TAWHARAU O NGA HAPU O WHAKATOHEA

WHAKATOHEA

RESOURCE MANAGEMENT PLAN

July 1993

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Mo ratou ma

TAWHARAU O NGA HAPU O WHAKATOHEA

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WHAKATOHEA RESOURCE MANAGEMENT PLAN

WHAKATOHEA

He puia taro nui
He ngata taniwha rau
E kore e ngaro

July 1993

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TAWHARAU O NGA HAPU O WHAKATOHEA

TABLE OF CONTENTS

INTRODUCTION 5
BACKGROUND 5
PLANNING PROCESS 6
WHAKATOHEA ROHE, HAPU AND MARAE 8
KAITIAKITANGA 9
TE TIRITI O WAITANGI - THE TREATY OF WAITANGI 12
PRINCIPLES OF TE TIRITI O WAITANGI - THE TREATY OF WAITANGI 12
ROLE OF CROWN AGENCIES 16
CONSULTATION 18
FUNDAMENTAL CONSULTATION PRINCIPLES 19
ANTICIPATED WHAKATOHEA CONSULTATION PROCESS 21
MATTERS OF RESOURCE MANAGEMENT SIGNIFICANCE TO WHAKATOHEA 22
SOCIAL, ECONOMIC AND CULTURAL WELLBEING 23
NGA WHENUA TIPUNA - ANCESTRAL LANDS 25
NGA WAI TIPUNA - ANCESTRAL WATER 27
NGA TAONGA TUKU IHO - HERITAGE 29
CULTURAL FACILITIES AND USES 31
FLORA 32
FAUNA 34
FISHERIES 35
MINERALS 37
ENERGY 38
APPENDIX 39
APPENDIX ONE: TE TIRITI O WAITANGI - THE TREATY OF WAITANGI 40
APPENDIX TWO: RESOURCE MANAGEMENT INFORMATION SHEETS 41
APPENDIX THREE: PAPA KAINGA HOUSING - MINISTERIAL STATEMENT OF INTENT 42
APPENDIX FOUR: REFERENCES TO MAORI TERMS IN THE RESOURCE MANAGEMENT ACT 43

INTRODUCTION

TE WAWATA O WHAKATOHEA

Whakatikahia nga Hapu a Whakatohea kia Whakakotahi te Iwi

BACKGROUND

Customary rights, responsibilities and intimate relationships of Whakatohea with its taonga have been developed over several centuries. These were confirmed and guaranteed by Te Tiriti o Waitangi signed at Opotiki on 27 May 1840. Despite successive colonial governments ignoring or actively undermining Crown Treaty obligations to Whakatohea, the Treaty agreement remains the basis of the relationship between Whakatohea and the Crown.

Despite recent changes in resource management legislation giving some recognition of customary rights and responsibilities of Whakatohea, these continue to be largely ignored and Whakatohea taonga continue to be mis-managed.

Whakatohea finds itself in the unfortunate position of continually responding to the initiatives of Crown Agencies and private organisations pertaining to Whakatohea taonga. While pressures on Whakatohea taonga continue to increase, so too do pressures for Whakatohea to focus on other issues such as tribal development, health, justice, and education.

The purpose of this plan is to provide a systematic framework to deal with significant resource management issues to Whakatohea Whanau and Hapu, reaffirming customary rights and responsibilities to manage and control its taonga according to Whakatohea needs and preferences, and as a basis to move from the reactive to the proactive mode.

This plan has been written to give a broad picture of the issues affecting Whakatohea taonga and to provide broad directions for resolution, maintaining the need for direct Hapu involvement in the implementation of this document. That is, this plan is not intended to replace the need for individuals and organisations to continue to directly and actively consult Whakatohea over *specific* resource management issues pertaining to the management of its taonga. The basis of that consultation, however, is clearly stated within this document.

Whakatohea customary rights and responsibilities towards its taonga, primarily through the exercise of Kaitiakitanga and Tino Rangatiratanga must be recognised and actively supported.

Whakatohea recognise the need to develop a comprehensive Management Plan covering all aspects of Whakatohea under it's Wawata. This resource management plan represents the first step towards achieving that Wawata.

Resource Management

As with traditional systems, resource management (use, development, and protection) continues to be about relationships, primarily between taonga and people. Successful resource management within Whakatohea rohe will be achieved by all parties focusing on getting relationships right between:

- people (e.g. Whakatohea and local authorities); and
- people and Whakatohea taonga (e.g. avoiding, remedying and mitigating adverse effects of people's activities on ancestral water of Whakatohea).

Whakatohea relationships with its taonga is based on whakapapa, or kinship with the natural world, and from long physical associations and experiences with taonga extending over several centuries.

Both traditional and western resource management systems can be simplified into three basic stages (Diagram 1).

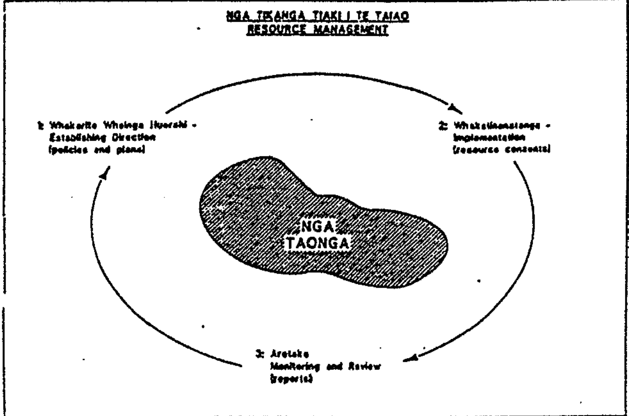


Diagram 1

Te Tiriti o Waitangi confirmed and guaranteed the relationships between Whakatohea and its taonga. Te Tiriti is itself a fundamental resource management framework, incorporating both traditional and western resource management systems.

Relationships of Whakatohea with its taonga have been systematically eroded through legislation and actions which have not recognised cultural and spiritual values nor the tribal authority of Whakatohea confirmed by the Treaty.

The Resource Management Act 1991 and related legislation provides some opportunities for restoring and enhancing such relationships in the interests of all parties - Whakatohea only hopes that the willingness exists.

PLANNING PROCESS

Plan Status

This plan acquires its authority solely from the mana of Whakatohea Hapu and has been prepared in accordance with Hapu aspirations.

It is to be accorded the status of authoritative tribal policy by all members of Whakatohea and any organisations and individuals who interact with Whakatohea.

To ensure that the integrity of this document is maintained, and closer realisation of Te Wawata o Whakatohea, this document shall bind all members of Whakatohea. Any changes to this document must be made through a Hui-a-Iwi.

Outcomes Sought

Whakatohea seeks three broad outcomes from the implementation of this plan:

(i) The guaranteed protection and enhancement of relationships and traditions of Whakatohea with ancestral lands, water, air, waahi tapu, and other taonga;
(ii) The political, social, economic, and cultural wellbeing of Whakatohea;
(iii) The establishment and enhancement of mutually beneficial relationships with Crown Agencies and others affecting Whakatohea interests;

in a way which is consistent with the Wawata of Whakatohea.

Plan Format

In order for Whakatohea to deal with the multitude of issues impacting on its taonga, many of which did not exist in traditional times, this document has been divided into a number of sections. The application of principles and policies stated throughout this document, however, must be in a way which treats the document as a whole.

Preparation and Approval of Plan

The following process was adopted in the preparation of this document:

6 Dec 1992	Pakowhai Hall. Iwi Executive Hui supported idea of preparing plan.
17 Jan 1993	Maromahue Marae, Hui of Kaumatua. Wawata decided and issues brainstormed.
7 Feb 1993	Te Rere Marae, Hui-a-Iwi. Te Roopu Kokiri comprising Hapu representatives appointed to prepare plan. Invitation to Trust Board.
19 Feb 1993	Project Team meeting to brainstorm issues and policies.
27 Feb 1993	Hui of BOP tribes, Whakatane District Council. Introduced to BOPRC consultation process to prepare Regional Policy Statement and consultants.
28 Mar 1993	Project Team, Kutarere School. First draft plan discussed.
3 April 1993	Hui of BOP tribes, Whakatane District Council. Statement presented to BOPRC stating concerns with council's consultation process.
31 May 1993	Draft plan forwarded to Project Team and Trust Board.
13 June 1993	Pakowhai Hall. Draft plan presented to Iwi Executive Hui.
27 June 1993	Trust Board. Workshop on draft plan.
18 July 1993	Omarumutu Marae. Plan approved by Hui-a-Iwi.

Implementation and Review of Plan

Hapu representatives will be responsible for coordinating the implementation, monitoring and review of this plan through Crown Agencies and other organisations. Hapu contacts will be forwarded to Crown Agencies on an annual basis.

Stage I

This document represents Stage I of preparing a Whakatohea Resource Management Plan stating resource management aspirations of Whakatohea in the form of policies and goals (*what* Whakatohea wants to achieve).

Stage II

An internal working document with objectives and methods detailing strategies for *how* (and when) goals will be achieved will be prepared as the second stage.

The ultimate interpretation of this document lies solely with Whakatohea.

Whakatohea reserves the right to review and amend the contents of this plan at any time. Amendments can only be made through a Whakatohea Hui-a-Iwi.

Consistent with Te Wawata o Whakatohea, the collective wellbeing of Whakatohea must have priority over individual wellbeing when deciding on amendments to this document.

WHAKATOHEA ROHE, HAPU AND MARAE

Ko Te Kopu O Te Ururoa Ko Te Rangi Ko Whakapaupakihi
Ko enei nga kokonga e toru o te
rohe potae o Whakatohea me korero
tatou ki a Tuhoe mo te taha ki te tonga
e pa ana ki a ratou

The following ancestral land rohe of Whakatohea according to evidence given by Te Hoeroa Horokai and Heremia Hoeroa at Opotiki on 14 July 1920 is as follows:

Commencing at Pakihi, at the mouth of the river along the sea coast to the mouth of the Waiotahe Stream to the mouth of the Ohiwa Harbour to Tehoro (a hill) and then turning inland southwards to Puhikoko (a hill) by straight line to Pukemoremore (a hill) then to Mapouriki (a hill) at one time a fighting pa. Then descending to Waimana Stream, Mapouriki being on the bank; following the Waimana Stream towards its source at Tautautahi (a hill) along the banks to the mouth of the Parau stream; then following Parau Stream to Tangata-e-roha (a hill) on to Kaharoa (an old settlement); from Kaharoa to TaHarakeke a ridge leading towards Maungapohatu to Maungatapere (a hill) descending into the Motu River to Kaitaura falls to Peketutu (a rock in the river that was an old crossing); leaving the river and up a ridge to Whakararonga (a hill); following the hill tops till it reaches Tipi o Houmea (a peak) descending towards Makomako (another hill) till it crosses Takaputahi Stream to Ngaupoko Tangata (a mountain) following the ridge to Kamakama (a mound resting place); along the ridge to Oroi (a trig station) then turning seawards to Te Rangi on the sea coast, (a stone visible on the sea coast at low tide); then along the sea coast to the mouth of the Opape Stream, to Awahou Stream to Tirohanga and back to Pakihi.

Subsequent Maori Land Court hearings have further defined the rohe of Whakatohea. Ancestral land also includes land covered by ancestral water and the air space above ancestral land.

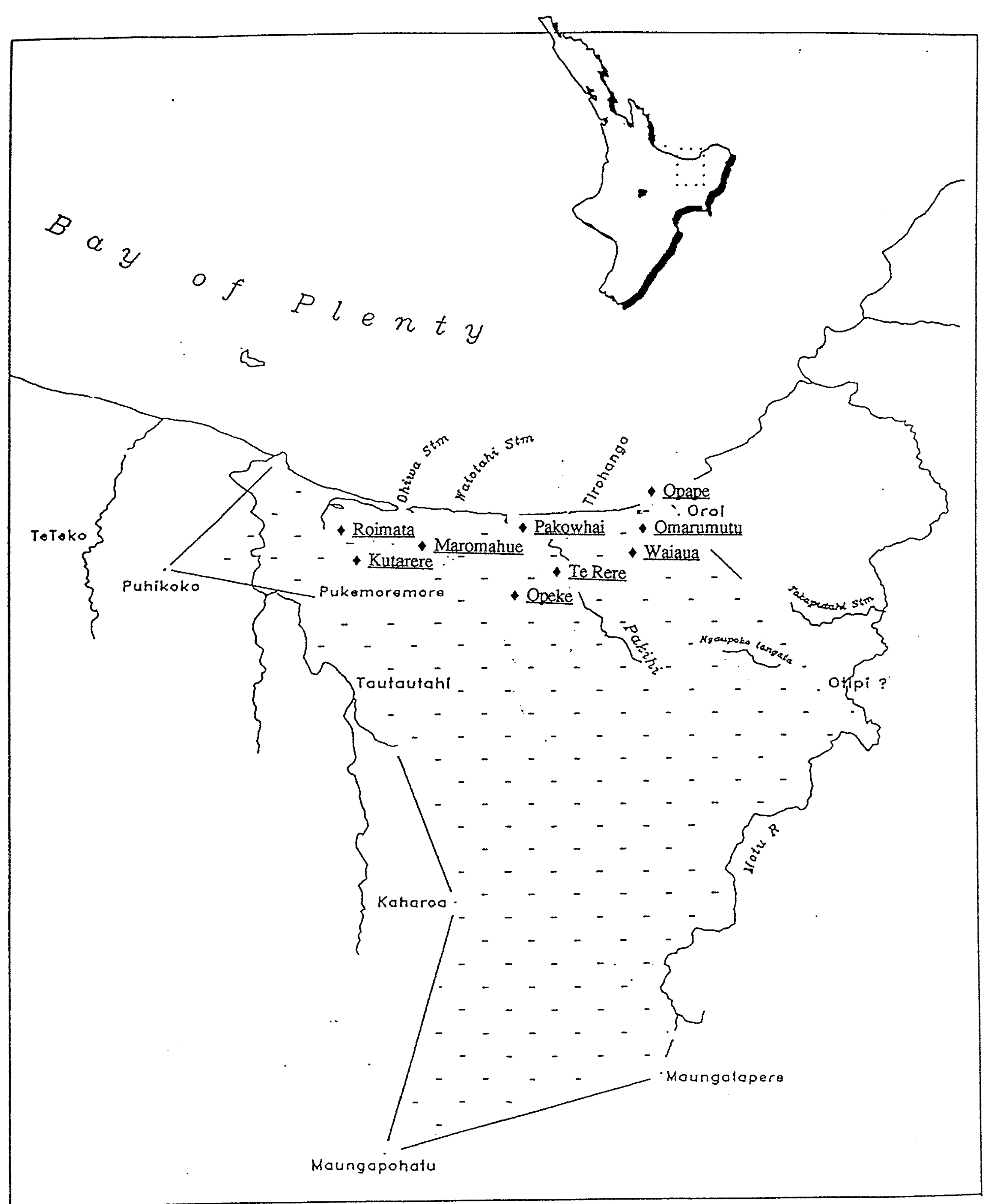
Ka hoki atu ki Opape
Ka tu nga tai o Te Rangi
Mata taniwha rau

Ancestral water:

All surface and ground water within the Whakatohea rohe including puna, waterfalls, wetlands, estuaries, and the whole or parts of the Ohiwa Harbour, the Waiotahe River, the Waioweka River, the Otara River, the Waiaua River, the Opape Stream, and the Motu River and Te Moananui-a-Toi.

The above rohe is subject to change in relation to claims.

NGA HAPU O WHAKATOHEA		FUNCTIONING MARAE
Ngai Tama		Opape
Ngati Rua		Omarumutu
Ngati Patu		Waiaua
Ngati Ngahere		Te Rere
Ngati Ira		Opeke
	{	Maromahue
Upokorehe	{	Roimata
	{	Kutarere
		Pakowhai


Bay of Plenty
Ohiwa Stm
Waiotahi Stm
Tirohanga
Opape
Oroi
Roimata
Pakowhai
Omarumutu
Maromahue
Waiaua
Kutarere
Te Rere
TeTeko
Puhikoko
Pukemoremore
Opeke
Takaputahi Stm
Pakihi
Ngaupoka tangata
Tautautahi
Otipi ?
Motu R
Kaharoa
Maungatapere
Maungapohatu

KAITIAKITANGA

The following is a general explanation of Kaitiakitanga to assist an understanding among external organisations responsible to Whakatohea.

Kaitiakitanga is rooted in traditional resource management systems. Traditional management systems are based on Whakatohea beliefs pertaining to the natural world and its origins.

Traditions concerning the creation recount the emergence of:

- te taha tinana (the physical reality);
- te taha hinengaro (the intellectual plane); and
- te taha wairua (the spiritual realm)

present in all things.

Traditions recount how all things in the natural world are interrelated and interconnected via whakapapa. Whakapapa also symbolises the passing of mana, from Io to Ranginui and Papatuanuku, and then to their children, the Atua.

The children of Papa and Rangi created, settled and maintained different domains, passing mana to their children, and breathing mauri or life-force, which emanated from Io, into them. Mauri generates, regenerates and upholds creation, binding physical and spiritual elements of all things together. When something dies, the mauri is no longer able to bind those elements together and thereby give life. Without mauri nothing can survive.

With the passing of mana are also responsibilities of Kaitiakitanga to one's creator. Whakatohea, as Tangata Whenua with mana whenua, belong to the land and have Kaitiaki responsibilities to it.

Tikanga or practices have been developed to maintain the mauri of the domains of the Atua. Tikanga are derived from beliefs pertaining to the creation, and recognises concepts such as tapu and rahui to manage and control the interrelations of people and the natural world.

