing policy statements and plans (First Schedule). What is more, councils could, through sections 33 and 34, transfer powers and/or delegate functions to an iwi authority in their area. Indeed, there are over 30 sections in the RMA which require councils to consider matters of significance to tangata whenua, the most important being sections 6(e), 7(a), 8 and 74(2)b.

With these characteristics and expectations in mind, the PUCM Research Programme set out to evaluate the quality of planning and governance under the RMA — a quest that has now entered its third phase of research focusing on environmental outcomes from district plans and their implementation.

Phase I Results: Plan Quality and Iwi Interests

The RMA provides a strong mandate to include Māori in the plan-making process, and to reflect Māori environmental values (e.g. kaitiakitanga) and Treaty of Waitangi principles in plan provisions. In this regard:

> *...the* [RMA] *mandate strengthens planning for the cultural and spiritual significance of natural and physical resources by indigenous people (Māori), which raises the possibility of formation of meaningful partnerships between indigenous people and local government* (Ericksen, et al., 2001, p. 10).

Nevertheless, the Phase 1 research on plan quality showed that policy statements and plans prepared under the RMA do not adequately address the role of Māori in land use and resource management (Ericksen et al., 2001; see Nuttall and Ritchie, 1995 for similar results). Some notable exceptions included Wellington City Council, Waitakere City Council, Christchurch City Council and Gore District Council.

Four principles were used to score plans: Treaty of Waitangi, the factual basis behind issues of concern to iwi; clarity of issues dealt with in the plan; and internal consistency of the plan in the cascade from issues, objectives, policies, methods and anticipated results. The 34 district plans evaluated yielded a mean score of only 47 percent. There was a wide range of scores from highs of 90 to 70 percent (Waitakere City Council, Manukau City Council and Tauranga District Council) to lows of 25 to 30 percent (Stratford, Lower Hutt and South Waikato). (Berke, Ericksen, Crawford and Dixon, 2002).

A number of major influences were found to affect the potency of policy statements and plans in addressing Māori interests. Among them were: partnership building and consultation; organisational capability; capacity building; and interpretation of the RMA mandate.

Partnership and Consultation

Evaluation of arrangements between iwi and local government show that attempts to co-ordinate with Māori early in the planning process positively influenced the degree to which plans incorporate their interests (Ericksen et al., 2001). Regional and district councils encouraged iwi involvement in plan-making in a variety of ways. These included political representation on council committees, appointment of iwi liaison staff within councils, payment for advice from iwi by means of consultancies and service contracts with iwi resource management units (Ericksen, et al., Ch. 4 in press). Supporting evidence of this finding is to be found in, for example, Hewison (1997) and Local Government New Zealand (1997).

Well established working relationships between iwi and councils, as with Ngai Tahu in the South Island, proved to be constructive and productive. Similarly, where new relationships were developed, outcomes were also positive. For example, Hurunui District Council negotiated a protocol with iwi that provided a process for meetings and material for the plan. Several regional and district councils reported that their experiences of working with iwi were very positive and had fostered good working relationships beyond the plan-making process (Ericksen et al., Ch 4 in press).

On the other hand, the level of trust established between Māori and local council officials has been a major factor in the instances where early consultation was ineffective. Many iwi and hapū groups have a long history of being isolated and ignored. Thus, it is not surprising that Māori are wary that involvement may lead to the disappointment of unfulfilled promises (Berke et al., 2000). As the following example illustrates, this concern is well-founded:

> *...during a two-year period (1996 and 1997), Māori planning consultants to Tasman District Council worked extremely hard to win support of tribal elders to participate in the plan making process (Ericksen et al., 2002). They felt betrayed when adverse non-Māori reactions to the proposed plan caused regulatory provision for protecting Maori interests to be withdrawn early in council hearings* (Berke et al., 2000, p.127).

For other councils, partnership-building was more problematic. Several councils experienced difficulties where disputes over which group had tangata whenua status impeded consultation, or disrupted formal arrangements that had already been established. Some councils found that not all iwi groups in their district wished to be part of an umbrella group for consultation, and that separate meetings with each group were needed. In other cases, representation issues delayed plan preparation at critical stages. Conversely, not all councils wanted to build relationships with iwi (Ericksen et al., Ch. 4 in press).

Organisational Capability

The capability of a council to plan consists of two factors — commitment and capacity (Ericksen et al., 2001; Godschalk, Beatley, Berke, Brower, and Kaiser, 1999). These can be described as follows:

> *First,* commitment is the dedication of planners and elected officials to plan*, as indicated by their concern for planning, their willingness to budget adequate staff and fiscal resources for planning, and the priorities they place on planning compared to other local programmes. Second,* capacity is the ability to plan*, as indicated by the human, legal and fiscal resources in place, the effectiveness of local agency communication and co-ordination, and the knowledge and technology available to analyse environmental effects of development and land use change* (Ericksen et al., 2001, p.17).

Findings from the Phase 1 study clearly demonstrated that when commitment and capacity within a council are strong, the quality of plans is significantly greater (Ericksen et al., 2001). In regard to Māori interests, three indicators of organisational capability to plan were examined. All indicators, including use of Māori consultants, and number of both local government staff planners and consultants devoted to plan preparation, strongly reflected the degree to which Māori interests were incorporated in plans. However, the findings reveal that the organisational capability of regional and district councils is weak. Only 35.3 percent of district councils in the sample of 34 plans employed local Māori consultants. Over half (50.1 percent) of all councils assigned two or less staff planners to preparing the mandated district plan, and over half (53.2 percent) of councils employed one or less consultants for planning. Thus, local government could significantly improve

how well plans support Māori interests by expanding local capability to plan through greater political commitment (Berke et al., 2002).

Capacity Building

While the RMA relied on active participation by Māori in the planning process, there was little capacity building to assist Māori and councils in improving plans. The consequences of this were aggravated by the lack of clarity in the role of councils as agents of the Crown. In general, few councils undertook capacity building and few had clear lines of communication with Māori (Ericksen et al., 2001).

The early part of the 1990s, so crucial for council plan-making, was characterised by an absence of capacity-building for implementing statutory provisions addressing Māori interests. In particular, the Ministry for the Environment (MfE) as the lead government agency for implementing the RMA was poorly resourced and was hampered in doing more to help build capacity in councils and iwi. To its credit, however, the Ministry did provide a number of guides for facilitating Māori participation in council planning under the RMA. (See the list under Ministry for the Environment in References Cited.) Nevertheless, with little support from the Government, most iwi did not have the capacity or expertise to contribute to policy development by councils. Yet the RMA required their active participation if the provisions in Part II were to be fulfilled by councils. It created expectations that iwi could not possibly meet, and thus they were largely set up to fail in terms of the mainstream planning mandate (Ericksen et al., Ch. 4 in press).

Council efforts to engage with Māori to address their obligations under the RMA focused primarily on building iwi capacity to support council plan-making, rather than long-term building of iwi capacity for resource management. One option available to councils for achieving the latter involved supporting the development of iwi management plans (IMPs), which are a major tool for the inclusion of iwi interests in plans. Specifically, IMPs could articulate "tribal sentiment, resource information, environmental quality standards, strategies for conflict resolution and other Māori expectations of resource management" (Ministry for the Environment, 1988, p.33; quoted in Ericksen et al., Ch 4 in press).

However, Māori faced considerable challenges in preparing iwi management plans, particularly as there was a lack of guidance on how such a plan should be prepared. An additional concern was how to secure the resources required to prepare an IMP and, even when they had been prepared, an important issue was how much weight councils gave them. The RMA requirement to "have regard to" does not place an obligation on councils to formally adopt the concerns or priorities expressed in iwi plans (Ericksen et al., Ch 4, in press). The discretionary judgement that councils can exercise over IMPs greatly weakens their potential for influencing council policy-making. Not surprisingly, not many references to iwi management plans were found in policy statements and district plans.

Interpretation of RMA Mandate

Poor mandate design has impeded progress in recognition of Māori values and resources in plans. For example, nearly 50 percent of plan-makers in district councils did not understand the Part II provisions in the RMA in respect of Māori issues (ss 6(e), 7(a) and 8). The provisions give councils considerable discretion in now they should recognise and provide for Māori interests in their plans (Ericksen et al., 2001).

As well, the RMA does not offer clear guidance for local government on how to incorporate Māori environmental concepts into plans. For example, the RMA refers to kaitiakitanga (ethic of guardianship), but is unclear whether this concept applies only to Māori. Instead, the Act indicates

that it represents an ethic for which "all persons exercising powers and functions under the Act shall have regard to" (Ericksen et al., Ch 4, in press).

Phase 1 results illustrate that just over half of the councils understood the mandate with respect of the Treaty of Waitangi and Māori interests philosophically, but failed to follow through due to lack of political commitment and capacity (Ericksen et al., 2001). Councils had difficulty in infusing the provisions for the Treaty into their plans due to imprecise language. In spite of councils having to acknowledge the Treaty when planning under the RMA, their obligations were never clarified by Government in respect of the Treaty. The relationship between the Treaty and the RMA is long overdue for amendment and, meanwhile, both Māori and the environment are short-changed. Hence the failure of Government to complete a systematic review between the Treaty and the RMA as well as related legislation contributed to the lack of clarity about the purpose of the RMA (Ericksen et al., 2001).

Conclusions

The research findings of Phase 1 demonstrated that Māori benefited from provisions in the RMA that promote Māori interests. They also revealed, however, several important factors that impeded the translation of these key provisions into plans. Focusing on improving consultation and partnership building, organisational capability, capacity building, and clarity of the RMA mandate would greatly improve implementation of the RMA with respect to Māori, iwi and hapū interests.

PART 2:

RMA PROVISIONS FOR IWI INTERESTS IN DISTRICT PLANS

Under the RMA, the process of preparing policy statements and plans requires substantial input from members of the community. In particular, the Act provides for tangata whenua participation in policy development. To this end, consultation with iwi, recognition of traditional values and relationships that tangata whenua have with the land, and incorporation of Treaty of Waitangi principles are all required.

The Ministry for the Environment (1991; 1992a; 1992b; 1993a; 1993b) did provide guidelines for Māori, iwi, and hapū involvement in planning under the RMA, and followed this up later with reports on iwi and council relationships (1998; 1999; 2000(a); 2000(b)). As well, the Parliamentary Commissioner for the Environment (1992; 1998) examined iwi participation in local government and Te Puni Kokiri (1993; 1996) provided some guidance. Nevertheless, Government failed to provide a national policy statement or methodology for how the council and iwi partnership should apply. Thus, there was no higher-level policy guidance from Government to ensure effective, consistent and reliable systems for tangata whenua participation in environmental management or the appropriate accommodation of tangata whenua values and concerns in local government policies and plans. It is not surprising then, that analysis of the 28 first generation district plans by Kōkōmuka Consultancy Ltd (Appendix 2) shows that RMA provisions relating to Māori perspectives were not effectively incorporated.

Methodology

The International Global Change Institute (IGCI) engaged Kōkōmuka Consultancy Ltd in 2002 to complete iwi interviews for Phase 2 of the PUCM Research Programme on quality of plan implementation, and to help provide a Māori framework and methodology for Phase 3 with respect to environmental outcomes for Māori.

Because Māori researchers had not been involved with Phase 1 nor the bulk of Phase 2, it was considered important that a review of Māori data relevant to these phases be carried out from a Māori perspective. The methodology used to conduct this evaluation with respect to Phase 1 included:

- a literature review of documentation from IGCI (Phase 1), government agencies, and others (see References Cited);
- an analysis of Māori content in 28 district plans and maps originally coded as part of PUCM Phase I evaluation of plan quality.