Observing tikanga is part of the ethic and exercise of Kaitiakitanga. Accordingly, Kaitiakitanga seeks to unify taha tinana, taha hinengaro and taha wairua in a holistic way, recognising that physical damage to a resource also results in spiritual damage. Failure to recognise and provide for all three elements of taonga results in a loss of wholeness (Diagram 2).

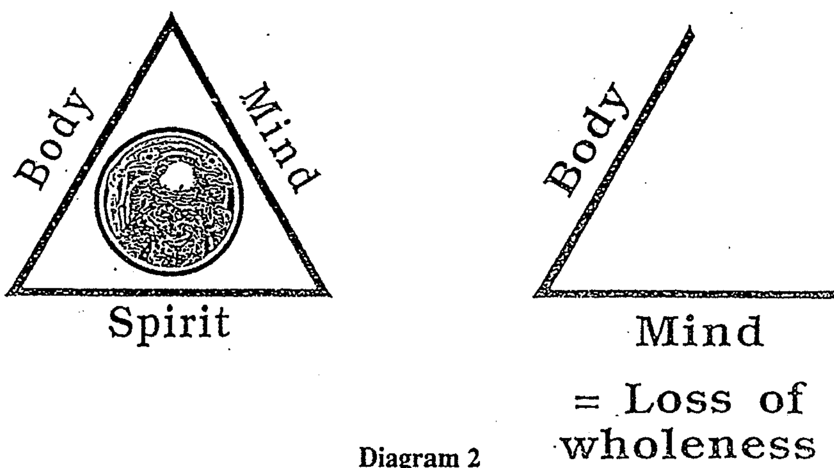


Diagram 2

Within the domains of the Atua are a variety of resources of particular importance or significance to Whakatohea which are regarded as taonga. Taonga refer to anything, tangible or intangible, that contribute to the tribe's intellectual, physical and spiritual wellbeing.

Tiaki includes notions of guardianship, care, and wise management.

Kaitiaki stands for a person and/or agent who performs the ancestral responsibilities of tiaki. Kaitiaki may be human or non-human. The primary responsibilities of Kaitiaki are to protect the mauri or lifeforce of all things in a way which ensures that the quality of tribal taonga passed on to future generations is as good as or better than currently.

Kaitiakitanga is the process or system of exercising Kaitiaki responsibilities.

Kaitiakitanga has a variety of applications including, but not limited to:

- the protection and maintenance of wahi tapu and other tribal areas of significance;
- the placing of rahui to allow replenishment of traditional kai moana areas;
- directing development in ways which are keeping with the environment;
- observing the tikanga associated with traditional activities;
- active opposition to developments with actual or potential adverse effects on taonga;
- monitoring resource indicators, where resources indicate the state of their mauri;
- lodging claims against Crown actions which have adversely affected the mauri of Whakatohea.

Kaitiakitanga is inextricably linked to Tino Rangatiratanga, since both are based upon mana. It is impossible to exercise Kaitiaki responsibilities without Tino Rangatiratanga as it requires controlling people's actions as they effect ancestral taonga. Where Kaitiaki are non-human, the obligation is on Tangata Whenua to respond to the indications which such ancestral Kaitiaki give regarding the state of the mauri.

Kaitiakitanga may only be practised by those Whanau or Hapu with mana or customary authority over the tribal taonga in question. Individuals or organisations may also be delegated the tasks of Kaitiakitanga with respect to a particular locality, place or resource. Kaitiaki are often found to be those who reside close to the resource, and who will have the most experience with Kaitiakitanga.

Exercising Kaitiakitanga today involves Kaitiaki using a combination of traditional and western approaches. The two main reasons for this are:

- the existence of foreign contaminants (e.g. pesticides, chemicals) against which traditional approaches provide little protection for the mauri;
- Te Tiriti incorporates both traditional and western systems for managing the interrelationships of people and the environment.

Whakatohea experiences the following problems relating to Kaitiakitanga.

SIGNIFICANT ISSUES

* Lack of recognition of Whakatohea values, relationships and experiences developed with taonga over many centuries and the positive contribution Whakatohea has to make in the sustainable management of natural and physical resources.

* Lack of recognition and resources for Kaitiaki to effectively exercise their traditional responsibilities and obligations towards taonga.

* The personal costs and lack of resources for Kaitiaki and Honorary Fisheries Officers assuming Crown Treaty responsibilities for protecting fisheries and associated habitats.

* Lack of monitoring and enforcement of resource consent conditions by the Crown Agencies responsible.

* Direct and indirect adverse effects of activities on the mauri of all Whakatohea taonga, and therefore on relationships of Whakatohea with its taonga.

* Lack of effective involvement in the preparation, approval, implementation, monitoring and review of policies, plans and resource consent processes affecting Whakatohea taonga.

* Difficulties for Kaitiaki restricting use and access of people to particular significant sites, areas and taonga through either traditional (e.g. rahui) or western (e.g. bylaws) mechanisms.

KAITIAKITANGA POLICY

Tiaki te mauri o nga taonga katoa o Whakatohea.

KAITIAKITANGA GOALS

1. To ensure the ongoing practical recognition of and provision for Kaitiakitanga in all relevant policies, plans, programmes and processes of Crown Agencies affecting Whakatohea taonga.

2. To establish and enhance a tribal resource management structure and resource centre, programmes and procedures necessary for practically exercising Kaitiakitanga in all levels and stages of resource management on an ongoing basis.

3. To ensure that Crown Agencies, with Whakatohea, avoid, remedy and mitigate actual and potential adverse effects of activities on relationships of Whakatohea with its taonga.

4. To ensure that Crown Agencies, with Whakatohea, fulfil their responsibilities regarding the sustainable management of natural and physical resources in a way that actively recognises and supports the Kaitiaki rights (including decision-making) and responsibilities of Whakatohea guaranteed by the Treaty.

5. To work with Crown Agencies and other tribal groups to establish programmes for facilitating the staged transfer of functions, powers and duties back to Whakatohea.

6. To enhance ongoing practical expression of Kaitiakitanga through the establishment of contracts restoring damaged ecosystems, and through ongoing education, training, research, monitoring and enforcement programmes between Whakatohea and Crown Agencies.

TE TIRITI O WAITANGI - THE TREATY OF WAITANGI

Te wero a te taiaha ka kitea
Te wero a te ngakau e kore e kitea

The wellbeing of Whakatohea Hapu is central to the wellbeing of Whakatohea as an Iwi, and to the wellbeing of Whakatohea taonga.

Hapu are the traditional political, social and economic unit of Whakatohea society. Exclusive rights and control over the use, development and protection of resources such as food and materials, in particular, were generally exercised on a day to day basis by the Hapu.

The important role of Hapu in resource management, holding mana whenua and mana moana over particular resources and areas within the rohe of Whakatohea, is recognised by Te Tiriti o Waitangi, signed at Opotiki on 27 May 1840 by Hapu Rangatira, confirming their sovereign rights as Tangata Whenua.

The customary rights of Whakatohea over its taonga do not derive from the Treaty. The Treaty simply confirms and guarantees rights that already existed, and provided a framework for two parties, the Crown and Whakatohea, to develop mutually beneficial relationships.

The continuing political, social, economic, cultural and spiritual impacts of Crown actions, in the form of raupatu, legislation and direct actions, has alienated Hapu from their ancestral taonga and deprived Hapu of their Tino Rangatiratanga and Kaitiakitanga rights and responsibilities recognised and guaranteed by the Treaty. Whakatohea has never relinquished these rights and responsibilities.

A successful settlement of the pending Whakatohea raupatu claim against the Crown (Wai-87) is an essential step to restoring the individual wellbeing of Whakatohea Hapu for the collective wellbeing of the Iwi and Whakatohea taonga.

PRINCIPLES OF TE TIRITI O WAITANGI - THE TREATY OF WAITANGI

The customary and constitutional rights of Whakatohea as Tangata Whenua embodied within the Treaty do not refer to "principles." Treaty Principles undermine the integrity of the Treaty itself - principles are a redefinition of the Treaty promulgated by one Treaty partner.

Because legislation refers to "principles of the Treaty," however, Whakatohea recognises the wisdom in stating Treaty principles from those developed by the Court of Appeal and the Waitangi Tribunal.[1]

Despite the reference to Treaty Principles here, Whakatohea will always strive to have the spirit and integrity of the "Articles" of Te Tiriti o Waitangi, and the authority and intentions of Whakatohea tipuna in signing Te Tiriti honoured.

I The Essential Bargain

The cession to the Crown of Kawanatanga in Article I is in exchange for the obligation to actively protect Tino Rangatiratanga guaranteed in Article II.

The powers and functions delegated by the Crown to local authorities are forms of Kawanatanga. A duty exists to govern for the needs of the general public in light of the obligation to actively protect Tangata Whenua interests. The guarantee of Tino Rangatiratanga necessarily qualifies or limits the

[1]Crengle, D. (January 1993) *Taking into Account the Principles of the Treaty of Waitangi.* Ministry for the Environment - Manatu Mo Te Taiao; Waitangi Tribunal (1993) *Ngawha Geothermal Resource Report.*

Kawanatanga but, by the same token, the Treaty does not authorise unreasonable restrictions on the Crown's right to govern.

II Rangatiratanga

The Crown has an obligation to legally recognise tribal Rangatiratanga. Rangatiratanga denotes the mana of Iwi and Hapu not only to possess what they own, but to manage and control it in accordance with tribal customs and cultural preferences. The Rangatiratanga principle includes the right of tribal self-regulation of their (Tangata Whenua) natural and physical resources in accordance with customary preferences.

The Treaty guarantees tribal control of Maori matters, including the right to regulate access of tribal members and others to tribal taonga.

Matters of Rangatiratanga over particular resources can only be determined by those who hold mana over that resource, such as particular Hapu, or persons or organisations explicitly appointed as their representative(s). Only Whakatohea can define Whakatohea interests and values, and determine what is significant from a Whakatohea point of view.

III The Partnership

Inherent in the Treaty is the intention that both the Crown and Tangata Whenua will benefit from the relationship. This principle requires the establishment and enhancement of ongoing mutually beneficial relationships.

1. The Treaty requires a partnership and the duty to act reasonably and with utmost good faith.

2. Inherent in the Treaty the needs of both the Tangata Whenua and the general public must be provided for, and where necessary, reconciled.

3. The guarantee of Tino Rangatiratanga requires a high priority for Tangata Whenua interests when works impact on ancestral lands, water, fisheries or other taonga of particular significance. In other cases, however, it is a careful balancing of interests that is required. Giving effect to the Treaty is to benefit both the interests of the general public and the distinct and specific interests of Tangata Whenua with respect to their taonga.

4. Tangata Whenua are to retain their distinct and special collective rights over their taonga, separately and in addition to those rights of citizenship granted under Article III.

5. The Crown right of pre-emption in Article II imposes reciprocal duties to ensure that Tangata Whenua retain sufficient resources for their own purposes and needs.

IV Active Protection

The active protection of the continuing authority of Tangata Whenua to exercise Tino Rangatiratanga over their taonga to the fullest extent practicable, including the ability to use, develop, protect and exercise self-regulated decision-making authority over those taonga. The duty is not merely passive, but denotes a requirement to act including:

1. to protect Tangata Whenua from legislative or administrative constraints from using their resources according to their cultural preferences;

2. to protect Tangata Whenua from the adverse effects of the activities of others on their ability to use and enjoy their taonga, whether in physical and spiritual terms;

3. supporting Tangata Whenua in the development of strategies for managing their taonga, and active involvement in matters of government affecting their interests. Active protection implies adequate resourcing for Tangata Whenua participation in resource management.

V Active Consultation

Before any decisions are made by the Crown, or those exercising statutory authority on matters which may impinge upon the rangatiratanga of a tribe over their taonga, it is essential that full discussion take place with Tangata Whenua. The Crown obligation actively to protect Tangata Whenua Treaty rights cannot be fulfilled in the absence of a full appreciation of the nature of the taonga including its spiritual and cultural dimensions. This can only be gained from those having rangatiratanga over the taonga.

The responsibility to actively consult is not simply informing Tangata Whenua of impending actions. Obligations of consultation include:

1. to provide information and time to allow Tangata Whenua to make an informed assessment on proposals and to determine their response to it in a culturally appropriate manner;

2. the consulting party keeping an open mind, to seek consensus, and to be willing to change plans or proposals, if this is the result of consultation;

3. a genuine invitation to give advice and a genuine consideration of that advice.

(See also Consultation Section below)

VI Decision Making

Tino Rangatiratanga encompasses both the making of decisions and their implementation. Provision should be made for the full participation of Tangata Whenua in decision making and other processes involving matters which Tangata Whenua identify as being significant to them.

VII Consistent Delegation

The Crown in devolving powers may not avoid Treaty obligations by conferring an inconsistent jurisdiction on others. The Crown has been held accountable for actions of local authorities which have given rise to Treaty grievances. This principle requires local authorities to incorporate Tangata Whenua interests in ways which will help avoid future Treaty grievances.

VIII The Development Right

Inherent in the Treaty is the right and responsibility of Tangata Whenua to provide for their collective social, economic and cultural wellbeing. This principle includes the right of Tangata Whenua to abide by their own customs and to take advantage of new techniques, knowledge and equipment.

IX Extrinsic Aids

Maori aspirations often appear to fall outside the primary statutes governing local authorities. In such cases the Court[2] has held that it is proper to resort to "extrinsic material" when making deliberations. Extrinsic material would include the decisions of the Waitangi Tribunal, the courts, and international agreements signed or ratified by New Zealand. Past or present statements of Tangata Whenua forwarded to the particular decision-making body covering the particular issues in question would classify as important aids to assist deliberations.

X Evolving Nature

All parties must allow for the fact that the Treaty is "always speaking," and that Treaty principles and their application will continue to evolve. Application of Treaty principles to resource management continues to be a matter for ongoing consultation and negotiation with Tangata Whenua. In

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

particular, matters of Tino Rangatiratanga over particular taonga can only be determined by Tangata Whenua who hold mana whenua over that resource.

TREATY PRINCIPLES AND THEIR APPLICATION

In the implementation of the RM Act and other legislation incorporating Treaty principles, Crown Agencies responsible must give effect to the intentions of Parliament which include a recognition of Treaty breaches and an expectation that the situation would be changed for the better.

Crown Agencies when exercising functions and powers under legislation have a responsibility to be informed as to the relevant facts and law to be able to say they have properly taken into account the principles of the Treaty.

Whakatohea holds that "take into account" (section 8, RM Act) requires decision makers to consider Treaty principles in every case and for these to be weighed against other factors in making a decision. Crown Agencies must be able to demonstrate how they have achieved the balance between matters in coming to their decision. Principles require that, where possible, the balance is to favour Whakatohea, especially where taonga are owned by, or are of particular significance to Whakatohea.

TREATY POLICY

That practical effect is given to the Treaty of Waitangi (Te Tiriti o Waitangi) in the management and control of Whakatohea taonga.

TREATY GOALS

1. To ensure that Crown Agencies recognise their responsibility not to hinder the settlement of claims, in particular by divesting themselves of public assets, and to actively support and give practical effect to Waitangi Tribunal recommendations, court decisions and claim settlements reached between Whakatohea and the Crown.

2. To ensure that Te Tino Rangatiratanga o Whakatohea over its taonga is recognised, actively protected and enhanced.

3. To have the above Treaty goals, principles and statements incorporated into all policies, plans and processes of Crown Agencies which affect Whakatohea interests.

4. To ensure that the above Treaty policy, goals, principles and statements form the basis for establishing and maintaining mutually beneficial relationships with Crown Agencies and others who affect Whakatohea interests. That all parties, however, allow for the fact that Treaty principles and their implications are still being defined.

5. To establish a Charter of Agreement with Crown Agencies stating respective responsibilities, and processes for guiding the ongoing practical application of responsibilities.

6. To ensure that the Crown and Crown Agencies recognise responsibilities to keep themselves, resource consent applicants, and the public informed of the Treaty and statutory obligations to Whakatohea, and the benefits to all parties of fulfilling these.

7. That any income from financial contributions and resource rentals recognises and provides for Treaty rights of Whakatohea.

ROLE OF CROWN AGENCIES

Ki te watea o te hinengaro
Me te pai o te rere o te wairua
Ka taea nga mea katoa

When the mind is free
and the spirit is flowing
All things are possible

The Treaty of Waitangi, International agreements and law, case-law, and the combined provisions of legislation, including Part II of the Resource Management Act 1991 (RM Act) are only some of the instruments requiring the Crown and Crown Agencies to afford a high level of recognition and protection for Whakatohea values and aspirations.

The cession to the Crown of Kawanatanga in Article I is in exchange for the obligation to actively protect Te Tino Rangatiratanga o Whakatohea in Article II. The powers and functions delegated by the Crown to central, regional and local government are forms of Kawanatanga.

The RM Act requires regional and district councils, when preparing and changing policy statements and plans to have regard to relevant planning documents recognised by an Iwi authority affected by such documents (sections 61, 66, 74).

Whakatohea holds that in exercising any powers and functions under the RM Act all persons shall have regard to relevant planning documents recognised by Whakatohea, particularly where Whakatohea policies are consistent with achieving the purpose and principles of the RM Act (Part II).

For Crown Agencies to have practical regard to Whakatohea aspirations, and to meet statutory responsibilities, will require mutually beneficial long-term relationships to be developed. Relationships, for example, which involve the sharing of resources (information, expertise, financial, materials), responsibilities and authority, and which provide ongoing training and/or education programmes for members of Whakatohea, Crown Agencies and the general public.