The PUCM project has revealed a variety of factors that influence plan quality. (See Ericksen et al., 2001, for a full summary of results.) Kōkōmuka Consultancy Ltd has built upon this research by developing criteria focused on Māori/hapū/iwi expectations, interests and values promoted by the RMA and by identifying examples of good practice from the plans themselves. The provisions that centre on Māori interests in the 28 district plans have been compared against these criteria in an attempt to ascertain how effectively RMA provisions for Māori (specifically Sections 6(e), 7(a), 8, 33, 34, 35, 74 and 93) have been incorporated into district plans (Appendix 1). In doing so, examples of Māori issues, objectives, policies and methods espoused within the district plans reviewed were identified and evaluated. Each of the key provisions is dealt with in sequence below, illustrated by quotations from various plans as appropriate.

Provisions for Identifying Tangata Whenua/Iwi in Districts

Active participation from tangata whenua/iwi is necessary to implement the RMA, particularly sections 6(e), 7(a) and 8 in Part II. For example, Section 6(e) requires councils to recognise and protect "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga". To fulfil such requirements, councils need to first identify iwi/tangata whenua in the district and then determine how the two groups will work together.

The 1990s saw a combination of devolution and decentralisation across most government sectors. In particular, health, social welfare and education reforms and decisions about the institutions for addressing Māori issues have led to significant devolution of authority by government to iwi organisations (Kerr et al., 1997, p.7). As a result, iwi authorities, rūnanga and trust boards have established working partnerships and agreements in delivering government services, and it is likely that the expectation generated by these new partnerships was carried over by iwi looking to be involved in the implementation of the RMA — particularly with the lead-in provided by Section 8.

To ensure Māori participation in the planning process, the RMA specifically states that a council must consult with tangata whenua when preparing a policy statement or plan (First Schedule). In support, Section 74(2)b of the Act states that, when preparing or changing a district plan, councils must have regard to any relevant planning document recognised by an iwi. (See Appendix 1 for the relevant RMA text.)

Iwi/Hapū Management Plans (IHMPs) are a useful tool as they can help to identify issues of concern for Māori. To be effective however, it is important that these documents are endorsed by the relevant iwi/hapū authority. Councils can then take heed of the contents of the IHMPs and integrate them into their district plans. This has been the case for one of the district plans analysed, which states that "…the proposed 'iwi resource management plan' will provide greater detail and clarity to the issues, values and resources important to iwi" (Queenstown Lakes District Council, 1995, Section 4, p.35).

Nonetheless, specific reference to Section 74 of the RMA was only recorded in 10 of the 28 district plans analysed. One such example is found in the Clutha District Plan: "Section 74 (2)(b)(ii)(iii) — Council is to have regard to any planning document recognised by an iwi authority and any regulations in relation to the conservation or management of taiapure fisheries when preparing District Plans" (Clutha District Council, 1996, p.61). Two of the 10 councils also stated that they would assist in the development of iwi management plans.

It is interesting to note that proposed changes to the RMA seek to elevate the status of iwi planning documents. Whereas councils are presently required to "have regard" to these documents, the amendments necessitate that they must be "taken into account" when preparing or changing policy statements and plans. Although these changes have not yet been enacted, the Local Government and Environment Select Committee has recommended to Parliament that they proceed. The implication for councils is the need to demonstrate more clearly their consideration of IHMPs (where they exist) in their district plans.

Too often, councils did not work at a governance level — leader to leader — when starting the consultation process. From a Māori perspective, that is essential for laying the basis for an effective working relationship.

Effective relationships between council and Māori need to be initiated, developed, and maintained to guarantee successful inclusion of Māori in the planning process. As mentioned above, identification of tangata whenua/iwi in a district plan signifies the extent to which this information is seen to be important by a council. When naming the iwi in the district and providing a brief history from iwi or an historical story, an assumption can be made that the council attempted to communicate with Māori groups. Supporting information, such as population demographics for the Māori population from Statistics New Zealand, could easily be obtained and incorporated in a district plan.

However, only 15 of the 28 district plans that were studied gave the name or names of iwi in their district. Of these, most failed to provide any history of the identified iwi. One exception was the Waitakere District Plan:

> *Statement by Te Kawerau a Maki... The following is a brief overview of the history of Te Kawerau a Maki. It is followed by a summary of the key resource management concerns held by the iwi which are extracted from Te Kawerau a Maki's Resource Management Statement…* (Waitakere City Council, 1995, section 4, p. 2).

Interestingly, those councils that did both (i.e., named the iwi and gave an historical account) proved to have stronger district plans in regard to identifying tangata whenua/iwi issues.

When checking for additional supporting information about Māori, it was discovered that a mere 29 percent of plans (eight of the 28) gave the statistical population of Māori within the district. This was normally found with the other ethnic groupings in the introduction of the District Plan. For example, the Clutha District Plan notes that "Ethnic composition… Of Clutha District population, 6

percent of the people stated that they have Māori ancestry (either NZ Māori or part Māori) in the 1991 Census" (Clutha District Council, 1996, p.22).

Seventeen district plans had a section referring solely to Māori interests under the RMA. However, on deeper analysis, it was noted that many of these plans paraphrased key sections (notably 6(e), 7(a) and 8). Simply restating the RMA rather than interpreting the significance of these provisions for Māori means that the diversity of Māori views regarding environmental management is not captured in the district plans. This example from the Gore District Plan illustrates what is commonly found:

> *Objective **Manawhenua**… in achieving the purposes of the RMA in the district Plan, in relation to managing the use, development or protection of natural and physical resources, shall recognise and provide for the relationship of iwi and their culture and tradition with their ancestral lands, water, sites, wāhi tapu and other taonga and shall take into account the principles of the Treaty of Waitangi: Te Tiriti o Waitangi …In managing the effects of land use activities within the district to recognise and provide for the relationship of Māori and their culture, kaitiakitanga, and shall take into account the principles of the Treaty of Waitangi* (Gore District Council, p. 29).

The evaluation further illustrated that only 54 percent of the district plans analysed (15 of the 28) provided a description of tangata whenua in their district. This can be seen as an indication of poor council/iwi relationships given that 46 percent (i.e., the remaining 13 councils) have not recognised the existence of iwi within their territory. Consequently, the level and quality of consultation that took place with Māori when preparing the district plan must be questioned.

While most plans identified issues of importance to tangata whenua in a special section, in most cases the plans failed to implement issues into objectives or policies outside of these tangata whenua sections.

Alternately, in those cases where policies were written in other plan sections, these were often difficult to link back to iwi issues. In one example from the Tauranga plan: The Issue, *Residential Area Use and Development*, has a policy (3.2.1.3 (b)) that "The relationship of tangata whenua with their ancestral landscape of Mauao and Hopukiore" is an important issue but the further explanation says that "in taking into account these considerations that buildings are prohibited from protruding through the maximum height plane covering the High Rise Policy Area" (Tauranga Plan, 1998 p.24-25). It is very difficult to see the link between the issue and the policy.

In one of few examples where a Plan showed clear links between Māori issues throughout the Plan, the South Waikato District Council included issues in the tangata whenua section objectives and policies that paraphrase the act but then in *methods to achieve objectives and policies* refer to other sections in the plan with specific policies relating to tangata whenua (South Waikato Plan, 1994, p. 35-37).

Matters of National Importance

Matters of national importance are cited in Section 6 of the RMA. Section 6(e) specifically addresses matters of importance to Māori, including culture and traditions, wāhi tapu, place names, and water. The extent to which these are addressed in district plans is explained in turn below.

Culture and Traditions

Section 6(e) specifically addresses Māori tikanga, which pertains to the cultural and traditional utilisation of resources. Primarily, tikanga involved food gathering and the protection of self, hapū and iwi. Consequently, the RMA requires councils to recognise and provide for sites of significance to Māori, including those with historical significance, places where food is gathered, sites for collecting materials for activities, such as weaving and carving, or places of shelter. For this to occur, issues associated with the identification of significant sites and appropriate methods to protect them should be identified through consultation with iwi/hapū. Agreed outcomes can then flow through to provisions in the district plan. Unfortunately, the results of this study suggest that this process has not been widely followed by councils.

Plan methods dealing with Section 6(e) included rules allowing development of Kōhanga Reo in residential areas and development or maintenance of Marae. In respect of the latter, 15 of the district plans in some way provided for Marae development. However, only five had provisions for Kōhanga Reo establishments. By way of better example, the Wellington City District Plan states:

> *...by acknowledging ancestral lands relationships with the land and natural world, a basis can be constructed for addressing modern forms of cultural activities... (part 20 p. 8)*
>
> *Policy…Provide the opportunity for establishing marae, papakainga/ group housing, kohanga reo/ language nests and similar activities in residential areas that relate to the needs and wishes of tangata whenua and other Māori, providing that the physical and environmental conditions specified in the plan are met…*
>
> *Method… General provisions have been made for non-residential activities in residential areas as Controlled or Discretionary activities. This will enable tangata whenua and other Māori to undertake uses that are appropriate in residential areas* (Wellington City Council, 1994, part 4 p. 20).

Less than half of the 28 district plans (13) included provisions for Papakāinga, which is community owned land predominantly used for housing development by any person that has hapū affiliation. One of the 13 plans, Papakura's had this objective and policy:

> *Objective… To recognise and provide for the relationship of the Māori people with their ancestral land, culture, and traditions…*
>
> **Policy… Provision is made in this plan for marae, and ancillary uses such as kokiri centre, kaumatua housing, papakainga housing and cultural facilities…** *(*Papakura District Council, 1997, p.33-34).

In addition to this example, Kaipara District Plan had a Māori Purposes Zone covering land in multiple Māori ownership (Kaipara District Council, 1997).

Wāhi Tapu

Wāhi tapu are a particular category of resource held in the highest regard by tangata whenua and, as such, are recognised in Section 6(e). Such places include, but are not limited to, those associated with death (e.g., urupā or cemeteries, battle fields, caves, trees), rituals (e.g., tūāhu, trees), birth (e.g., burial places for placenta), ara purahoura or sacred pathways, mauri stones or trees, tauranga waka, maunga, mahinga kai, and wāhi taonga mahi-ā-ringa. This analysis showed, however, that district plans primarily associated wāhi tapu with activities connected to death.

Interestingly, of all the Māori issues referred to in the RMA, wāhi tapu is the one most widely identified in district plans — all 28 plans made reference to wāhi tapu — although the majority of plans merely copied or paraphrased what was in Section 6(e). By way of example, the South Waikato District Plan had this objective: "Use, development and protection of natural and physical resources that recognise the relationship of Māori with their culture and traditions with their ancestral lands, water, sites wahi tapu and other taonga" (South Waikato District Plan, 1995, p.25). This was linked to the following policy: "To recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu (sacred sites) and other taonga (treasures)" (Ibid, 1995).

Identification of sites of significance to Māori was seen in many plans as being necessary to facilitate protection through the resource consent process. The idea being that this would alert a resource consent applicant to the presence of such sites and whether or not their proposal might have a negative impact on them. Being aware of this information at an early stage allows the applicant to avoid, remedy or mitigate any adverse effects on the significant site. Thus, many of the plans declared that sites requiring protection needed to be identified before the resource consent application was submitted to council. Hurunui District Plan stated that "There are sites of significance to tangata whenua within the District which could be damaged or destroyed if they are not, formally identified or recognised though a method of consultation…" (Hurunui District Council, 1995, p.28).

Plans often identified that wāhi tapu are those listed on the register of the New Zealand Historic Places. Through their plans and policies, many of the district councils have encouraged all wāhi tapu sites to be publicly known. For example, the Wellington District Plan stated that:

> *… the council will; Identify, define and protect sites and precincts of significance to tangata whenua and other Māori…The sites of significance are listed and mapped within the plan…The environmental result will be that such sites and precincts are identified and protected from inappropriate development* (Wellington City Council, 1994, part 8, p.12).

The fact that district plans disclose locational and other information about features significant to tangata whenua contrasts with the views of many Māori who feel that the best way to protect wāhi tapu is not to divulge such details. The Rotorua District Plan recognises this view:

> *Policy… To recognise that some information held by tangata whenua which may be necessary for informed decision-making may be considered by tangata whenua to be privileged.*
>
> *Anticipated environmental result… Resources regarded as taonga are accorded adequate protection, and thus their mana is respected by not releasing sensitive information* (Rotorua District Council, 1996).