Crown Agencies means Central or Local Government organisations including Ministers of the Crown, the Ministry for the Environment, Department of Conservation, Te Puni Kokiri, Ministry for Agriculture and Fisheries, Bay of Plenty Regional Council, Whakatane District Council, Opotiki District Council, and Gisborne District Council;

Consent Agencies includes the Minister of Conservation, Bay of Plenty Regional Council, Whakatane District Council, Opotiki District Council, and Gisborne District Council and any other agencies involved in the granting of resource consents. The RM Act requires 'resource consents' from consent agencies before certain activities can be carried out. Activities include using land, subdividing land, using the area below the mean high water springs, using lake and river beds, using water, and discharging pollutants into the environment. Resource consent applicants have a number of responsibilities to Whakatohea, primarily to ensure that applications have assessed the effects of the proposal on Whakatohea and its taonga.

CROWN AGENCY POLICES

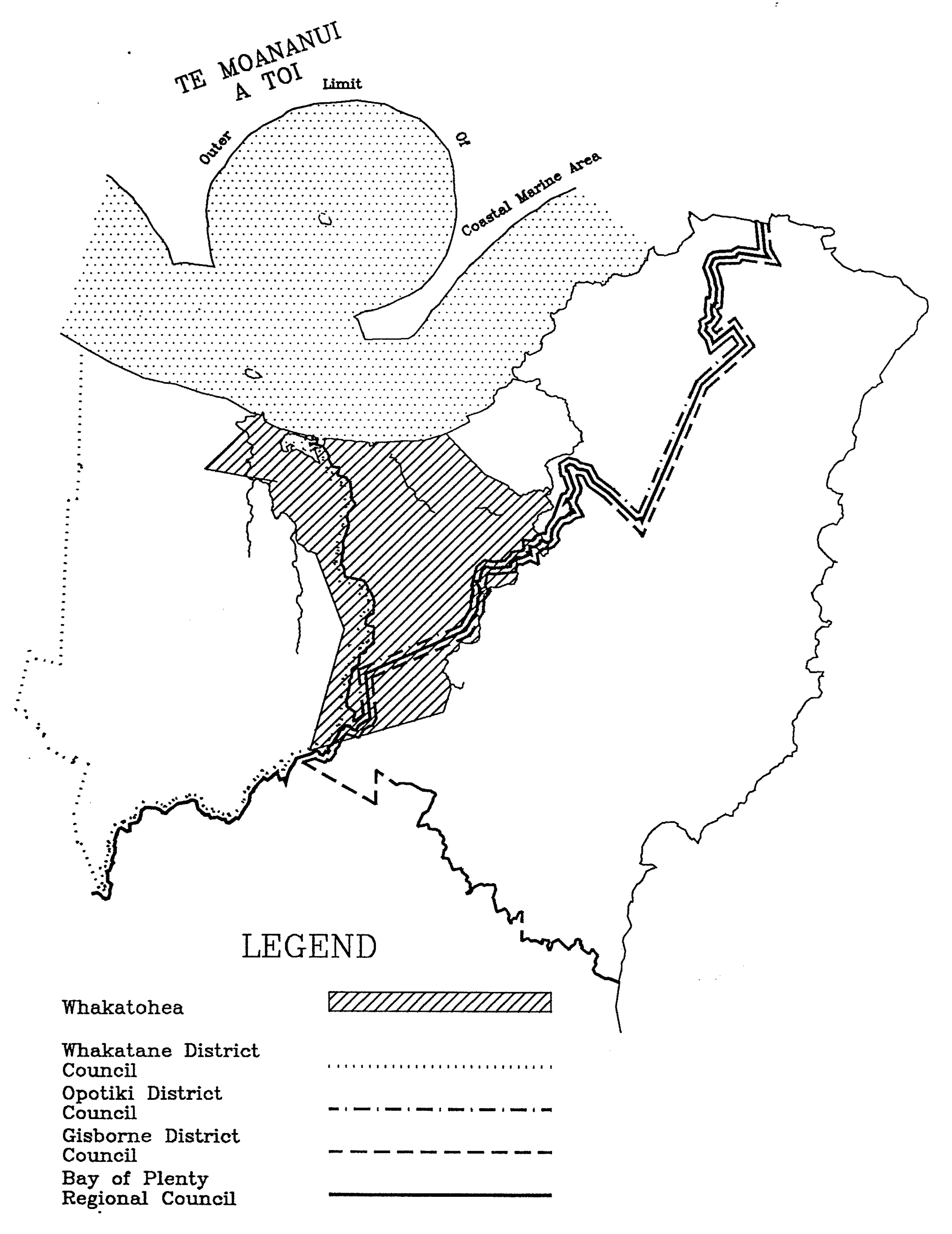
1. That all Crown Agencies, with Whakatohea, recognise and provide for Whakatohea aspirations contained in this plan during the preparation, approval, implementation, monitoring and review of plans, policies and resource consents which effect Whakatohea and its taonga.

2. That all monitoring reports produced by Crown Agencies pertaining to resources and other taonga within Whakatohea rohe refer to Whakatohea policies and goals contained within this document to determine whether statutory responsibilities to Whakatohea have been met.

3. That Crown Agencies recognise that this document represents a framework for establishing the necessary ongoing relationship with Whakatohea. It does not provide the final definition of that relationship but gives directions for its development and practical application.

4. That Crown Agencies recognise that they need to provide for the direct and active ongoing involvement of Whakatohea in all processes which have effects on Whakatohea and relationships with its taonga.

5. That Crown Agencies recognise their responsibilities to work with Whakatohea in the implementation of this document.


WHAKATOHEA AND LOCAL AUTHORITY ROHE
TE MOANANUI A TOI
Outer Limit of Coastal Marine Area
LEGEND
Whakatohea
Whakatane District Council
Opotiki District Council
Gisborne District Council
Bay of Plenty Regional Council

CONSULTATION

Numerous Crown Agencies and private organisations and individuals have statutory and moral responsibilities to consult directly with Whakatohea over a wide range of matters. Under the Resource Management Act, for example, local authorities must consult Whakatohea during the preparation, change and review of policy statements and plans.

According to the 'scale and significance' of activities, resource consent applicants are also required to consult Whakatohea in the assessment of Socio-economic, historical, cultural and spiritual effects of actual or proposed activities (Fourth Schedule, RM Act).

The degree to which Whakatohea needs to be consulted will depend on the significance of the effects and issues in question. Only Whakatohea can determine what it believes is significant.

Whakatohea often experiences the following problems during consultation with external organisations:

* lack of awareness and understanding amongst organisations of their relevant statutory responsibilities, case law, international agreements, Cabinet decisions, or central government guidelines elaborating on responsibilities to and the status of Tangata Whenua;
* failure of organisations to meet their moral and statutory responsibilities to Whakatohea whether in the preparation of policies or in the processing of resource consents;
* different levels of understanding amongst parties as to what is meant by consultation;
* that numerous organisations continually expect Whakatohea to assist them meet their statutory responsibilities without providing Whakatohea with the necessary resources, timeframe or guarantee that Whakatohea will benefit from the consultation process;
* organisations leaving consultation with Whakatohea 'to the last minute;' imposing processes upon Whakatohea as opposed to consulting through agreed processes; failing to consult at all;
* lack of coordination amongst different Crown Agencies consulting Whakatohea over the same issues;
* inadequate or no feedback from consulting parties on how written or oral concerns communicated by Whakatohea during consultation have been addressed;
* failure to assess the past, present and ongoing effects of activities on Whakatohea.

The importance of Whakatohea and Crown Agencies working together to establish ongoing processes for effective ongoing consultation and communication is obvious.

Effective and meaningful consultation benefits all parties. It is clearly cost-effective and efficient for parties to resolve any differences at the start of a process, and through direct and meaningful consultation as opposed to litigation through tribunals or courts.

Clearly, there is a need for agreement amongst parties on some fundamental consultation principles to begin to give certainty to resource management processes and to allow consultation to be measured.

Consulting parties also need to refer to case law and central government guidelines stating essential elements of consultation.[3]

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[3]These include: (i) *Air New Zealand Ltd v Wellington International Airport Ltd*, High Court Wellington Registry, CP No. 403/91; (ii) Office of the Parliamentary Commissioner for the Environment - Te Kaitiaki Taiao a Te Whare Paremata (June 1992) *Proposed Guidelines for Local Authority Consultation with Tangata Whenua*, Wellington, p19; (iii) Ministry for the Environment - Manatu mo Te Taiao (September 1991) *"Consultation with Tangata Whenua,"* Wellington.

FUNDAMENTAL CONSULTATION PRINCIPLES

i. Sufficient information and advice when requested - to all parties to allow intelligent and informed decisions to be made. This includes consulting parties supplying sufficient information regarding their statutory responsibilities to Whakatohea. Making informed decisions also requires information to be presented in a manner that can be easily understood by those being consulted.

ii. Sufficient time - for the effective participation of Whakatohea and genuine consideration of the advice or concerns given. The need for Whakatohea to hold hui to facilitate consultation, and to develop an understanding and consensus must be recognised and provided for.

iii. Genuine consideration - of advice or concerns communicated by Whakatohea, including an open mind and a willingness to change. If the consulting party disagrees and decides not to act upon advice, clear reasons in writing must be given to Whakatohea within agreed timeframes.

iv. Understanding and respect, by all parties, of each others values.

v. Correct information use - to avoid errors, any information provided by Whakatohea will not be amended from the original, or finalised in reports without the explicit approval of Whakatohea representatives consulted.

   Minutes of all meetings shall be accepted by all parties as accurate before being placed on record. Responsibility for recording minutes and ensuring their accuracy falls on the consulting party.

   Confidential information must be respected and protected, including the identification of waahi tapu.

vi. Direct consultation - where matters primarily effect a particular Hapu or Whanau of Whakatohea, their direct consultation is essential, particularly Ahi Ka. Initial contact must be made with the Marae Chairperson.

   Consultation on resource management matters affecting Whakatohea as an Iwi shall be through Whakatohea representatives delegated authority for resource management matters.

   Any formal structures or committees established between Whakatohea and Crown Agencies can only make decisions affecting particular taonga of Hapu where the explicit authority from that Hapu has been delegated to Whakatohea representative(s) to make such decisions. Formal lines of accountability from representative(s) to Hapu must be established for any structures. Hapu always reserve the right to revoke that delegation of authority at any time.

vii. Sufficient resources - recognising that the effective participation of Whakatohea in consultation processes, assisting organisations meet their statutory responsibilities, is a cost to Whakatohea requiring agreed forms of recompense from the consulting party. Recompense by way of resources can include information, expertise, materials and financial.

viii. Meaningful and equal decision-making provisions for Whakatohea according to the significance, to Whakatohea, of the issues being considered.

ix. Active consultation - an organisation cannot rely on Whakatohea to bring to its attention matters which meet that organisations responsibilities, particularly where Whakatohea lacks resources to participate effectively in statutory processes.

Expecting Whakatohea to respond to public notices or letters and documents sent in the mail does not meet consultation responsibilities to Whakatohea.

x Tino Rangatiratanga - Whakatohea will always reserve the right to formally oppose proposals where it does not believe the above consultation principles or Treaty Principles have been adhered to.

Crown Agencies shall recognise that Tino Rangatiratanga Article II Treaty rights precede the Article III rights of Whakatohea. Crown Agencies are expected to consult with Whakatohea before citizen rights consultation begins.

CONSULTATION POLICY

That all organisations consult Whakatohea on the basis of mutual rights and responsibilities confirmed by Te Tiriti o Waitangi.

CONSULTATION GOALS

1. To enter into consultation with external organisations following agreement, appropriate to the situation, on the above fundamental consultation principles.

2. That, in additional to Consultation Goal 1, all local authorities adopt the Parliamentary Commissioner for the Environment's consultation guidelines with Tangata Whenua (June 1992) as a transitional framework for establishing processes for ongoing mutually beneficial relationships with Whakatohea.

3. To establish and enhance Tribal resource management structures and systems necessary to ensure successful ongoing involvement of Whakatohea Hapu in the use, development and protection of their taonga.

4. To develop a comprehensive list of relevant international agreements, resource management legislation and statutory responsibilities of Crown Agencies and others to Whakatohea (also see Appendix 2).

5. That Crown Agencies allocate sufficient resources in their Annual Plans to meet responsibilities to Whakatohea.

6. To achieve understanding amongst Whanau and Hapu of Crown Agency responsibilities to Whakatohea, and ways of influencing resource management processes.

7. To ensure that Crown Agencies establish the procedures necessary for the effective involvement of Whakatohea in resource consents. Procedures need to:
   - 7.1 ensure Whakatohea is consulted by resource consent applicants before applications can be accepted as complete;
   - 7.2 ensure that resource consent applicants are made aware of their responsibilities to Whakatohea at the start of the process;
   - 7.3 ensure the ability for marae hearings when requested by Whakatohea and the use of Maori language in hearings;
   - 7.4 be culturally appropriate.

8. To ensure that Crown Agencies, with Whakatohea, prepare lists of Hearing Commissioners with recognised expertise in tikanga Maori. These Commissioners will be appointed at hearings under the RM Act where tikanga Maori and/or the Treaty are significant issues to Whakatohea being considered.

9. To have copies of all minutes and agendas of all Council and Council Committee meetings sent to relevant Whakatohea tribal structures.

ANTICIPATED WHAKATOHEA CONSULTATION PROCESS

(a). Consulting party contacts Whakatohea representatives, clearly stating the purpose of consultation and outcomes sought from consultation.

(b). Meeting to agree on which consultation principles are appropriate to the situation, and the necessary consultation process including resources.

(c). Implement consultation process.

nb: Throughout process, minutes of meetings to be taken by the consulting party and forwarded to Whakatohea representatives to check for accuracy.

TE WAWATA O WHAKATOHEA

"Whakatikahia nga Hapu a Whakatohea kia whakakotahi te Iwi"

Te Wawata o Whakatohea recognises that the wellbeing of every Whakatohea Hapu is central to the unity and wellbeing of Whakatohea as an Iwi. The wellbeing of Whakatohea Hapu is dependent on the wellbeing of Whakatohea taonga (and vice versa). Wellbeing encompasses taha tinana, taha hinengaro and taha wairua - physical, intellectual and spiritual dimensions at all levels.

The Wawata of Whakatohea is consistent with the holistic world view. All things in the natural world are interrelated and interconnected via whakapapa or genealogy. The health of water, for example, is a reflection of the health of the land, and this in turn is a reflection of the health of the Tangata Whenua, Whakatohea.

What affects one part of Whakatohea affects the rest of Whakatohea.

MATTERS OF RESOURCE MANAGEMENT SIGNIFICANCE TO WHAKATOHEA

Key resource management issues for Whakatohea include:

* Social, economic and cultural wellbeing
* Nga Whenua Tipuna - Ancestral lands
* Nga Wai Tipuna - Ancestral water
* Nga Taonga tuku iho - Heritage
* Cultural Facilities and Uses
* Flora
* Fauna
* Fisheries
* Minerals and other taonga
* Energy

SOCIAL, ECONOMIC AND CULTURAL WELLBEING

Individual Whakatohea Whanau and Hapu contribute to the collective wellbeing of Whakatohea as an Iwi. The ability to manage resources according to Whakatohea customs and preferences is essential to the social, economic and cultural wellbeing of Whakatohea.

Due to the recent history of Whakatohea, in particular the impacts of Crown breaches of the Treaty since the 1860s, Whakatohea has special social, economic, and cultural needs compared with the rest of the community. Accordingly, the rate at which Whakatohea moves towards the goal of sustainable management of its taonga may be different form the rest of community because of the above special needs.

SIGNIFICANT ISSUES

* Western society and systems inherently focused on individual wellbeing as opposed to collective wellbeing. The ongoing individualisation of rights to land, water, fisheries, intellectual property and other ancestral taonga of Whakatohea, and the resulting fragmentation and inefficient use of taonga.

* The continuous eroding of customary rights and responsibilities to use, develop and protect taonga according to Whakatohea customs, preferences and social, cultural and economic needs.

* The cumulative adverse effects of raupatu, government laws, and other breaches of the Treaty on the social, economic and cultural wellbeing of Whakatohea and Whakatohea taonga. Accordingly, all proposals which affect Whakatohea taonga, no matter how seemingly minor, are of significance to Whakatohea.

* Proportionally higher unemployment, greater dependence on welfare systems, and generally lower socio-economic circumstances of Whakatohea compared with others.

* The cumulative adverse effects of inappropriate and poorly located developments (which attract further inappropriate developments) on relationships with taonga (e.g. Ohiwa Harbour) and, therefore, further adding to the ongoing adverse effects of activities on the spiritual and cultural wellbeing of Whakatohea.

* The Crown setting and receiving levies, resource rentals and coastal tendering for resources owned by Whakatohea.

WHAKAORA POLICY

The active recognition and protection of Te Tino Rangatiratanga for the collective wellbeing of present and future generations of Whakatohea.

WHAKAORA GOALS

1. To ensure that Crown Agencies and others actively support any Whakatohea initiatives for protecting, restoring and enhancing the collective social, economic and cultural wellbeing of Whakatohea in the management of its taonga.

2. To have the cumulative effects of activities on Whakatohea and Whakatohea taonga fully recognised and provided for in all resource management decision-making, in particular resource consent and policy making processes.

3. To restore and sustain the economic base of Whakatohea for the collective political, social and cultural wellbeing of Whakatohea.

4. To ensure that priority is given to collective wellbeing and responsibility as opposed to individual wellbeing in the management of all Whakatohea taonga. This includes returning appropriate taonga to collective Whakatohea ownership and control, and putting systems in place to prevent further individualisation of ancestral taonga.