Such a position more strongly requires that tangata whenua be consulted for all resource consent applications in order to ascertain whether there are any adverse effects on wāhi tapu. An example of this is in the Papakura District Plan where they have chosen not to disclose locations, but where wāhi tapu are still protected.

> *…The tangata whenua have decided that wāhi tapu should not be identified in the District Plan. Tangata whenua intend to protect their own interests in this regard by maintaining a close liaison with the Department of Conservation and by relying on provisions of s93 (f) of the Resource Management Act 1991, which requires iwi authorities to be notified of resource consent applications...* (Papakura District Council, 1997, Section 1, Part 3 p.6).

This is a good example showing that sensitive information does not need to be disclosed to councils (or the public), but can instead be held by another agency.

Subdivision is perhaps one of the most important issues for Māori. In urban areas (such as Tauranga), koiwi (human bones) are often discovered as urban sprawl encroaches on rural areas. Land that was used for farming is being subdivided for housing, which inevitably leads to earthworks that in some cases unearths or destroys wāhi tapu. District plans sometimes place a duty upon applicants to consult with tangata whenua. The Papakura District Plan again provides a positive example, stating that: "Council will require to be satisfied that consultation where appropriate has been carried out with Māori people in respect to subdivision or development which may effect their interests…" (Papakura District Council, 1997, Section 2, Part 6, p.33).

Kaipara's District Plan strongly emphasised the importance of consultation when making decisions about proposed subdivisions and rural development. In this regard, the council will:

> *Consult with iwi on resource management matters which impact on tribal resources and ensure that associated decisions do not prejudice outstanding Treaty based claims…Consultation with iwi is paramount to effective decision-making because of extensive Māori ownership and interests in resources* (Kaipara District Council, 1997, p. 5-8).

Only two of the 28 district plans analysed specifically noted the fact that wāhi tapu can be located anywhere and are not limited to land in Māori or Crown ownership.

Place Names

Place names are important to Māori as they have historical value and connections. For example, a place can be remembered for an historical event or a person to whom tangata whenua affiliate. In only four plans was the issue of Māori place names specifically referred to. This was usually in reference to urban areas where Māori would like sites of significance — currently with Pākehā names — to have their traditional names remembered and signposted. Queenstown Lakes District was one such place:

> *Objective 7: Ingoa Rarangi (Place Names)… The continued and enhanced use of traditional Kai Tahu place names as an educational resource to explain the culture and historical relationship of Kai Tahu to the Environment.*
>
> *Policies…*
>
> *1 When the use of the Māori language is being considered for streets or places, to consult and involve Kai Tahu in the process.*
>
> *2 To broaden the interpretation of 'heritage' values to include traditional Māori place names.*
>
> *3 To give consideration to the recognition of traditional place names*
>
> *The recognition and the retention of traditional Kai Tahu place names is an ongoing recognition of the district's heritage and the relationship of Kai Tahu with the resources, lands and places of the District. Inappropriate use of Māori place names can be offensive to the values and importance of places recorded through Kai Tahu names* (Queenstown Lakes District Council, 1995, part 4, p.39).

Water

The relationship of Māori with water is recognised as important under Section 6(e) of the RMA. The Māori water cycle starts at wai tai (saltwater), through the process of evaporation becomes wai maringi (rain) which falls as wai māori (fresh water). Wai māori is separated into wai mate

(swamps) and wai tapu (where special ceremonies were held). Water is essential to all life forms and is regarded as a significant carrier of mauri. Traditional uses of water are varied, and include rituals, irrigation, drinking, cleaning and transportation.

However, our study highlights that the relationship of Māori with water is not widely covered in the plans and, in fact, very few plans actually refer to water as a consideration under Section 6(e). Moreover, only five councils identified waste disposal affecting water quality as an issue relevant to Māori. Eleven plans did identify tangata whenua concerns over the ability to maintain mahinga kai.

A rare example allowed for involvement or consultation with tangata whenua when developing strategies for maintaining water resources and quality.

> *Policies… To consult with the appropriate Kai Tahu rungana when developing waste management strategies for the District.*
>
> *Explanation and Principle Reasons… Manawhenua values do not condone the siting of landfills, the dumping of rubbish or the disposal of untreated human wastes into or near waterbodies, including wetlands and groundwater...*
>
> *Anticipated Environmental Outcomes… Activity and development which reflects and acknowledges traditional Māori values in terms of the protection and use of natural and cultural resources* (Queenstown Lakes District Council, 1995, section 4, p.41).

Other Matters

Section 7 of the RMA directs councils to deal with other matters considered important to the national mandate. Of interest to Māori, section 7(a) requires district councils to have particular regard to kaitiakitanga (Appendix 1). The term is defined by the RMA in the following way: Kaitiakitanga is the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself (s2, RMA, 1991).

This is a narrow view of kaitiakitanga. In fuller explanation, the Māori concept of kaitiakitanga is one of nurturing and involves protection, management and development. As described by Ngāti Kahungunu ethic for environmental protection, mauri is fundamental (PCE, 1998 p. 68). As said in the PCE report:

> *Mauri is described as the wellspring of life itself, the elementary energy which permeates the whole of created reality. When mauri is absent there is no life…that of all taonga tuku iho, mauri is the most precious, and therefore kaitiakitanga, as the process by which mauri is protected, has deep spiritual and elemental significance.*
>
> *…the traditional practices are based on centuries of experience, and evoked by those who have the necessary mana, training and discipline to serve as the interface between the spiritual dimensions and ordinary experiences* (Ibid, 2002, p.68).

Kaitiakitanga is, therefore, a complex concept, particularly for councils trying to encapsulate it in district plan provisions. To do so successfully would require substantial guidance from Māori. As the following analysis reveals, however, there is little evidence that this level of consultation took place.

Of the 28 district plans, 19 made reference to Section 7(a) of the RMA. Perhaps as a result of the ambiguous definition in the RMA, plans were generally vague and unclear as to the implications of

kaitiakitanga. For example, the Gore District Plan states: Objective Manawhenua… In managing the effects of land use activities within the district to recognise and provide for the relationship of Māori and their culture, kaitiakitanga, and shall take into account the principles of the Treaty of Waitangi (Gore District Council, p.29).

In contrast, the Queenstown Lakes District District Plan more substantially addresses the concept of kaitiakitanga:

> *Objective… Kaitiakitanga (Guardianship)… Recognition and provision for the role of Kai Tahu as customary Kaitiaki in the district.*
>
> *Policies… To ensure that the kaitiaki role of iwi, via the appropriate Runaka, is achieved through on-going consultation on policy development relating to the natural and physical resources of the district…*
>
> *Anticipated Environmental Outcomes… Activity and development which reflects and acknowledges traditional Māori values in terms of the protection and use of natural and cultural resources* (Queenstown Lakes District Council, 1995, section 4, p.34).

Just six of the 28 district plans recognised that kaitiakitanga can only be defined by tangata whenua and ventured beyond the definition given in the RMA. For example, the Palmerston North District Plan recognises that:

> *A Māori worldview… presents a different perspective on the management of natural and physical resources… Kaitiakitanga, for example, embodies a view for resource management of natural and physical resources which acknowledges ancestral relationships to both the land and the natural world… Only tangata whenua have the right to translate the historical, cultural and spiritual history of a site which holds special significance for* them (Palmerston North City Council, 1995, section 17, p. 8).

Kaitiakitanga is inextricably linked to tino rangatiratanga, which the Parliamentary Commissioner for the Environment defines as "*rights of autonomous self-regulation, the authority of the iwi or hapū to make decisions and control resources*" (PCE, 2002, p6). This implies that tangata whenua have total control over their resources. Again, the district plan for Palmerston North City was one of only six acknowledging that kaitiakitanga and rangatiratanga are interlinked: "…Kaitiakitanga, or guardianship, is inextricably linked to tino Rangatiratanga and is a diverse set of tikanga which result in sustainable management of a resource" (Palmerston North City Council, 1995, section 3, p.3(3-3)).

In some cases, councils made reference to Māori concepts of environmental management, like rāhui, and made provision for supporting iwi over their implementation. Hurunui District Plan, for example, has the following objective:

> *To recognise and provide for the traditional approaches to resource management practised by tangata whenua.*
>
> *Explanation… this includes the practice of rāhui and tapu…the council will consult with iwi... and how they will be implemented with the assistance of council…* (Hurunui District Council, 1995, p.30).

Kaitiakitanga encompasses all aspects of resource management, but the findings from this analysis show that while nearly all of the 28 district plans acknowledged kaitiakitanga (two completely ignored it) and incorporated some principles regarding sites of significance from Section (6e), many other dimensions of kaitiakitanga were not included.

The Treaty of Waitangi

The RMA (section 8) (Appendix 1) is one of only a few statutes in New Zealand that makes reference to the *Treaty of Waitangi*. The *Treaty of Waitangi* is a document signed by the English Crown and most Māori chiefs in 1840 (Appendix 3). It can be viewed as the fundamental bargain between Crown and Māori where, in exchange for the Crown's right to govern and make laws (kawanatanga), Māori were confirmed the rangatiratanga of tangata whenua, thus leading to the principles of the Treaty and the Crown's obligation to protect Māori interests (Parliamentary Commissioner for the Environment, 2002, p.7).

As is well documented, debate, conflict and division have arisen from the fact that the Māori and English versions of the Treaty differ in interpretation — the result being that the Crown gained sovereignty over New Zealand, but failed to secure for Māori the right to exercise tino rangatiratanga (Appendix 3). Hence assertions by Māori that the Treaty had been ignored flared soon after the 1840 signing and claims for recompense continue today.

Given this history, it is interesting to note (but perhaps not too surprising) that only three of the 28 district plans include the Māori version of the *Treaty of Waitangi*. Furthermore, just three district plans (11 percent) made reference to kawanatanga and only seven (or 25 percent) made reference to tino rangatiratanga. Stratford District Plan was one that did both: "In return for ceding sovereignty, Māori were to retain rangatiratanga, or the right of iwi to control, manage and use tribal resources according to their cultural preferences, with the Crown having an obligation to actively protect these rights" (Stratford District Council, 1995, p. 36).

Nevertheless, of the district plans assessed, most (24 of the 28) made some reference to Section 8 of the RMA and included objectives and policies recognising principles of the Treaty. However, many of these references tended to simply paraphrase the RMA and make no attempt to interpret what the Treaty principles might require of the council in practical terms. The Papakura District Plan is a good example of this: "…council will also take into account the principles of the Treaty of Waitangi in exercising its functions and powers under the RMA, 1991" (Papakura District Council, 1997, Section 2, part 6, p.33).

Seven plans acknowledged the evolving nature of the *Treaty of Waitangi*. In this regard, Stratford's District Plan notes that: "These principles are not a definite or exclusive list, but may continue to evolve, and the nature of their implementation will vary depending on the needs of iwi" (Stratford District Council, 1995, p. 36). It was further acknowledged that plan policy had the potential to conflict with Māori Treaty rights.

Just 10 of the 28 district plans recognised the importance of a good relationship between council and iwi in facilitating effective consultation. These same plans acknowledged the need for a partnership between the council and Māori, as well as the inclusion of Māori in the decision making process. Wellington City's District Plan put it this way:

> *...In considering resource consents, council will take into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi... The principles that underline the Treaty provide a basis for the management of natural and physical resources. These principles include having regard to consultation, partnership and a shared responsibility for decision-making. For this reason, rules have been included in the Plan requiring consultation in specific situations… The environmental result will be that appropriate developments respect the existence of Māori cultural values* (Wellington City Council, 1994, section 6, p. 17).

The Masterton District Plan aims to increase awareness and understanding of the Treaty in resource management. It proposes a number of ways to do this:

> *Policy… To promote awareness of the Treaty of Waitangi amongst those responsible for resource management in the district and within the community generally…*
>
> *Explanations… In order to foster a good relationship between the Treaty partners, awareness of the principles of the treaty will be promoted amongst agencies responsible for resource management in the district, including council. In doing this, the taking into account of the principles of the Treaty in resource management decision-making within the district may be better understood by the community* (Masterton District Council, 1997, p. 27).