5. To ensure that Crown Agencies recognise and provide for the fact that Kaitiakitanga and Tino Rangatiratanga have a positive contribution to make in the sustainable management of ancestral taonga of Whakatohea.

6. To establish, for the purpose of providing for collective Whakatohea wellbeing, a Land Bank to buy back ancestral taonga from individuals wishing to sell or gift their shares.

7. To ensure that Crown Agencies recognise that the rate at which Whakatohea achieves the sustainable management of its taonga may be different from the rest of the community due to prejudice Crown actions in breach of the principles of the Treaty.

NGA WHENUA TIPUNA - ANCESTRAL LANDS

Whatungarongaro te tangata
Toitu te whenua

Although the pattern of legal ownership of Whakatohea ancestral lands has changed through confiscation, selling, or other means of acquisition, traditional attitudes to and mana over ancestral lands will always remain. Mana over ancestral taonga does not derive from the Treaty or legislation (see Kaitiakitanga).

The view of Whakatohea that ancestral land means all land within its tribal rohe, irrespective of legal title, is supported by the High Court defining ancestral land as "land which has been owned by ancestors" (*Royal Forest and Bird Protection Society v WA Habgood*, M655/86).

Under the RM Act Crown Agencies shall, as a matter of national importance, "recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga" (S6(e)). Despite similar provisions under the previous Town and Country Planning Act 1977, Whakatohea has found frustration with Crown Agencies failing to recognise and provide for ancestral relationships with taonga, particularly in the granting of resource consents. Obvious examples include the approval of inappropriate developments near the Waiotahe estuary and around the Ohiwa Harbour. Moreover, the cumulative effects of numerous developments are not being assessed by organisations. This plan is a step to addressing such failings of Crown Agencies.

Before Crown Agencies can expect to "recognise and provide" for the relationships of Whakatohea with its taonga, serious attempts must be by Crown Agencies to understand such relationships. Only Tangata Whenua with mana whenua and mana moana can determine what type of relationship should be provided for, reinforcing the need for Crown Agencies to provide for the direct and active involvement of Whakatohea in managing its taonga.

SIGNIFICANT ISSUES

* The cumulative and ongoing adverse effects on Whakatohea Whanau and Hapu of physical dislocation and alienation from ancestral lands, kainga, farms, cultivations and other taonga.

* The ongoing adverse effects of individualisation of title on the collective wellbeing of Whakatohea and Whakatohea taonga (see Whakaora Goal 4).

* Fragmentation, under-utilisation, and mis-management of Maori Land.

* Need to ensure that contributions for land or development levies are not required for Maori Land partitions which stay within the Iwi, Hapu or Whanau (Te Ture Whenua Maori 1993).

* Significant increases in the rating of Maori Land without any clear improvements in Council services (see Cultural Facilities Goal 1).

* The cumulative and ongoing adverse effects of roading, subdivisions and other inappropriate developments occurring on or near resources of cultural and spiritual significance including water, waahi tapu, kaimoana, pa, and marae (e.g. Ohiwa Harbour Catchment) (see Whakaora Goal 2, Nga Wai Tipuna Goal 2).

* Increasing developments on or near areas of significance placing inequitable pressures on Whakatohea not to develop its own resources on or near areas of similar significance (e.g. Ohiwa Harbour).

* The adverse effects of inland and coastal erosion and sedimentation on ancestral lands, water and fisheries.

* The adverse effects of contaminated timber treatment sites on human health and Whakatohea taonga.

* The adverse effects of rubbish dumps and septic tank disposal on waahi tapu, land areas and nearby water. The importance of promoting principles of waste reduction, reuse, recycling and strict residual management (e.g. composting facilities; treatment of effluent leachate).

NGA WHENUA TIPUNA POLICY

The active recognition and protection of Te Tino Rangatiratanga o nga whenua tipuna o Whakatohea.

NGA WHENUA TIPUNA GOALS

1. To ensure protection of and access to all ancestral sites and areas of significance, including the right to control the use and access of others.

2. To actively protect and enhance use, development and protection opportunities associated with Maori Land for the collective wellbeing of Whakatohea (see Appendix 2).

3. To ensure that the policies and plans of Crown Agencies actively recognise, protect, enhance, and provide for relationships of Whakatohea with ancestral lands and other taonga.

4. To ensure that Crown, public or private development proposals do not inhibit the right of Whakatohea to use ancestral lands and other taonga according to Whakatohea customs, needs and preferences.

5. To ensure that contributions for land or development levies to Crown Agencies are not required for Maori Land partitions which stay within the Iwi, Hapu or Whanau.

6. That all Maori landowners and Crown Agencies recognise and fulfill their responsibilities not to permit further alienation (sale, gifting, long-term leases) of Maori land within the Whakatohea rohe, but to return ancestral lands to full Whakatohea ownership, management and control for the long-term collective wellbeing of Whakatohea.

NGA WAI TIPUNA - ANCESTRAL WATER

E noho ana ano ite koko ki Ohiwa
Ka Whakarongo rua aku taringa
ki te tai o Tua-Rae-O-Kanawa
E aki ana ku uta - Ki te Whanau a Tairongo
Kei Tauwhare ko Koopua o te Ururoa
Te Kai i ra ri noa mai
Te raweke tia e te ringa ringa
Kei Roimata ko te Upokorehe
Ko te Umu Tao Noa A Tairongo
Tihei Mauri Ora

Water is a very significant resource to Whakatohea. Water is life-giving with its own mauri or life-force which must be nurtured as a living entity.

Water represents the lifeblood of Papatuanuku, the tears of Ranginui, and is the domain of Tangaroa.

Practices and elements which defile the mauri and mana of water are seen as abhorrent. The effluent from the numerous dairy farms (approximately 50 and 12 dairy sheds along the Waioweka/Otara and Waiotahe Rivers respectively), septic tanks, and town sewerage systems draining into ancestral water is totally unacceptable to Whakatohea values. Everything that derives from the land must return to the land.

According to holistic beliefs, the wellbeing of water is a reflection of the wellbeing of the land, and this in turn is a reflection of the wellbeing of the Tangata Whenua, Whakatohea.

SIGNIFICANT ISSUES

* Adhoc and inappropriate developments allowed within the Ohiwa Harbour catchment.

* The adverse effects of poorly located and controlled land-based activities on people's health and the mauri of water, fish, kaimoana and their habitats. Activities include those resulting in animal and human waste, sewage effluent overflows, contaminated stormwater, siltation, soil erosion, fertilisers, sprays, pesticides, flooding, and residential, agricultural, horticultural, commercial and industrial waste into water.

* Adverse effects of runoff from roads, bush and scrub clearance, forestry development, earthworks, new and established subdivisions, and discharges and leachate from sewage systems, septic and industrial waste tanks, dairy sheds, piggeries, open drains, boats, effluent ponds, public toilets, and rubbish dumps.

* Adverse spiritual and cultural effects of treated or untreated wastes entering water.

* Boats discharging human, engine fuel, and other wastes into water. The burial of tuupaapaku at sea.

* Uncertainties regarding the capacity of landbased soakage fields to cope with sewage effluent volumes.

* Dumping of rubbish alongside rivers and streams.

* Reclamations.

* Inadequate water supply and sewage disposal services for marae and papa kainga housing.

* Government irrigation schemes established in the Whakatohea rohe but refused to Maori landowners.

* Lack of involvement in planning and deciding the location of any structures (e.g. boat ramps, moorings, jetties) in the coastal marine area (area below mean high water springs to the 12-mile limit).

* Crown and Crown Agencies allocating and selling rights to use, take, dam and divert water resources rightly owned by Whakatohea.

* The draining of wetlands for purposes including those of agriculture and horticulture, resulting in loss of significant spawning grounds of whitebait, fish and eels, and traditional food and cultural resources of Whakatohea.

* Need to restrict use, access and development of certain sites and areas (e.g. waahi tapu located in coastal marine area, lagoon, river and stream beds; specific springs and areas of water with special historic and cultural significance).

* Flooding and siltation of water including coastal marine areas, kaimoana and their habitats from activities such as mining river beds, forestry, farming, major storms, farming methods, the clearing of vegetation cover, roading and earthworks, the 'total clearance' methods of subdivisions.

* The need to place restrictions on water when drownings occur.

NGA WAI TIPUNA POLICY

The active recognition and protection of Te Tino Rangatiratanga o nga wai tipuna o Whakatohea.

NGA WAI TIPUNA GOALS

1. To ensure active involvement in setting policies, controls and conditions to avoid, remedy or mitigate adverse effects of existing and proposed land or water-based activities on water, marine life and habitats (see Appendix 2).

2. That Crown Agencies recognise their responsibility to urgently prepare strategic development plans with Whakatohea to avoid, remedy or mitigate actual or potential adverse effects of future development on relationships of Whakatohea with ancestral taonga.

3. To ensure that all contaminants, human or otherwise, derived from land or water-based activities are firstly adequately treated by passing through and in some cases over land before being discharged directly into water.

4. To actively oppose all future development proposals, including buildings and subdivisions, within the Ohiwa Harbour Catchment until a comprehensive joint Tangata Whenua - Crown Agency management strategy is established.

5. To challenge the Crown's 'presumptive' ownership of Whakatohea taonga which has never willingly been gifted, transferred or sold by Whakatohea. Any applications for any income from coastal tendering provisions must recognise Treaty obligations to Whakatohea.

6. To ensure that all remaining wetlands are actively protected and enhanced.

7. To oppose any applications for water conservation orders which effect water within the Whakatohea rohe.

NGA TAONGA TUKU IHO - HERITAGE

Whakatohea heritage represents a unique, dynamic, complex and wide range of spiritual, cultural, and physical associations with natural and physical resources and environment. Whakatohea heritage includes:

(i) Tikanga

including customs, traditions, waiata, haka, pepeha, whakatauaki, karakia, taiaha, whakairo, Whakatohea calendar of important commemoration dates, and pu rakau;

(ii) Whakapapa

genealogies describing the creation, Ira Atua, Ira Tangata and nga waka.

(iii) Kawa

including protocols associated with tangihanga, powhiri, and whakairo.

(iv) Sites and areas of cultural and spiritual significance

including nga maunga, mahinga kai moana or maataitai, mahinga kai whenua, mahinga wai, ara moana, ara whenua, kainga mahue, puna, wai tohi, tohu, kowai, caves, toka, pa, battlefields, fishing grounds, where traditional activities took place, urupa, tauranga waka, wetlands, beds of lagoons, rivers and streams, of which some of the above areas and sites are or contain waahi tapu.

(v) People

(vi) Natural and physical resources

including springs, rivers, maunga, motu, taonga raranga, artefacts, buildings, structures, and other taonga.

Whakatohea history and traditions are fundamental to the identity of Whakatohea, engendering a strong sense of belonging and defining relationships with all things.

SIGNIFICANT ISSUES

* Breakdown in the traditional maintenance, protection and advancement of historic and traditional knowledge.

* Actual or potential conflicts between heritage and other environmental, social, economic and cultural objectives. The need for absolute protection of certain heritage sites and areas, however, such as waahi tapu, cannot be compromised.

* Investigation, use, destruction and disturbance of ancestral sites without Whakatohea involvement or approval.

* The absence of:
  (i) a comprehensive inventory of Whakatohea heritage sites and areas of significance;
  (ii) systems which ensure heritage sites and areas are protected from inappropriate effects and activities;
  (iii) and systems for 'flagging' concerns for Council planning and resource consent purposes whilst ensuring the protection of sensitive information.

* Heritage is a finite resource and once lost cannot be returned. Most heritage cannot be left to look after themselves but demand active protection. Crown Agencies are not meeting their statutory responsibilities to ensure heritage sites and areas are actively protected.

* Loss of ownership, control and management of historic areas and information on those areas and sites. A number of organisations outside Whakatohea hold records on Whakatohea heritage.

* Historic sites, areas and taonga of significance to Whakatohea no longer in Whakatohea control or possession. Need to ensure protection and access in perpetuity.

* Neglect and replacement of traditional placenames. The naming of public assets and facilities after people rather than events

* Lack of clear guidelines for people who come across koiwi and tribal artefacts.

* Lack of general public awareness, understanding or respect for the significance of Whakatohea heritage to all parties.

HERITAGE POLICY

The absolute protection, control and enhancement of Whakatohea heritage in perpetuity.

HERITAGE GOALS

1. To ensure that the investigation, use, destruction or disturbance of sites and areas of significance to Whakatohea is prohibited unless the explicit and written approval of Whakatohea has been obtained. Only Whakatohea has the right to make decisions pertaining to the management and control of Whakatohea heritage.

2. To ensure all waahi tapu are actively protected in perpetuity including those no longer in Whakatohea ownership (See Appendix 2). Where other sites and areas are disturbed, modified or destroyed the 'no net loss' principle shall apply.

3. To ensure that all parties meet their statutory responsibilities to actively protect Whakatohea heritage sites and areas, which includes the need for Crown Agencies to fully support the establishment and maintenance of systems which 'flag' the location of sites and areas of significance to Whakatohea, including specific areas where activities shall be restricted or prohibited.

4. To restore and promote the use and understanding of all traditional placenames.

5. To actively promote the significance of Whakatohea heritage.

6. To establish a comprehensive inventory and information system of all natural and physical tribal resources to facilitate their protection and to monitor their sustainable management.

7. To ensure that Whakatohea retain the right to exclude the use and access of others to taonga of particular significance.

CULTURAL FACILITIES AND USES

Cultural facilities include all those which contribute to the physical, spiritual and intellectual wellbeing of Whakatohea. Cultural facilities reaffirm Whakatohea identity and enhance relationships with ancestral lands. The ability to use cultural facilities according to Whakatohea tikanga is essential to ensuring that relationships of Whakatohea with its taonga continue.

Marae, churches, housing, education, employment, and health facilities are examples of cultural facilities.

SIGNIFICANT ISSUES

* Inadequate services for some marae, papa kainga housing and other cultural facilities including roading, electricity, and sewage, stormwater and water reticulation.

* Actual and potential adverse effects of government laws, and inappropriate developments and activities on cultural facilities and associated activities.

* Need to ensure cultural facilities are used according to Whakatohea customs and cultural preferences.

* Need to ensure the continual use and unrestricted access of Whakatohea (including the customary right to restrict the use and access of others) to traditional resources which support marae activities (e.g. kaimoana and water).

CULTURAL FACILITIES POLICY

To actively protect and enhance Te Tino Rangatiratanga of Whakatohea over cultural facilities and associated taonga and activities.

CULTURAL FACILITIES GOALS

1. To obtain adequate services to all cultural facilities and land of Whakatohea otherwise to seek the repayment of all rates for such lands and taonga.

2. To ensure all laws, policies, plans, developments and other proposals actively protect the customary right of Whakatohea to use, manage and control cultural facilities and associated taonga according to Whakatohea needs, customs and preferences.

3. To actively protect and enhance the use, development and protection of all traditional resources which support marae.

4. That Crown Agencies adopt the Papa kainga Housing Ministerial Statement of Intent (Appendix 3) as Whakatohea policies for the purpose of the regional policy statement, regional plans, district plans, and annual plans.

FLORA

SIGNIFICANT ISSUES

* The introduction of plant species without Whakatohea consultation or approval (see Fauna Goal 3).

* Introduced plants (e.g. gorse, blackberry, wattle, hawthorn, barbary, ragwort, thistle, privet, bracken, spartina grass, marram grass) taking over ancestral lands, water and valued sites including urupa.

* Landowners lack financial resources and environmentally friendly methods for controlling noxious weeds and other problematic introduced plants.

* Need continued and unrestricted use and access to ngahere and other ancestral resources for traditional purposes such as rongoa, education, kai, whakairo, construction and weaving. Destruction and serious depletion of taonga raranga and supporting habitats.

* Controlling the disadvantages (e.g. siltation, loss of biodiversity) and enhancing the advantages (e.g. employment, carbon sinks) of forestry.

* The need to actively protect intellectual and cultural property rights over flora.

* Unsustainable clearing of native vegetation by both humans (e.g. logging of old trees) and animals (e.g. deer, sheep, cattle, possums, goats, pigs) (see Fauna Goal 1).

* The costs to Whakatohea of preserving and protecting indigenous forests in the public interest.

* Pressure from Crown Agencies to own, control and manage Whakatohea lands and forests.

* The adverse effects of using tapu vegetation (e.g. flax) to improve water quality or pollution.

* Crown Agencies assuming ownership, control and management of ancestral Whakatohea flora.

POLICY

The active protection of Te Tino Rangatiratanga of Whakatohea over ancestral flora and habitats.

GOALS

1. To develop and enhance contracts and programmes with Crown Agencies for eliminating or controlling noxious weeds and other problematic introduced plant species.

2. To ensure continued and unrestricted access, use and enhancement of ngahere and taonga raranga for customary needs and preferences, including the implementation of conservation and regeneration programmes.

3. To ensure the sustainable management of exotic forestry including the regeneration of native vegetation on 'unproductive' land.

4. To develop programmes for ensuring the sustainable management of all native vegetation, including their use, development and protection for economic and cultural needs.

5. To ensure that Crown Agencies do not prejudice the successful implementation of the Torere Whakatohea Forest Management Plan.

FAUNA

SIGNIFICANT ISSUES

* The introduction of bird and animal species without Whakatohea consultation or approval.

* Introduced species including possums, cattle, sheep, pigs, cats, stoats, weasels, dogs, goats, rats, and deer destroying native bird and vegetation, and aiding erosion. Adverse effects on the ability of Whakatohea to have continued access to traditional food resources.

* Poor controls on domestic, hunting and farm animals which often damage and destroy native vegetation.

* The importance of native and some introduced bird and animal species for social, economic and cultural wellbeing.

* Animals causing erosion of sites and areas including waahi tapu.

* Animal diseases posing threats to humans and natural resources.

* Crown Agencies assuming ownership, control and management of traditional Whakatohea fauna.

* The protection of intellectual and cultural property rights over fauna.

POLICY

The active protection and enhancement of Te Tino Rangatiratanga over all ancestral fauna of Whakatohea.

GOALS

1. To ensure strict management controls are applied for all introduced species which pose a threat to any native species or which contribute to soil erosion or heritage destruction.

2. To ensure the sustainable management of fauna in a way which contributes to the social, economic and cultural wellbeing of Whakatohea including the use and active protection of customary rights over native fauna.

3. To ensure that no flora or fauna are introduced into the rohe without Whakatohea approval.

FISHERIES

SIGNIFICANT ISSUES

* Need to ensure the absolute protection of customary fishing rights.

* The introduction of fish species without Whakatohea consultation or approval.

* Need for public understanding and support for rahui and other traditional mechanisms for achieving the sustainable use, development or protection of fisheries resources and habitats.

* The destruction of traditional fisheries resources (e.g. from pollution, reclamations, draining wetlands).

* Crown Agencies assuming ownership of Whakatohea taonga and, in some cases, wasting taonga which can significantly contribute to cultural wellbeing (e.g. whale carcasses).

* Over harvesting, overfishing and mismanagement of traditional fisheries resources by government, commercial, and recreational interests (e.g. kuku at Opape and Ohiwa).

* Balancing the advantages and disadvantages of section 338 reserves (formerly S.439), mahinga mataitai reserves, taiapure, marine reserves, parks and farming for the protection and enhancement of fisheries resources and their habitats, and for meeting both the economic and cultural needs of Whakatohea.

* Land-based activities with adverse effects on fisheries resources and their habitats including erosion, earthworks, forestry, fertilisers, sewage, contaminated stormwater and using chemicals for weed and pest control (see Nga Wai Tipuna Goals).

* The need to develop regimes in which commercial, recreational and eco-fisheries can co-exist whilst protecting customary fishing rights.

* Need to ensure absolute protection of traditional fisheries resources and habitats.

* Crown Agencies assuming ownership, control and management of customary Whakatohea fisheries.

POLICY

The active protection and enhancement of Te Tino Rangatiratanga of Whakatohea over traditional fisheries and habitats.

GOALS

1. To ensure the active recognition, protection and enhancement of customary fishing rights and responsibilities.

2. To ensure that no fisheries species are introduced without explicit Whakatohea approval and a full assessment of environmental effects.

3. To apply traditional and western resource management mechanisms as necessary to protect and enhance fisheries resources and habitats (e.g. mahinga mataitai reserves, S.338 reserves, and taiapure) (see Appendix 2).

4. To initiate and actively support fisheries proposals that contribute to the collective wellbeing of Whakatohea and Whakatohea fisheries and habitats.

5. To work with DOC on ensuring use and access of Whakatohea to whale bones for cultural purposes.

MINERALS

SIGNIFICANT ISSUES

* The mining, quarrying or taking of sand, river metal, rocks or any other taonga owned by Whakatohea without Whakatohea consent (see Nga Wai Tipuna Goal 5).

* Unjust payment of royalties to the Crown for the mining of resources the Crown "presumes" to own (under the Territorial Sea and Exclusive Economic Zone Act 1977) (see Nga Wai Tipuna Goal 5).

* Erosion and siltation effects of mining and quarrying on water, coastal marine area, riverbeds, coastal margins, kaimoana, fisheries and so on.

* Uncertainties regarding the actual or potential effects of mining, quarrying and taking resources such as sand, river metal, rocks or any other taonga.

POLICY

The active recognition and protection of Te Tino Rangatiratanga of Whakatohea over all Whakatohea minerals and taonga.

GOALS

1. To ensure the management of minerals and associated taonga gives full recognition and protects Whakatohea ownership of such resources.

2. To avoid, remedy and mitigate adverse effects of mining and quarrying on land, fisheries and habitats.

3. To obtain all royalties paid for mining and quarrying activities including recompense from all past royalties unjustly paid to the Crown.

ENERGY

SIGNIFICANT ISSUES

*	Customary rights associated with energy resources.

*	Need for renewable, and more efficient and sustainable forms of energy.

POLICY

The full recognition and active protection of Te Tino Rangatiratanga of Whakatohea over energy resources above and below, in and around, Whakatohea rohe.

GOALS

1. To ensure the management of energy resources gives full recognition to the customary rights of Whakatohea over such taonga.

2. To promote renewable, efficient and sustainable forms of energy.

3. To oppose any form of nuclear energy.

APPENDIX

APPENDIX ONE:
TE TIRITI O WAITANGI - THE TREATY OF WAITANGI

II Te Tiriti O Waitangi

The Maori Text (from the Treaty of Waitangi Amendment Act 1985)

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani – kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakarite te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ke te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua ahau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu -te Kawanatanga katoa o o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

The Treaty of Waitangi

The English Text (from the Treaty of Waitangi Act 1975)

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great many of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her Subjects has been graciously pleased to empower and authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

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.

Article the second

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 so 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 upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

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.

Translation of Maori Text (Professor Sir Hugh Kawharu)

Victoria, the Queen of England, in her concern to protect the Chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it necessary to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queens government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a Captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government over their land.

The second

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 purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand (i.e. the Maori) and will give them the same rights and duties of citizenship as the people of England.

APPENDIX TWO:
RESOURCE MANAGEMENT INFORMATION SHEETS

- Maori Land
- Te Whakatoitunga - Long-term Protection of Land and Water
- Protection of Maori Heritage Places
- Tangata Whenua and Local Government Planning - A Guide to Effective Participation
- He whenua, he marae, he tangata - Planning by Maori for Maori

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This information paper is aimed at those who want to know how Te Ture Whenua Maori (Maori Land Act) 1993 and the Resource Management Act 1991 apply to the subdivision and partition of Maori land, especially with respect to esplanade reserves and reserves.

At the time of writing, significant changes are proposed by an Amendment Bill to the Resource Management Act. These changes may become law by July 1993 and would include changes to the esplanade reserves provisions. The proposals would establish esplanade reserves, esplanade strips and access strips.

The Resource Management Amendment Bill, at the time of writing, has not been passed by Parliament. It would be prudent to check when the Bill is finally passed.

The Ministry for the Environment will provide further information when this happens.

Maori land

How to find out if it is Maori land

There are some fundamental points to get to grips with before trying to unravel the complex issues surrounding subdivision and partition. A basic step is to find out if land being dealt with is Maori land. If it is Maori land then the matter must be referred to the Maori Land Court at some stage in the process.

A useful beginning is to talk to a lawyer or ask for help at the nearest Maori Land Court.

Most records of Maori land are held in the Maori Land Court. It has registries or offices throughout the country. If the land is Maori land, the Court should have some record of it. Anyone is allowed to search (examine) the records of the Maori Land Court. Sometimes there will be a fee to pay.

It is helpful for Court staff if as much information as possible can be given to them right at the beginning.

This information could include:

- A full legal description of the land.
- The description given on a rates notice.
- The description given on a land valuation notice.
- A copy of any mortgage, lease, or charge documents.
- A copy of any titles that affect the land.
- The names of any known beneficiaries, owners, mortgagees, lessees, chargeholders, or occupiers.
- A beneficiaries' rent card (usually held by what were the Department of Maori Affairs offices and are now Te Puni Kokiri regional offices). This is a record of rents paid to the beneficiary owners of a block of Maori land.
- The name of any land blocks near or bordering the land.
- Any legal documents in a searcher's possession which affect the land.
- A physical description (either specific or general, e.g., 154 B Street, or Rural Delivery, or along C river bank).
- Any relevant oral history that is known.

This information will help Court staff narrow down the search for the land. Once the land is identified, it should be easy to track its legal history.

The term "minute books" will nearly always either be referred to by staff or be encountered in the course of searching. These minute books are official records of the Maori Land Court. Many of them are handwritten.

These minute books are not in themselves proof of the legal title to the land. However, they contain the evidence on which legal documents are drawn up. It includes:

- land descriptions and names of blocks;
- whakapapa;
- legal transactions;
- owners, beneficiaries;
- how the land was shaped and formed;
- the influence of the Crown and non-Maori.

Modern computer technology can make searching an easy process.

When land has ceased to be Maori land it is likely all records will be transferred to the Land Transfer Office (also known as Land & Deeds) which is a division of Justice Department. There are also registries established throughout the country. The legal title (called a Certificate of Title) will have recorded on it how the land ceased to be Maori land and will have a reference back to the Maori Land Court records.

The method of search of these records is similar to Maori Land Court searches. As much information as possible should be gathered beforehand. If there is any suspicion that land is Maori land, a search is probably better begun in the Maori Land Court.

The Maori Land Court and Territorial Authorities

The Maori Land Court

Applications for partitions into parcels to be held by owners outside the hapu will be processed by the Maori Land Court. It will be required to confirm territorial authority requirements for esplanade reserve and reserve contributions. It cannot refuse to confirm territorial authority requirements, but may, if it so wishes, make comments on them.

In respect of partitions into parcels to be held by owners who are members of the same hapu, the Court has a greater role. It will

process partition applications; it will decide whether esplanade reserves or reserve contributions are to be required; and it will impose a restriction that the land will not be alienated other than in accordance with Te Ture Whenua Maori Act 1993 (the Maori Land Act). Thus, if the land is subsequently transferred out of the hapu, the subdivision provisions of the Resource Management Act 1991 will apply.

Territorial authorities

Where land is partitioned to be held by owners outside the hapu, the territorial authorities can require an esplanade reserve or a reserve contribution if it is specified in the district plan.

However, they may not take land in lieu of what is generally known as a development levy under section 108 of the Resource Management Act. They can require a survey plan to be deposited with them and can expect the Maori Land Court to agree to their requirements.

Where land is to remain within the hapu on partition the territorial authorities can make submissions to the Maori Land Court if it is felt that esplanade reserves or reserves should be required. They can also request that a survey plan be done, and the Maori Land Court will consider those requests.

Partition of Maori land prior to the Resource Management Act

Before the Resource Management Act, if someone wanted to partition out part of a block of Maori land they had to make an application to the Maori Land Court and produce a legal survey of the block. In many cases they would have suffered the greater costs of having the entire block, not just their bit, surveyed.

This could represent huge costs if, for example, a quarter acre was wanted from a block of many hundreds of acres.

Section 432 of the Maori Affairs Act 1953 said that partitions had to comply with the provisions of the Local Government Act 1974 which dealt with subdivisions. Both were to be dealt with in the same way.

Subdivisions were to be handled by territorial authorities, which would regulate reserve contributions by what was then the regulatory instrument, the District Scheme.

Those subdivision provisions meant, for example, that a coastal iwi, hapu, or whanau could stand to lose esplanade reserves and reserve contributions amounting to many hectares on any subdivision – which did in fact happen.

Maori people consistently challenged these esplanade reserve contributions. There was limited statutory recognition of Maori relationships to their whenua, and subdivision law tended more towards regulating developments which created many smaller parcels. Accompanying these subdivisions, there soon appeared provisions for amenities such as reserves for recreation and public access to water and the coast.

Maori land was affected in a major way. What was often an essentially iwi, hapu, or whanau relationship which necessitated partition was caught up by the general subdivision law, and so large areas of land were lost.

Partition was often only necessary for the financing of papakainga, kaumatua flats, settling a relative on the land or other traditional reasons. It did not usually envisage the whenua passing out of Maori ownership. Yet the effect of the subdivision laws was to result in exactly that.

Te Ture Whenua Maori Act promotes the continuation of the link between generations and cultures where Maori land is concerned.

An example of the kind of esplanade reserve at issue.

The current law – the Resource Management Act and Te Ture Whenua Maori Act

Te Ture Whenua Maori Act (the Maori Land Act 1993)

Te Ture Whenua Maori Act will come into force on 1 July 1993. It makes significant changes to the powers of territorial authorities to require esplanade reserves and reserves contributions on partition of Maori land.

The Act also eases the pressures on Maori owners to partition parcels and is intended to enable multiply owned blocks of Maori land to be developed and retained within Maori ownership.

The Resource Management Act 1991

The Resource Management Act is a framework for the sustainable management of natural and physical resources. In principle it treats all land in the same way. But there are some exceptions.

Apart from the physical matter of land – soil, turf, earth etc. – land under the Resource Management Act includes land covered by water, and the air space above land. It therefore includes:

- the beds of rivers, streams, lakes and creeks;
- the sea floor up to the outer limits of the territorial sea, but not including the seawater;
- all air space associated with the above two examples.

It also includes the surface of water in any lake or river.

The provisions of the Resource Management Act in terms of sustainable management apply to both Maori land and general land. The concept of the sustainable management of resources focuses on all land. However, where Maori land is concerned, if there is a subdivision or partition of land, the Maori Land Court will have some jurisdiction concerning esplanade reserves and reserve contributions.

The Resource Management Act and Subdivision

Under section 11 of the Resource Management Act there are certain restrictions on the subdivision of land. Maori land, though, is exempted from those provisions.

Where there is not much knowledge about the background of the land, and there is a likelihood of some question about its status, the following suggestions could be helpful.

Subdivisions along the coast blend the built environment with the beauty of the natural environment.

- Find out if it is Maori land (as described earlier).
- If it is Maori land, then what are the facts surrounding it (such as, is it to be subdivided or partitioned)?
- If it is proposed to subdivide or partition the land, does this have implications for planning or resource management, for example for the taking of esplanade reserve or reserve contributions? There may then be implications for the Resource Management Act 1991 and Te Ture Whenua Maori Act 1993.

The purpose of Te Ture Whenua Maori Act, which is also known as the Maori Land Act, is to facilitate and promote "the retention, use, development and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu and their descendants" (section 2 (2)).

Esplanade reserves, reserves and non-Maori land

Under the Resource Management Act at present, when land is subdivided, generally the owner is required to transfer to the local authority 20-metre wide reserves on either side of any rivers or streams which are wider than three metres, at the edge of any lake greater than eight hectares in area, or at the coast.

The landowner pays the survey costs associated with this transfer and receives no compensation for the land. The local authority, for its part, must accept and maintain these isolated reserves. They may be transferred to the Crown or Regional Councils by agreement. The boundaries remain fixed.

Changes made by the Resource Management Act and Te Ture Whenua Maori Act

Section 11 (2) of the Resource Management Act exempts Maori land from the subdivision provisions.

Section 108 of the Act permits territorial authorities to make a condition, in a district plan for resource consents, that Maori land too can be taken for what is generally known as a development levy. At the time of writing it is intended, under the Resource Management Amendment Bill, to amend this to exempt Maori land, but a cash contribution could still be required.

Where there is a partition of land into parcels to be held by owners who are not members of the same hapu, the provisions of the Resource Management Act apply. In this case it is deemed to be a subdivision and territorial authorities may require esplanade reserve and reserve contributions, according to their district plans.

In the past esplanade reserves and reserves could be taken from the whole block to which the partition related. Now any esplanade reserve and reserve requirement can only be taken from that part which is to be partitioned. It cannot be taken from the whole block.

Further, if there are parts of the land to be partitioned that have been certified by the Maori Land Court to the territorial authority as being of special historical significance or spiritual or emotional association with the Maori people, or any group or section of the Maori people, then no land can be taken by the territorial authority from any of those parts.

The application must be confirmed by the Maori Land Court.

Where land is to be partitioned into parcels to be held by members of the same hapu, it is only the Maori Land Court that has authority to require esplanade or reserve contributions. The territorial authority may make submissions to the Court but it cannot take land without the consent of the Court.

If ever the Court does impose a condition as to esplanade reserve or reserve contribution, then it can do so only over the land that is to be partitioned.

Any land contributions that are ordered by the Court cannot be taken from areas that the Court itself has certified are of special historical significance or spiritual or emotional association with the Maori people or any group or section of Maori people.

Essentially, then, where Maori land is partitioned there are three options for the taking of esplanade reserves or reserves:

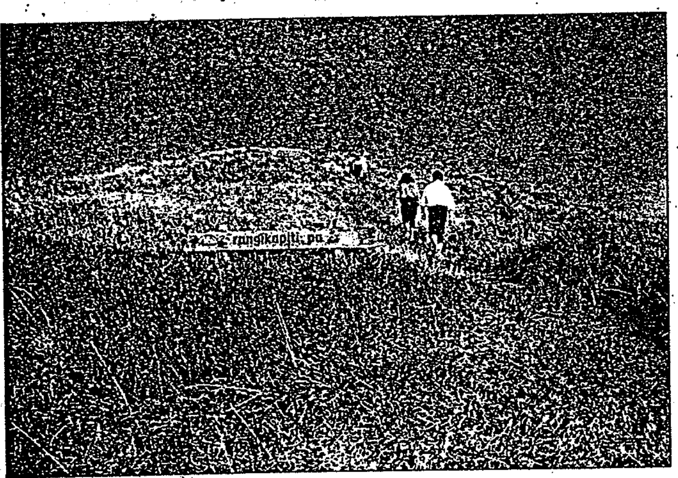
- Where ownership remains within the hapu, esplanade reserves and reserves can only be taken by the Maori Land Court (s301 Te Ture Whenua Maori Act (Maori Land Act 1993));
- Where ownership transfers outside the hapu, the territorial authority may take esplanade reserves or reserves as of right (Resource Management Act applies);
- If the territorial authority is satisfied that land is not going to be sold and that only a present owner will acquire any other interest it has the discretion to waive reserve and roading requirements (s305 Te Ture Whenua Maori Act).