In a survey conducted with 52 territorial local authorities, "a quarter considered that the Treaty responsibilities are between central government (the Crown) and Māori, not between local government and Māori." Although varied in response, three quarters of the councils surveyed remained largely unclear of their Treaty obligations (Saville-Smith et al, 1991, p.6). As argued by Matunga (2000, p. 45), the inability of councils to transfer or share even limited decision-making with Māori has resulted in the "Māori Treaty partner on the outside, looking in on a passing parade of environmental decision and policy processes controlled by the other". Solving this problem requires the "decolonising of environmental planning" and the establishment of "dual or bicultural planning" that gives decision-making power to iwi over their taonga (Ibid, 46).

Conclusion

Most of the 28 district councils whose plans were reviewed need to do better at identifying Māori issues and incorporating these into their plans. Council plans have very limited reference to, or content associated with, issues of importance to Māori/iwi. This is characterised by plans paraphrasing the RMA and the poor quality fact base of many plans

Plans not only lacked reference to relevant iwi issues, but also in many cases limited their implementation by not referring to iwi issues outside of the tangata whenua section. District plans provided better coverage of section 6e of the RMA than other Part II sections which refer to Māori (i.e. 7a or 8). However, the treatment of these issues was often minimal and failed to fully take account of the Māori worldview. In some plans, other issues of importance, such as kaitiakitanga, were not addressed at all. Plans often mentioned monitoring and encouraged iwi participation, but did not acknowledge how or with whom they would participate in the monitoring process. In consequence, plans did not adequately utilize Treaty principles.

Other Relevant RMA Sections

There are other provisions in the RMA that are important for Māori, iwi, and hapū participation in resource management, in addition to Part II sections 6(e), 7(a), 8. They allow iwi/tangata whenua to not only to be part of the plan preparation process, but also its implementation through the resource consent and monitoring processes. The pertinent sections for district council processes are 33, 34, 35, 74 and 93.

Reviewing Resource Consents

Section 93 pertains to the resource consents process (Appendix 1). Council is required to serve notice on appropriate authorities — including iwi authorities — and provide relevant information for all resource consent applications. Unfortunately, reference to Section 93 as an option for Māori

is not in the available literature so was not included as an evaluation criteria by Kōkōmuka. However, one example was found in the Papakura District Plan:

> *Tangata whenua intend to protect their own interests in this regard … by relying on the provisons of s93 (f) of the Resource Management Act 1991, which requires iwi authorities to be notified of resource consent applications…* (Papakura District Plan, 1995, Section One, Part 3, p.6).

Māori have used Section 93 in their interests, sometimes having to insist that councils keep them informed of resource consent applications. Some (e.g., iwi in Tasman District) have argued that council should send all applications, and not just those that council deems appropriate (Ericksen, et al., in press). Through this process, iwi are not only informed of consent applications, but also provided with sufficient information to make a decision about likely impacts on their interests, such as wāhi tapu — as explained in the case of the Rotorua District Plan referred to earlier.

Monitoring Functions

Under Section 35 of the RMA (see Appendix 1), monitoring of council processes and procedures, such as the resource consent process, is needed to determine whether or not councils are satisfying provisions in the RMA through their district plans.

Many of the 28 plans analysed did not go into detail about their monitoring practices. While some plans mentioned monitoring and encouraged iwi participation, councils did not acknowledge how or with whom they would participate with in the monitoring process. For example, the proposed Timaru District Plan states:

> *Policies… To recognise and provide for the relationship of Māori and their culture and traditions with their ancestral water…*
>
> *Methods… To monitor both the effects of activities on the surface of water and the effectiveness of any self-regulating codes of practice, and to promote the participation of iwi in this* (Timaru District Council, 1995).

The following example from the Gore District Plan provides greater clarity for why monitoring is done, but is still rather general.

> *Objective… in achieving the purposes of the RMA in the district Plan… State of the environment monitoring can be taken by, and in conjunction with, a variety of resource users, developers or protectors. These include… Iwi*
>
> *Reason for monitoring*
> - *Ensure liaison links with iwi are maintained*
> - *Monitor the effects if land use activities on ancestral lands, water, sites wāhi tapu and other taonga of importance to iwi*
> - *Review policies that relate to mana whenua*
> - *Investigate community complaints*
>
> *Sources of information*
> - *Council records*
> - *Iwi resource management plans when published*
> - *Iwi records*
> - *Discussion with Iwi representatives*
> - *Monitoring programmes that form part of environmental management plans*

Indicators that can be used

- *Changes in views of iwi about their concerns have been addressed and incorporated into resource management decisions*
- *Change in the number if ancestral lands, water, sites, wāhi tapu and other taonga that are of values to iwi and that are protected* (Gore District Council, 2002, p. 328-334).

Overall though, monitoring was poorly written into plans with many of the councils failing to specify any monitoring methods in their district plan. Māori participation in monitoring is mainly encouraged through consultation although a number of councils have initiated committees involving iwi representatives.

Delegation of Functions

Section 34 gives a council the power to *delegate* certain of its functions under the RMA to a number of specified people and groups — including an iwi authority (Appendix 1). A range of functions can be delegated, such as the ability to assess resource consent applications and determine whether or not to grant them. If adopted, this would confer very considerable power to iwi. In the 28 plans reviewed, no iwi authorities had been given delegated functions by a council under Section 34.

Transfer of Powers

Under Section 33 of the RMA, a council has the ability to *transfer powers* to another public authority — such as an iwi authority (Appendix 1). No council has initiated any such transfer of power to an iwi authority. Not surprisingly then, only five of the 28 district plans (18 percent) made reference to section 33. As demonstrated by the Clutha District Plan, this provision is commonly written with minimal detail: "Section 33(1) (2) — Council may transfer functions to an iwi authority" (Clutha District Council, 1996, p.61).