Amendments to the Resource Management Act

At the time of writing, there have been significant changes proposed by an Amendment Bill to the Resource Management Act. These changes may become law by July 1993 and include changes to the esplanade reserves provisions. The proposals would establish esplanade reserves, esplanade strips and access strips.

Esplanade reserve: Will remain the same as described earlier in this paper.

Esplanade strip: An area of land alongside water bodies and/or the bed of a water body that allows public access and/or protects conservation values. Land ownership stays with the landowner but the restrictions are noted on the title of the land. The restrictions will be imposed by the local authority as a condition of the subdivision consent. The Amendment Bill proposes to include standard restrictions in a Schedule to the Resource Management Act 1991. For example, the carrying or use of guns, lighting fires, taking animals or vehicles on to the property, laying poison or traps, or removing plants can only occur on an esplanade strip if the landowner agrees. The standard restriction (prohibiting such activities) is then omitted from the document that is registered against the land title creating the strip.



Access to both Maori and non-Maori land is to be encouraged where appropriate.

The strip will move with changes in the water body in the same manner as marginal strips under the Conservation Act. The restrictions will be binding on future landowners. No surveying is required but the water body(ies) adjacent to the strip would need to be identified on the survey plan. This will significantly reduce survey costs. It would be possible to close the strip if appropriate (e.g., lambing, rahui, tapu) and there would be restrictions on use by the public (e.g., in relation to guns and dogs).

Access strip: A narrow public pedestrian access way across the landowner's land to or along a water body which is negotiated and agreed between the landowner and the local authority. The local authority may negotiate payment of some compensation (e.g., for fencing) in reaching agreement with the landowner. The access strip is similar to a walkway in that it is surveyed, does not move with any changes of the waterbody, is recorded on the land title, and is a type of easement in favour of the council, but with underlying ownership remaining with the landowner. Restrictions on the public use of the access strip would be built in to the agreement (e.g., access with guns or dogs, and closure for rahui, tapu or other reasons).

It should be noted that this regime covers non-Maori land, including non-Maori land owned by Maori.

Where Maori land is to be transferred outside the hapu, it too will be subject to this regime. It is viewed as being the same as subdivisions of non-Maori land.

Reserves for recreational and amenity purposes can be required on subdivisions by way of conditions under s220 of the Resource Management Act.

The new regime will allow councils to choose from the following options – esplanade reserves and esplanade strips.

It is important to note that these are changes which are signalled by the Resource Management Amendment Bill which, at the time of printing of this paper, has not been passed by Parliament. It would be prudent to check when the Bill is finally passed.

The Ministry for the Environment will provide further information when this happens.

Te Whakatoitunga: Long-term Protection of Land and Water

Maruwhenua

A Guide for Maori

MINISTRY FOR THE ENVIRONMENT • PO BOX 10362 • WELLINGTON • PHONE (04) 473-4090

How can your whanau, hapu or iwi give permanent, or special, protection to an area of land or water? This pamphlet briefly describes the types of protection you might be able to use, and the first steps that you will need to follow.

Regardless of the type of land, or who owns it, there are certain basic questions you will need to ask.

- What are your *objectives* for your taonga?
- Who *owns the land* you want to protect, and who will own it after protection has been put in place?
- Who will *manage* that protected place? Can someone other than the owner be empowered to make management decisions?
- How will the *Crown* work to maintain that taonga?
- What *costs* are involved and who will pay them?

You will then need to determine whether the various laws and regulations provide for your objectives.

No single means of protection is likely to fully satisfy your needs. Each will have its drawbacks: the application process may be long and frustrating; success may not be guaranteed; costs may be higher than you can afford; a protected place may effectively lock out any later plans for some other type of development; management plans may not come up to your expectations; or you may feel that tino rangatiratanga has been undermined.

If you decide to proceed with a particular type of protection that you think will serve your purpose you should first contact an office of the appropriate agency. Most of these agencies have useful publications which are available free or at low cost. Contact details for these agencies are given below.

Who owns the land you want to protect?

The type of protection which you can choose will be influenced by who owns the land.

Maori land means Maori customary land and Maori freehold land. Although, in many cases, you could use Maori Communal Reserves under Te Ture Whenua Maori [The Maori Land Act] 1993 to protect special areas, there are other possibilities for you to explore.

General land may be owned by Maori or non-Maori. Most private land in New Zealand is general land.

Crown-owned land is owned by the government. Many areas are held for conservation purposes by the Department of Conservation. Most remaining Crown-owned land that has not been allocated to State-owned enterprises is administered by the Department of Survey and Land Information. Various other government agencies, for example the Ministry of Education, administer relatively small pieces of Crown-owned land for their special purposes.

Who manages protected areas?

The landholder usually has the responsibility for managing a protected area. In other cases management responsibility and control may rest with a government agency or joint management committee.

You may have concerns that after a place has been given protected status you will not have any say in the management of that area. In recent years there have been changes in legislation which enable greater participation by Maori in a joint management role.

For example, the Minister of Conservation may make the following arrangements for tangata whenua involvement in the management and use of reserves in the Crown conservation estate where it would better achieve the reserve's purpose:

- Vest a public reserve in Maori trustees [s26 Reserves Act 1977].
- Appoint any Maori body ... to control and manage a public reserve [s29 Reserves Act] or any Maori Trustees or Maori Trust Board [s35 Reserves Act].
- Appoint Maori persons (exclusively or with non-Maori) to be a reserves board, trust or trust board to control and manage a reserve [s30 Reserves Act].
- Appoint joint management committees [e.g., Waitomo Caves, s9 Reserves Act] or ad hoc advisory committees [e.g., Northland Cultural Materials Committee].
- Appoint Maori (as adjoining owner or otherwise) when appropriate as the managers of marginal strips [s24H Conservation Act 1987].

- Appoint Maori members to the New Zealand Conservation Authority and conservation boards [s6D(1)(a), s6P(3), (5), (6) and (7) Conservation Act 1987].

You will need to decide whether any proposed management regime gives due recognition of your rights as tangata whenua, and will enable you to keep your own objectives foremost.

Costs of protection mechanisms

Costs will vary depending on the type of protection process you have decided upon. They may include application fees, maintenance costs and, sometimes, compensation to owners. You should get advice on all likely costs before you proceed. The relevant agency should be able to advise you.

What types of protection can you use?

Some forms of protection are for a set period but most are permanent. In other words, even if ownership changes, the new owner will be bound to observe the terms of the protection.

A **reserve**, in general terms, is an area of land or water set aside for any public purpose, usually for some form of protection. It includes, among others, any private land set apart as a reserve in accordance with the provisions of any Act. **It does not include any Maori reservation.** Ownership of Maori reserves remains with Maori. Normally ownership of other reserves, created under the Reserves Act or any other act, is vested in the Crown or one of its agencies.

A **covenant** is a legal agreement between a landowner and some other party to protect an area of land. It is registered on the title and binds future owners for the term of the covenant. Note that covenants are voluntary. In fact, many covenants are initiated at the owner's request. Ownership remains with the landholder unless that person is willing to vest the land as a reserve.

Protection orders are not voluntary and are enforced by local or central government. There are processes by which a protection order can be placed on land which belongs to someone else. Although you can apply for protection orders to be imposed, there is no guarantee of success, and costs can be high. Ownership remains with the landholder, although in some cases the authority pursuing the protection order can be ordered by the Planning Tribunal to acquire the land from the owner.

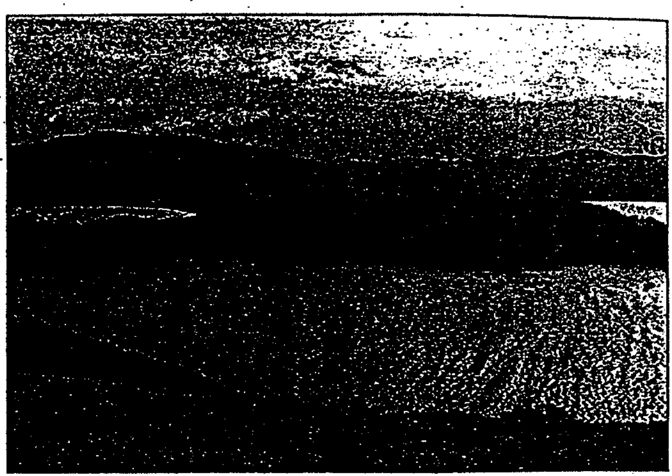
The following sections briefly outline the range of protection mechanisms available.

Protecting heritage places

There are numerous places of heritage value to Maori which we might loosely define as wahi tapu, or heritage places. You know the sites which are important to you.

The Historic Places Act 1980 provides for **heritage covenants**. These are agreements between landowners and the Historic Places Trust to covenant a part of a land title for protection purposes. The covenant is tied to the land title and cannot be removed if the property is sold. It is a voluntary approach, and is also one of the lowest in cost. You can, of course, put a heritage covenant on part of your own property, especially if you are concerned about what might happen if ownership later changes.

The Historic Places Act has undergone extensive review and a new Act comes into force on 1 July 1993. For further information about the Historic Places Act and heritage covenants you



should contact the Historic Places Trust, PO Box 2629, Wellington, Ph. (04) 472-4341.

A **heritage order** is a provision in a territorial authority's district plan which affects how a place can be used. Territorial authorities are the main land use consent authority. A heritage order is a powerful mechanism, overriding any other provision in the local authority's plan, and can severely limit the use of both private and public land. A heritage order prevents anyone doing anything which affects the heritage characteristics of a place without the written consent of the heritage protection authority.

Heritage orders are used to protect, among others, any place of special significance to the tangata whenua for spiritual, cultural or historical reasons. You might consider using heritage orders if you want to protect wahi tapu on land you do not own, especially if the owner is not prepared to consider a heritage covenant.

Details of heritage orders can be found in Part VIII of the Resource Management Act. The free Ministry for the Environment publications, *Protection of Maori Heritage Places* and *Heritage Protection: A Guide for the Public*, give more details on heritage orders.

Protecting native forests

Nga Whenua Rahui is a fund set up to help Maori owners to protect their indigenous forests on land under Maori tenure so that they are sustained in perpetuity. It is a voluntary scheme, initiated by the Maori landowners. Nga Whenua Rahui can provide funding, most commonly for fencing, to help protect native forests. Once an area has been formally protected, regional councils are encouraged to give rate remission to forested areas.

Legal protection is usually in the form of a kawenata [covenant], carefully worded to ensure tangata whenua keep ownership and control of their land and retain tino rangatiratanga. Although the intent of the legal agreement is for permanent protection, it allows for a review at generational intervals of 25 years. On larger blocks of very high ecological and/or timber values, a one-off lump sum is sometimes paid to Maori owners as a "consideration" payment for formal protection.

Further information is available from Department of Conservation offices, or The Executive Officer, Nga Whenua Rahui, PO Box 10-420, Wellington, Ph. (04) 471-0726.

The Forest Heritage Fund is a similar type of protection scheme available to all privately owned native forests. Highest priority is given to applications in which ecologically valuable forested

land is to be gifted as a reserve or protected through a covenant with no financial benefit to the owner. The Fund helps with the costs involved in setting up this protection.

Further information can be obtained from any office of the Department of Conservation, or the Secretary, Forest Heritage Fund, PO Box 10-420, Wellington, Ph. (04) 471-0726.

Other landscape protection

The Queen Elizabeth II National Trust was established to encourage and promote the provision, protection and enhancement of open space. Although private landowners who want to protect a natural feature may wish to deal with the Crown or a local authority, an alternative for many owners is to negotiate an open-space covenant agreement with the Queen Elizabeth II National Trust. The Trust is an independent trustee body.

An open space covenant is a legal agreement between the Trust and the landholder, and can protect a wide variety of landscape and vegetation features. Protection is usually permanent, although shorter periods are possible. The Trust makes a contribution, usually up to 50%, towards protection works such as fencing. Management of the protected feature remains with the landholder.

The Trust Board has a subcommittee, Te Komiti Whenua Toitu, with specific responsibility for matters relating to Maori land. Maori have used open space covenants for a range of landscape features, both on general land and on Maori land. For Maori land the Trust accepts registration in the Maori Land Court, but for general land it is entered on the land title.

For further information contact The Trust Manager, Queen Elizabeth II National Trust, PO Box 3341, Wellington, Ph. (04) 472-6626.

Protecting fresh water

A water conservation order is a specific means of protecting a river, lake or wetland for its scenic, recreational, ecological, cultural and other values. To qualify for a water conservation order the water body must have outstanding amenity or intrinsic values, which may include characteristics of significance in accordance with tikanga Maori. Fresh water and geothermal water are both classed as water bodies.

A water conservation order can be placed over the whole water body or part of it. The order prohibits or restricts the issue of water and discharge permits by regional councils. You might consider applying for a water conservation order if waters of significance to you appear to be threatened in some manner.

Details of water conservation orders can be found in Part IX of the Resource Management Act 1991, and a free brochure, *Water Conservation Orders: A Guide for the Public*, is available from any office of the Ministry for the Environment.

Marine protection

Taiapure - local fisheries

In 1989 the Maori Fisheries Act was passed. It provided for Maori input into the management of special fishing areas called taiapure. Taiapure are fishing grounds in estuarine or littoral waters that have customarily been of special significance to any iwi or hapu, either as a source of food, or for spiritual or cultural reasons.

Maori applicants have found that establishing a taiapure can be complicated. For further information on taiapure contact your local office of the Ministry of Agriculture and Fisheries.

The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 does not replace taiapure provisions. Rather, it provides a further avenue for Maori to manage special fishing places. These places are referred to as mahinga mataitai and tauranga ika. The new Act requires the Minister of Fisheries to consult with tangata whenua and develop policies and programmes which provide for non-commercial customary usage of fisheries.

The Treaty of Waitangi Fisheries Commission iwi discussion document, *Mahinga Kaimoana Tuturu: Customary and Traditional Fishing Regulations*, can be obtained from their office at PO Box 3277, Wellington. The Ministry of Agriculture and Fisheries is also preparing a discussion document for Maori on these new provisions.

Marine reserves

Marine reserves are similar in function to National Parks. They form important regeneration and nursery areas for the surrounding waters by giving protection to the plants and animals within.

Marine reserves provide recreation areas where the public are free to swim, boat and dive. Commercial fishing and harvesting are prohibited, but provisions can be made for traditional and recreational fishing, although these are not generally allowed because a main purpose of the Marine Reserves Act is to protect and preserve marine life.

Some groups can make an application for a marine reserve to the Director-General of Conservation. You will need to seek advice on how your iwi can apply. Establishing a marine reserve demands extensive consultation with all interested groups throughout the whole application process.

Marine reserves are managed by the Department of Conservation, and local people are encouraged to become involved in management decisions. For more information, contact the Marine Reserves Officer at your local conservancy office of the Department of Conservation.

Protection of Maori land

Maori communal reserves

You are perhaps most familiar with section 439 reserves in the Maori Affairs Act 1953. This Act has been repealed and section 439 reserves, with some relatively minor changes, are now reserves under section 338 of Te Ture Whenua Maori [Maori Land Act] 1993. Any Maori freehold land or any general land may be set apart as a Maori reservation for a wide range of purposes, including a village site, marae, burial ground, or other place of cultural, historical, or scenic interest.

Maori Reservations for Communal Purposes have been the type of reserve most commonly used by Maori, especially on Maori land. However, this does not mean that a section 338 reserve cannot be established on general land. Of course, the owner of that land, Maori or non-Maori, must agree to the reserve.

Section 338 reserves are usually held for the common use or benefit of the owners. They cannot be transferred out of the hands of the owners, or their descendants. However, in some situations Maori reservations may be held for the common use and benefit of the people of New Zealand [see section 340(1) of Te Ture Whenua Maori].

The use of trusts to administer section 338 reserves helps prevent alienation of Maori land, and is an effective way of protecting new urban marae built on newly acquired general land. The Maori owners of the land elect the trustees who will administer the reserve. Reserves of less than 2.03 hectares in area are exempt from rates.

The local office of Te Puni Kokiri or the Maori Land Court can provide more information on Te Ture Whenua Maori and Maori communal reserves.

Esplanade reserves

An esplanade reserve is a strip of land 20 metres in width along the mark of mean high water springs of the sea, along the bank of any river, and along the margin of any lake. Its purpose is to protect conservation values and to enable public access to and recreational use of the sea, rivers or lakes. Ownership is vested either in the territorial authority or the Crown. Esplanade reserves are usually taken when land is subdivided.

When Maori land was partitioned under old laws, esplanade reserves were set aside, and were liable to pass out of Maori ownership. Esplanade reserve provisions now come under Te Ture Whenua Maori.

Under the new Act, esplanade reserves should not be taken from a block of Maori land at partition if that partitioned land is kept within the hapu. But if Maori land is partitioned into parts which are not held by members of the same hapu, it is deemed to be a subdivision and the provisions of the Resource Management Act apply and territorial authorities may require esplanade reserves.

The local office of Te Puni Kokiri or the Maori Land Court can provide more information on esplanade reserves.

Other means of protection

There will be occasions where it would be of greater benefit for you to use opportunities for tangata whenua involvement in local government planning, rather than pursuing a specific protection mechanism.

Under the Resource Management Act local government has an obligation to consult with tangata whenua of the area in the preparation of policy statements and plans. You can use these opportunities to achieve your resource management objectives by participating in the planning process.

Any office of the Ministry for the Environment can provide more information, including the publications, *Tangata Whenua and Local Government Planning*, *An Introduction to the Purpose and Principles of the Resource Management Act: The Place of Kaupapa Maori*, and *Kia Matiratira: A Guide for Maori.*

The heritage protection authority notifies the relevant **territorial authority** of its requirement for a heritage order. This process is known as issuing a requirement. Section 189 details what must be included in that requirement.