A survey of all 86 councils in February 2003 revealed that none of the 74 councils that responded had delegated functions or transferred powers to an iwi authority (Bach, 2003). In a case study of Ngati Awa, Rennie, Thompson, and Tutua-Nathan (2000) gave reasons why councils do not transfer powers to iwi. Bach (2003) extends this analysis to include delegation of functions.

CONCLUSIONS

The RMA allows for active participation by tangata whenua in environmental management, notably via sections 6, 7 and 8, as well as sections 33, 34, 35, 93 and Clause 3 of the First Schedule. These provisions strongly endorse Māori participation in the planning process and afford Māori interests greater significance to those of other parties. This in effect acknowledges Māori as Treaty partners.

Our analysis has revealed that this strong mandate has not been reflected well in the 28 district plans reviewed, which either largely paraphrase or fail to acknowledge key sections of the RMA. This lack of recognition for tangata whenua/iwi values has resulted in inferior plans. The 28 district plans are further deficient in identifying issues and concerns relevant to tangata whenua/iwi. Identification of iwi issues is typically limited to provisions that make allowance for wāhi tapu. Consequently, the plans fail to translate Māori concerns into relevant objectives, policies, methods, rules, and anticipated environmental results.

This situation is largely the Government's doing. It failed to clarify whether or not councils are agents of the Crown in dealing with Māori as partner. The uncertainty allowed disinclined councils to choose a minimalist approach to iwi interests under the RMA. This was exacerbated by Government not providing adequate capacity building and guidance to councils for implementing provisions in the RMA of relevance to Māori, iwi, hapū, such as a national policy statement and/or special grants.

More positively, there are a number of tools available to promote participation by Māori in the planning process and to formalise relationships with councils. These include: iwi management documents, Memorandums of Understanding, and Memorandums of Partnership. Additionally, systems that allow Māori to withhold sensitive information from the district plan (and therefore away from public scrutiny) are available to councils. Examples include tangata whenua/iwi assessing all resource consent applications, and 'silent files' held by councils or other organisations that are not available to the public. The use of some these methods by councils was noted in a small proportion of the 28 district plans studied.

Appendix 1

RMA Provisions for Māori

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 taonga.

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 the Resource Management 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).*

33. Transfer of powers *– (1) A local authority that has functions, powers, or duties under this Act may transfer any one or more of those functions, powers, or duties to another public authority in accordance with this section, except that it may not transfer any of the following:*

(a) The approval of a policy statement or plan or any changes to a policy statement or plan:

(b) The issuing of, or the making of a recommendation on, a requirement for a designation or a heritage order under Part VIII:

(c) This power of transfer.

(2) For the purposes of this section, ``public authority'' includes any local authority, iwi authority, Government department, statutory authority, and joint committee set up for the purposes of section 80.

34. Delegation of functions, etc., by local authorities *— (1) A local authority may delegate to any committee of the local authority established in accordance with the Local Government Act 1974 any of its functions, powers or duties under this Act.*

(2) A territorial authority may delegate to any community board established in accordance with the Local Government Act 1974 any of it functions, powers, or duties under this Act in respect of any matter of significance to that community, other than the approval of a plan or any change to a plan.

(3) A local authority may delegate to any hearings commissioner or commissioners appointed by the local authority for this purpose, who may or may not be a member of the local authority, any of its functions, powers, or duties under this Act, other than —

(a) The approval of a policy statement or plan or any change to a policy statement or plan:

(b) This power of delegation.

(4) A local authority may delegate to any of its officers any of its functions, powers or duties under this Act, other than —

(a) The approval of a policy statement or plan or any change to a policy statement or plan:

(b) The making of a recommendation on a requirement for a designation or a heritage order under Part VIII:

(c) The granting of a resource consent for a non-complying activity in respect of any application which is notified in accordance with section 93:

(d) This power of delegation.

35. Duty to gather information, monitor, and keep records *— (1) Every local authority shall gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under this Act.*

(2) Every local authority shall monitor —

(a) The state of the whole or any part of the environment of its region or district to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and

(b) The suitability and effectiveness of any policy statement or plan for its region or district; and

(c) The exercise of any functions, powers, or duties delegated or transferred by it; and

(d) The exercise of the resource consents that have effect in its region or district, as the case may be —

and take appropriate action (having regard to the methods available to it under this Act) where this is shown to be necessary.

74. Matters to be considered by territorial authority *– (1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations.*

(2) In addition to the requirements of section 75 (2), when preparing or changing a district plan, a territorial authority shall have regard to –

(b) Any –

(ii) Relevant planning document recognised by an iwi authority affected by the district plan;

93. Notification of Applications — *(1) Once a consent authority is satisfied that it has received adequate information, it shall ensure that notice of every application for a resource consent made to it in accordance with this Act is —*

(f) Served on such local authorities, iwi authorities, and other persons or authorities it considers appropriate;

First Schedule, 3. Consultation *— (1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult —*

(d) The tangata whenua of the area who may be so affected, through iwi authorities and tribal runanga.

APPENDIX 2

District Council Plans Evaluated

Christchurch, 1999
Clutha, 1996
Dunedin City, 1995
Gore, 1995
Horowhenua, 1996
Hurunui, 2000
Kaipara, 1997
Kawerau, 1996
Lower Hutt, 1995
Manukau City, 1995
Marborough Sounds, 1998
Masterton, 1997
Matamata-Piako, 1996
Otorohanga, 1997
Palmerston North City, 1995
Papakura, 1997
Queenstown-Lakes, 1995
Rotorua, 1996
South Taranaki, 1996
South Waikato, 1995
Stratford, 1995
Tararua, 1996
Tasman, 1996
Tauranga, 1996
Timaru, 1996
Waimate, 1996
Waitakere City, 1995
Wellington City, 1994

APPENDIX 3

Treaty of Waitangi 1840

Māori Version

The Treaty of Waitangi 1840
The First Article
The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The Second Article
The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand, the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her agent.

The Third Article
For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

English Version

The Treaty of Waitangi 1840
The First Article
The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

The Second Article
Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess as long as it is their wish and desire to retain the same in their possession; but the chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate — at such prices as may be agreed between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

The Third Article
In consideration thereof Her Majesty the Queen of England, extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

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