The consent authority must give notice of the requirement to a number of persons and organisations. The requirement must also be publicly notified and submissions invited. You will need to read section 93 for details.

Once the order is established, the consent of the heritage protection authority is required for any activity which would reduce the effect of the heritage order.

The heritage order process is summarised on the chart below, but you will need to refer to the Act for more detail.

Interim protection

Once notice of a requirement for a heritage order has been given to a territorial authority, the place in question automatically has interim protection until the requirement has been through a public process [section 194]. This is an important part of the Act, because it means that any actions which threaten a heritage place can, at least temporarily, be halted [section 193]. It is an offence for any person to knowingly damage a place under interim protection.

- Heritage Protection Authority [187,188]
- ↓ Notice of requirement for Heritage Order [189] → Interim protection begins [194]
- ↓ Public notification by territorial authority [93] — HPA withdraws application
- ↓ Territorial authority may recommend... [191] → Requirement be withdrawn
- ↓ Requirement be confirmed (with or without changes) → HPA rejects recommendations [192, 172]
- ↓ HPA accepts recommendation [172] — Appeal against HPA to Planning Tribunal [174]
- Requirement... → Confirmed or changed / Cancelled
- ↓ Territorial authority includes requirement in district plan [175]

Appeals against a heritage order

When any person proposes to do anything to a heritage place that they could have done if there were no heritage order, and has been refused consent by the heritage protection authority, that person can appeal to the Planning Tribunal. The Tribunal may confirm, modify or reverse the authority's consent [sections 193, 195].

The owner can also appeal against a heritage order on the grounds of being unable to sell or reasonably use the land. The Tribunal may direct the authority to withdraw the requirement or to take the land under the Public Works Act 1981. If the heritage protection authority is neither the Crown nor a local authority, it will be liable to pay the full compensation costs to the Minister of Lands [section 198].

The cost of heritage orders

A heritage protection authority can also be liable for some, or all, of the other costs associated with a heritage order. In some instances these costs could be considerable.

Preserving the confidentiality of waahi tapu

There will be many instances where you are not prepared to make public the location of waahi tapu. The Act partly recognises this need; a local authority may exclude the public from all or part of any hearing, and prohibit the publication of information from that hearing [section 42]. These measures may be taken if the local authority is satisfied that it is necessary "to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu..."[section 42(1)(a)]

Note that the final decision rests with the local authority. You may need to decide in advance whether you, or your heritage protection authority, will withdraw the requirement for an order if you think that use of section 42 might not happen.

You may want to consider the use of "silent files" for your heritage places, especially your waahi tapu. With this system, your iwi, hapu or whanau keeps its own confidential file of heritage places and negotiates protective procedures with local government and consent authorities.

MINISTRY FOR THE ENVIRONMENT
MANATU MO TE TAIAO
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A GUIDE FOR THE PUBLIC

Protection of Maori Heritage Places

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"Kei raro i te tarutaru, te tuhi o nga tupuna"

"The signs or marks of the ancestors are embedded below the roots of the grass and herbs."

This brochure explains how tangata whenua can use opportunities in the law to protect places which are important to them. Many of these places are waahi tapu. Others, which might be called historic places in English, are often known as waahi tupu, nga tapuwae, papatupu, kainga mahue, he onepito, or he onekura. For the purpose of this brochure we will call them all heritage places. There are other laws for protection of heritage places, but this guide will concentrate on heritage order provisions in the Resource Management Act 1991.

This brochure is only a guide. If you plan to take steps to protect your heritage places you should also read in full the relevant sections of the Resource Management Act and, when it is passed, the new Historic Places Act. You should get a copy of the Ministry for the Environment publication, Heritage Protection Under the Resource Management Act, which contains useful information on heritage order procedures. You could also contact Maruwhenua in the Ministry for the Environment, PO Box 10-362 Wellington, or any of the Ministry's regional offices.

However, if you decide that you do want to use these provisions, you should first seek legal advice so that you are completely clear about what any legal consequences might be.

The Resource Management Act

Part II of the Act, Purpose and Principles, is very important for it sets the tone for the rest of the Act. A number of the principles relate to heritage protection, or have special reference to tangata whenua interests.

Sections 6, 7 and 8 impose particular duties on decision makers. As a matter of national importance they must recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

They must give particular regard to kaitiakitanga, and to the recognition and protection of the heritage values of sites, buildings, places, or areas. "Kaitiakitanga" is defined in the Act as the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.

Decision makers must also take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

You should expect local authorities to be familiar with sections 6, 7 and 8. These sections make it clear that local authorities have an obligation under law to give more than a passing thought to the interests of tangata whenua. In other words, the Act provides for your active participation in resource management. Getting involved in the local authority planning process, therefore, is one way to work towards better protection of your heritage places.

The Ministry for the Environment plans to publish a guide to help tangata whenua participate effectively in local government planning.

Heritage protection approaches

A range of approaches can be used by tangata whenua, depending on who owns the land. These range from voluntary agreement with a landowner to protective laws which can be enforced by local government, such as heritage orders under the Resource Management Act.

Voluntary agreements may often be the best option, because protection of Maori heritage will become important for the wider community. They will usually be cheaper than any other method. When landowners see that a voluntary agreement has not caused hardship or inconvenience to another landowner they may be more inclined to come to a similar agreement.

The Department of Conservation and the NZ Historic Places Trust can give you more information on voluntary agreements. Your local authority may also be able to assist.

Heritage orders

A heritage order is a provision in a **district plan** and affects how places can be used. It can protect "any place of ... special significance to the tangata whenua for spiritual, cultural, or historical reasons" [section 189(1)(a)]. This very general description would include your heritage places, regardless of what your iwi, hapu or whanau call them. The important point is that the places are of special significance to you.

A heritage order prevents anyone doing anything which affects the heritage characteristics of a place without the written consent of the appropriate heritage protection authority (HPA).

It overrides any other provisions in the local authority's plan [section 193]. To ensure full protection of a heritage place, the heritage order may also have provisions which affect parts of the land surrounding that place.

Who can apply for a heritage order

A requirement to a territorial authority for a heritage order can be made only by a heritage protection authority. Tangata whenua have three different means of access to the heritage order provisions.

- **The Minister of Maori Affairs** acting on the recommendation of an iwi authority [section 187(a)(ii)].

The tangata whenua could reasonably expect that the Minister, aided by the expertise of the Ministry of Maori Development, would be inclined to act as their heritage protection authority. The Minister, in the first instance, would be liable for any costs which were incurred, but could negotiate with the iwi to have them pay all or some of these costs if this were appropriate.

- **A local authority** acting on the recommendation of an iwi authority [section 187(b)].

If the local authority is a district council, it would be acting as the consent authority which considers the application for a heritage order. It may be reluctant to be a heritage protection authority in an issue which could increase costs for ratepayers.

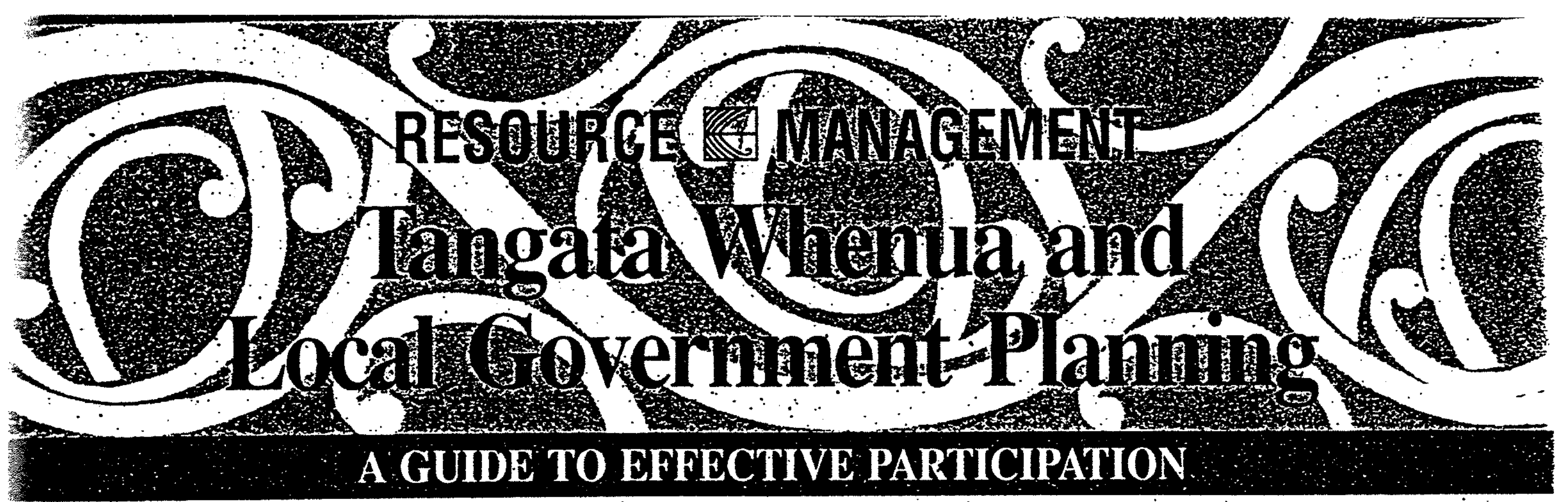
- Any body corporate having an interest in the protection of any place may apply to the **Minister for the Environment** for approval as a heritage protection authority for the purpose of protecting that place [section 188].

This provision means, for example, that an iwi authority which is a body corporate could apply for approval as a heritage protection authority. This process directly recognises the interests of tangata whenua in protecting their heritage, but there may be some drawbacks. The Minister for the Environment must take "public interest" into account when deciding whether to approve a heritage protection authority, whereas the Minister of Maori Affairs can focus more on Maori interests.

"Body corporate" is a legal term. Examples are incorporated societies, charitable trusts, Maori incorporations and 438 trusts. If you do not have access to one, you may need to seek advice on what a body corporate is, and the steps required to set one up.

The heritage order process

If you decide to protect a heritage place using heritage orders, you will have to consider which is the most appropriate body to act as the heritage protection authority (see sections 187 and 188 of the Resource Management Act for more detail).



"Kia ao ai te mahi, me matua whakapou te puunga kia ngita ai te mana, kia pumau ai te kaupapa, kei poapoaina ai te iwi."

Consider these issues:

- Your local council wants to subdivide land over a waahi tapu.
- The regional council plans a flood control scheme which will destroy traditional eel habitats.
- Commercial fishers are seriously depleting your traditional kai moana areas.
- Your iwi wants to begin a forest planting scheme on a large block of Maori land.
- An urupa is threatened by a proposed council road.
- Quarrying of sand threatens koiwi.
- Your marae committee wants to build 10 kaumatua flats on ancestral land.
- A planned iwi aquaculture venture needs high water quality and you fear that pollutants could enter upstream.
- Your whanau wants to open a river rafting business.
- Your hapu wants to erect a building to use as a kohanga reo.
- Your hapu is concerned about the spread of noxious plants onto land under a 438 trust.

These issues have at least one thing in common. They can all be influenced by the Resource Management Act 1991. You will be in a stronger position to deal with issues such as these – and to achieve your objectives – if you are familiar with the Act and know how to deal with your local authorities.

This brochure explains ways in which you can use the Resource Management Act 1991 for conservation and development of resources within your rohe by participating in local government planning.

Why Participate in Local Government Planning?

Sound environmental management did not become important to tangata whenua with the signing of the Treaty of Waitangi. Years of observation and experience contributed to the development of resource management practices which had clear life-sustaining objectives.

In fact the language reflects these lessons. For example "Te Ao Turoa" can be translated as "the enduring world", and encompasses the concept of sustainability.

The well-known Motunui claim to the Waitangi Tribunal, in the mid 1980s, highlighted tangata whenua concern about the discharge of waste into a customary food gathering area. The Tribunal report revealed what tangata whenua had known for a long time – that their environmental knowledge and interests had virtually no status in law in Aotearoa.

The Resource Management Act could change all that. Tangata whenua interests in natural resource management are now recognised in law and must be taken into account by local and central government planners. Knowledge is power – your knowledge of the Resource Management Act can help you be effective in managing your resources.

You may think that the Resource Management Act, which covers 382 pages, is too difficult to learn or understand. Despite its bulk, you should consider becoming familiar with those sections which can have a significant impact on the interests of tangata whenua.

Remember that the Act can work for you only if you use it. Effective resource management and development within your rohe will be difficult, if not impossible, if you do not take advantage of the ways the Act provides for you to get involved. To do this, you must understand the role of local authorities in resource management and development.

Local Authorities

Local authorities include:

Regional councils, such as the Wellington Regional Council.

Territorial authorities, which are usually city or district councils, such as the Christchurch City Council.

Unitary authorities, which carry out the functions of regional and district councils, for example Gisborne District Council.

Each local authority consists of politicians and staff. The politicians are councillors, elected by the ratepayers to make decisions on how their region or district will be managed. Staff are the

paid employees, who carry out those management decisions. They include, for example, inspectors, rubbish collectors, and office staff.

What Local Authorities Do

Local authorities get their authority and functions from various Acts of Parliament. The Resource Management Act sets out some of their functions relating to management of the area's natural and physical resources. Part II of the Act, Purpose and Principles, makes it clear that local authorities must give more than a passing thought to the interests of tangata whenua. Your knowledge of the Act can ensure that local authorities work in your interests.

Regional councils must produce regional policy statements. They may also produce plans for the management of the region's natural and physical resources. They have the main responsibility for managing water and the beds of water bodies, controlling discharge of contaminants, and land use effects of regional significance [these functions are listed in section 30]. They share responsibility for water bodies and land use with territorial authorities, and for coastal marine areas with the Minister of Conservation.

Territorial authorities have the main responsibility for the control of land use, including subdivision, and for control of the surface of rivers and lakes [these functions are listed in section 31]. They must prepare district plans [sections 72, 73].

Strategies for Participation

Politics is the art of the possible. You should think about setting resource management objectives which can be achieved. This will mean working out your priorities.

You may simply want to make sure that you are fully consulted, or you may have more extensive objectives, such as getting an iwi management plan incorporated into a regional or district plan.

The main point is that you should be clear about how you can participate in resource management and the goals you want to achieve.

When Can You Participate?

The Act provides for you to take part in managing resources. Therefore, getting involved in the local authority planning process at the right time is a crucial part of resource management in your rohe.

There are three different stages in the planning process when you can take part:

- Initial consultation by local authorities when they are preparing policy statements and plans.
- Submissions to local authorities after they have notified the public about an issue, including resource consents.
- At any time that you want local authorities to change their plans by integrating iwi management plans, or when other single issues are important to you.

Preparation of Policy Statements and Plans

The *regional policy statement* gives an overview of natural and physical resource management issues and priorities. It describes the policies and methods which will be used to manage these resources [section 59]. Each regional council must always have one policy statement.

The statement must include matters of resource management significance to iwi authorities [section 62(1)(b)]. This means that the council must consult iwi authorities from the start.

Regional plans deal with specific resource management issues [section 63]. Regional plans are not compulsory, but there may be more than one. If tangata whenua have any serious concerns about their cultural heritage in relation to natural and physical resources, then a regional council must consider preparing a regional plan [section 65(3)(e)]. Any person may request the preparation of a regional plan (other than a regional coastal plan) [Clause 22, Part II, First Schedule]

In other words, you may at any time ask for a regional plan to be prepared. The fact that one or more regional plans already exist does not limit your right to ask for further plans. However, it is important to realise that the council is able to recover certain costs from the applicant [see section 36 for details].

There must be one *regional coastal plan* for the coastal marine area of each region. It may be included as part of a regional plan [section 64].

You will notice the Act says that regional authorities must take notice of tangata whenua concerns. Consultation during the preparation of policy statements and plans is no longer something which local authorities can put into the "too hard" or "not important" baskets.

Each territorial authority must have one *district plan* to assist them in carrying out their functions [sections 72, 73]. The plan must not be inconsistent with any national policy statement, or the regional policy statement. The district plan may include rules which prohibit, regulate, or allow activities [section 76].

All local authorities must provide for matters relating to the management of any actual or potential effects of any use, development, or protection on *natural, physical, or cultural heritage sites and values, including landscape, land forms, historic places, and waahi tapu* as the authority considers appropriate [Clause 4, Part I, and Clause 2, Part II, Second Schedule].

This means that you do not have to confine your concerns to land which is owned by tangata whenua. It is possible there will be issues you want to influence relating to other land, especially ancestral land. Other issues may not relate to any specific area. For example, you may want local government planners to include a tangata whenua environmental perspective within all of their relevant policy statements and plans.

Resource Consents and Submissions

Any person may apply to the relevant local authority for a resource consent [section 88]. Once a consent authority is satisfied that it has received sufficient information and that the application is not minor, it must notify the public through the local newspapers and specifically advise those, including iwi authorities, it considers to be affected [section 93]. If an application for a resource consent is publicly notified, anyone may make a submission to a consent authority about it [section 96].

These sections mean that you can have your say about any advertised resource consent application. If you have already established a good consultation process

with your local authority, your iwi authority will be informed about relevant applications. If you do not think that the consultation process is satisfactory, you will need to keep an eye on public notices. This could mean that you always have someone from your iwi, hapu or whanau responsible for checking the public notices in your local paper.

Changes to Policy Statements and Plans

Anyone may propose a change to a regional plan (including a regional coastal plan) or district plan [Clause 22, Part II, First Schedule]. These provisions guarantee your right to have your say, and you can try to initiate change at any time. You do not have to wait for your local authority to decide on a change.

The local authority must decide within 20 working days whether to process the request. You may appeal to the Planning Tribunal if your request is refused or deferred [Clauses 24 and 26, Part II, First Schedule].

Tangata whenua cannot request a change to a regional policy statement. Changes to that statement may be proposed only by any Minister of the Crown, the regional council or any territorial authority of the region. Therefore, if you want change you will need to persuade at least one of the authorities mentioned above.

The First and Second Schedules

Even though the First and Second Schedules are tucked into the back of the Resource Management Act, they are very important and you will need to be familiar with them. The First Schedule, "Preparation, Change, and Review of Policy Statements and Plans", and the Second Schedule, "Matters That May Be Provided For In Policy Statements and Plans", set out the process for preparing and changing plans, and the matters to be considered in preparing plans and policy statements.

In particular, the First Schedule sets out what local authorities must do in relation to tangata whenua during the planning process. If you become familiar with this Schedule, you will be able to see whether local authorities are fulfilling their obligations to consult tangata whenua.

How Can You Participate?

Consultation

When they are preparing policy statements and plans, all local authorities must consult the tangata whenua of the area who may be affected, through iwi authorities and tribal runanga [Clause 3(1)(d), Part I, First Schedule].

Consultation does not mean that local authorities simply offer their final document to you for review. You should be part of the process from the start. When a local authority has prepared a proposed policy statement or plan it must notify the public about it. It must also provide one copy, without charge, to the tangata whenua of the area, through their iwi authorities and tribal runanga. [Clauses 5(1)(a) and 5(4)(f), Part I, First Schedule].

If you do not know which iwi authority or tribal runanga has been consulted by the local authority, it is your right to ask. Under the Act, "iwi authority" means the authority which represents an iwi and which is recognised by that iwi as having authority to do so [section 2]. Therefore it is not sufficient for the local authority to consult with tangata whenua of the authority's choice. They must be the people and authorities of the tangata whenua's choice.

In January 1992 the High Court held that the duty to consult:

(a) meant "meaningful discussion" lying between telling or presenting and agreement or negotiation towards agreement;

(b) implied adequate information, so as to enable the person being consulted to make intelligent and useful responses, and the person doing the consulting being "ready to change and even start afresh" [Air New Zealand Ltd v Wellington International Airport Ltd; High Court, Wellington; 6/1/92].

If you do not think that proper consultation has taken place, you can question the local authority about its consultation methods, including how it weighted any of your input.

Participation Models

You may need to begin by negotiating with the council to find a consultation and participation process which satisfies your needs. There is a range of consultation and participation processes between local authorities and tangata whenua throughout Aotearoa. Some are briefly described here:

- **Tangata Whenua Representatives on a Local Authority**
  This is the direct electoral approach, where tangata whenua representatives stand in the local body elections. Your representative[s] on the council will be able to advocate your interests, but may also be diverted to a lot of other work. However, members of your local council are the key decision makers in your area, so having tangata whenua representatives on council increases your ability to influence change.
- **Standing Committees**
  There is great variety in the types, membership and influence of standing committees. They usually have an advisory relationship with councils, and may be appointed by councils or nominated by tangata whenua. You should expect council to resource these committees.
- **Tangata Whenua Resource Management Committees**
  Chosen by the tangata whenua, these committees differ from standing committees in that they are "stand alone" groups entirely organised from within iwi, hapu and whanau. You may want to discuss how these committees are resourced with your local authority.
- **A Council Iwi Liaison Officer**
  This person, employed by the council, can function as the key link with tangata whenua. He or she acts as a point of first contact for iwi and as an advisor for the council. Note that this person is not your spokesperson, but is a facilitator, or pipeline, between you and the council.
- **No Formal Consultation or Participation Links**
  It is difficult to see how a "do nothing" approach could be in your interests.

You may need to talk to people from other areas and then choose or change a model to suit your particular needs. You may need to persuade councillors from the local authority that your model of consultation and participation is in their interests as well as yours.

Iwi Planning Documents

In determining policy statements and plans, local authorities must pay attention to any relevant planning document recognised by an iwi authority [sections 61(2)(a)(ii), 66(2)(c)(ii) and 74(2)(b)(ii)]. These are often called iwi management plans. They normally include plans for resource use within a rohe. Iwi planning documents, therefore, can be an important tool in influencing local authorities to take account of tangata whenua concerns. However, if you have a concern it does not have to be part of an iwi management plan before you raise it with the council.

Te Rūnanga o Ngatihine believe that the following principles must be assured:

- The plan is accepted as a legitimate policy statement of a well-constituted body representing a recognised Treaty partner.
- Negotiations regarding the plan should be conducted in a manner appropriate for two equal partners.
- The forums in which debate over the issues arise should be both marae and council chambers, and that councils accept marae kaupapa, and operate in its terms.

The Ministry for the Environment plans to publish a brochure on iwi management plans and the Resource Management Act, which you may find useful.

Silent Files

You may want to consider the use of "silent files" for your heritage places, especially your waahi tapu. Under this system your iwi, hapu or whanau keeps its own file of heritage places. Access to this file may even be restricted within an iwi or hapu.

You need tell the local authority only the general area where each site is located; for example, which land titles contain waahi tapu. Whenever a new land use consent was sought for any of these titles the local authority would have an obligation, in the first instance, to consult with the appropriate tangata whenua to see if the proposed land use posed any danger to the integrity of the waahi tapu. If waahi tapu were endangered, you could enter into negotiations with the local authority, and perhaps the landowner, to protect your taonga.

The advantage of this system is that you remain the guardians of these taonga without necessarily having to reveal where they are located.

If you want further information on protection of your waahi tapu and other heritage places, you could get a copy of the Ministry for the Environment pamphlet, **Protection of Maori Heritage Places.**

The Main Barriers to Effective Participation

Experience has shown that the two main problems which tangata whenua encounter are:

- Lack of effective communication with local authorities. This means "effective" both from your point of view and the local authority's.
- Lack of resources. Resources may include time, people with the necessary skills, or finance. You may choose to approach the local authority for assistance. For example, your regional or territorial council should be able to arrange a short course on the Resource Management Act for iwi representatives at very little cost.

Getting Started

If you are interested in taking part in resource management and local government planning, you might need to consider a number of questions. The following list is not exhaustive; other questions may arise.

- Do you have access to a copy of the Resource Management Act, including amendments and regulations?
- Are you familiar with all the relevant provisions in the Act?
- Do you have the resources for active participation in local government planning:
  - people with necessary skills?
  - people with the time?
  - enough finance?
- Where can you get these resources?
- What will they cost?
- Who are the local tangata whenua, if any, with whom the local authorities consult?
- Are those people able to represent your views?
- Do you want the council to change its way of consulting?
- Do you have a clear idea of the participation models you might want to use?
- Do you know who the key contact people in the local authority are?
- Does the local authority have a person skilled in iwi liaison?
- Do you already have an iwi management plan?
- Do you want to prepare an iwi management plan?
- Do you have any particular issues or concerns that you want to bring to the local authority's attention?

Further Information

The Ministry for the Environment publications, **An Introduction to the Purpose and Principles of the Resource Management Act: The Place of Kaupapa Maori,** and **Kia Matiratira: A Guide for Maori,** provide much useful information on the Act. You could also contact Maruwhenua (Ministry for the Environment, PO Box 10-362 Wellington), or any Ministry regional office.

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Planning by Maori for Maori

MINISTRY FOR THE ENVIRONMENT • PO BOX 10362 • WELLINGTON • PHONE (04) 473-4090

This information sheet is aimed at groups such as marae committees, section 439 trustees, whanau trusts, runanga or trust boards that wish to participate in resource management processes under the Resource Management Act 1991. It sets out a simple framework for planning and decision making that can help you to participate effectively without overloading your time, finances and energy.

The Resource Management Act 1991 replaces many of the previous laws dealing with the way we use resources such as land, air, water, and the coast. It also provides for iwi to have a much greater role in resource management than was the case under the previous legislation. Taking a greater role in statutory processes and structures will help you to address the environmental matters that are important to you.

The framework outlined here has been set in the context of resource management structures established under the Resource Management Act. However, it is a process that could be applied to other issues on which you are asked for input, such as health and employment, because the principles of good planning have universal application. It is a tool to help you focus on issues and decide how to respond.

The process outlined here can be as simple or as sophisticated as you think is necessary. You may wish to publish a document, a paper to be used as the basis for discussion with local authorities, or you may simply need a few notes to help in your discussions with different agencies.

This information sheet is not about preparing an iwi management plan, which is a formal document, although it may help you in that task. If you wish to proceed with the preparation of an iwi management plan, contact either Maruwhenua at the Ministry for the Environment or regional offices of Te Puni Kokiri for assistance.

Why should we plan?

Planning makes you focus on where you want to be and how you are going to get there. Without a plan, you are likely to end up running round in circles, getting tired but not achieving anything. Primarily, planning helps us to find our direction.

When should we plan?

The sooner you make a plan, the better. That way you can set your own timetable and move away from just reacting to the demands of others. However, if you have only enough resources to plan when you have to, this process will still help you to do so in a considered, strategic manner at low cost.

There are four main points at which your input under the Resource Management Act is likely to be sought:

1. Regional policy statements

Regional policy statement must be prepared by regional councils. They are intended to give an overview of resource management issues in the region, and are mainly concerned with "the big picture". Every regional council must prepare its first regional policy statement by 1 October 1993.

2. Regional plans (including regional coastal plans)

Each regional council must prepare a regional coastal plan by 1 October 1993, but other regional plans are optional. Regional plans tend to address specific issues (such as air quality, water and soil, or heritage issues) but they can also be prepared for a specific geographic area. These plans contain rules which control the way people use resources.

3. District plans

District plans are prepared by territorial local authorities (district or city councils). They are compulsory, and they also contain rules which control the way people use resources.

4. Consent applications

Somebody who wants to carry out an activity such as subdividing land must apply to a regional or district council for a resource consent and must submit an "assessment of environmental effects". This means that they must look at what will happen to the surrounding environment if they are allowed to carry out this activity. As part of the assessment, they must identify people who might be affected by the proposal, consult them, and respond to their views. In many instances, iwi, hapu, or whanau could be affected by an activity, and so a potential applicant may approach you for your views.

For more information about these procedures you should refer to the Resource Management Act, or to the guidelines and information sheets published by the Ministry for the Environment. Be aware that it is a statutory requirement for local authorities to consult tangata whenua when preparing policy statements and plans.

Who can plan?

Any group that wants to be involved in resource management can plan. It could be a whanau, hapu, iwi, or waka group, or it could be a group representing a combination of these groups.

There are two important aspects to consider. Firstly, is your interest in the area you are planning for clearly identified? For example, do you hold mana whenua or mana moana, or do you have a waahi tapu in the area)? Secondly, do the people who are carrying out the planning have the authority or mandate to do so on behalf of the group?

What resources should we plan for?

You should plan for those resources in which you have an interest, whether that interest is in the nature of ownership or is an ancestral relationship. The Resource Management Act provides for controls over the way in which people use resources, regardless of who owns that resource, where this is appropriate to achieve environmental objectives. When resource management agencies are exercising such control they must consider certain matters, including the relationship of Maori with their ancestral taonga, kaitiakitanga, and the principles of the Treaty.

So, for example, someone who wants to drain a wetland is likely to need a consent before they can do so. The agency that considers the consent application will have to think about, among other things, the possible effect of draining the wetland on the local iwi or hapu. If you are able to clearly communicate your interests in the resource and your objectives for it, the consent agency is more likely to address your concerns.

What do the terms mean?

It is important to know not only where you want to be, when, and why, but also how to express that in a way in which others can understand. Planning and resource management issues are not foreign concepts, but sometimes the language used is full of jargon and technical terms.

Some of the terms or "buzzwords" are explained below. If you come across other terms that you do not understand ask someone who does. Discuss the terms with council staff so that you all agree on what they mean.

Goals	Where you want to be in a certain time - it could be in five years, 10 years, 40 years, or over an indefinite period.
Objectives	Things that need to happen for you to achieve your goals. They are similar to goals, but are more specific. They are like "mini-goals" that can be carried out in set time-frames.
Policies	These can be principles or statements which guide and direct decisions, or they can be action statements which outline how an objective is to be reached.
Methods	These are ways in which the goals and objectives can be achieved. Sometimes policies and methods can be the same thing.
Outcomes	The results you expect to achieve through your objectives, policies and methods.

Goals, objectives, and policies can all be developed at different levels of detail. As an example, we have worked through the process outlined below to look at some general goals and objectives that iwi might develop, then at more specific goals and objectives for the coastal environment, and then focused on goals and objectives for water quality in that environment. The overall goals have been expressed in quite general language, but as the issues become more specific, so too does the language.

How should we plan?

Resource management issues can be approached in a number of ways. You should choose the method that works best for you. The method used here is based on developing goals, objectives, methods and policies to address issues which are specific to particular resources. It is very similar to the process that local authorities are required to carry out under the Resource Management Act.

The examples given are based on experience with Maori resource management. However, none of the goals, objectives or policies is absolute. You should change them or come up with completely new sets to suit your own circumstances. You can have as many or as few as you feel are necessary.

(i) Developing general goals and objectives

Resource management issues are related to other matters that whanau, iwi and hapu are involved in. For example, you may want to build papakainga housing on ancestral land to provide shelter, or set up a mussel farm to provide income and employment. In either case, you are likely to need consents from either the district council or regional council.

Therefore, in order to develop a direction for resource management, you need to know the general direction in which your iwi wants to go. Your first step should be to decide in a general, philosophical sense, what is the ideal situation for your iwi, hapu, or whanau in the long term.

Some overall goals might be:

- The maintenance or enhancement of the dignity/mana of the people; or
- The promotion of the cultural, physical and spiritual health of the people.

Remembering that objectives are similar to goals, but more specific, think about what needs to happen for the goal to be achieved. Your objectives may be similar to these:

- To promote economically self-sufficient tribal communities.
- To maintain and enhance the continuation of the relationship with ancestral taonga.
- To enable communities to provide for their physical needs through:
  - high quality kai;
  - housing;
  - communal activities;
  - places of solitude;
  - facilities for recreation;
  - places of healing.
- To equip people with the skills and knowledge to stand tall.

1990 *Waitangi Commemorations*

Developing these general goals and objectives will also set a context for other plans, not just those that relate to resource management; for example, plans about education, preventative health programmes, housing, economic development, and fisheries.

(ii) Developing resource-specific goals and objectives

Now you need to look at how these overall goals and objectives relate to a specific resource management issue, such as coastal management.

Firstly, think about what it is about the coast that your iwi values. Ask yourselves what features of the coastal environment are important to you and what makes those features important.

The answers might be something like this:

- Source of kai, both from water (fish, seaweed, shellfish) and land (shellfish, birds).
- Ancestral ties (spiritual relationship).
- Location of waahi tapu or other places of significance.
- Source of peace, solitude and recreation.
- Source of cultural materials; for example, pingao timber.
- Potential source of income or economic support for the iwi; for example, from activities such as aquaculture, fishing, tourism, and related industries.
- Educational environment for kohanga reo, kura kaupapa, and whare wananga.
- Manaakitanga.

Now, bearing in mind both the overall goals and the features of the coastal environment identified as important to tangata whenua, look at specific goals for the coast that might work towards

achieving the overall goals.

Examples of coastal goals include:

- To care for the coastal environment so that it continues to nourish and sustain the people.
- To uphold the spiritual relationship with the coast.

It is better to have a few well-focused goals and objectives rather than lots of them. If you have too many objectives it can lead to confusion when you get to the following stages of developing policies and methods.

(iii) Identifying issues

Now that you have roughed out what you want to achieve with regard to a particular resource (goals), you can start looking at what will help you achieve those goals, and the options you have for making or helping those things happen (objectives, policies and methods).

Ask yourselves what is necessary to retain or improve the things about the coast which are important. The answers to that question are termed "issues", because they usually raise matters that need to be addressed.

Some issues could be:

- Water quality.

  This is necessary for healthy kai, spiritual reasons, and to avoid any negative effects on tourism caused by pollution.
- Identification of areas suitable for development.

  Certain types of activities need to be located on the coast because of their nature; for example, aquaculture needs available coastal space in an area of high water quality with appropriate growing conditions (for example, good flush). The product also usually needs to be processed nearby or close to transport.

  Some tourism-related activities, such as hotels and motels, don't need to be right on the coastal zone, but other, such as boat tours or helicopter tours, may require it. Marinas cannot be located anywhere other than the coastal area, unless there are nearby rivers and lakes that are large enough.

  Fishing-related activities, such as dry docks or other facilities for ship maintenance, must be on the coast. Fish processing factories probably also need to be in that area to speed processing and reduce costs.
- Identification of areas entirely unsuitable for development of a type which has effects that compromise the following values:
  - places of tapu;
  - places highly valued for particular qualities
  - landscape
  - forest or bush
  - quiet/solitude;
  - traditional fishing grounds/kaimoana harvesting areas;
  - sources of cultural material;
  - places used for wananga.
- Maintenance or enhancement of habitats:
  - to maintain breeding stock; -to provide educational areas for passing on of Maori resource management lore;
  - to maintain continuous supply of cultural material.

The question of what is necessary for a resource to hold its value (in the full sense of the word, not just financial value) is not always an easy one to answer. Some features of the resource will be known automatically, but on other matters you might need advice from others, such as business people, scientists, lawyers, and so on.

(iii) Developing issue-specific objectives and choosing policies

Once you have identified the relevant issues, you can look at developing objectives and policies for each of those issues. This information sheet will look only at the issue of water quality, but you should carry out a similar exercise for every issue that you identify.

Water quality has been shown to be important because of its relationship to healthy kai, spiritual integrity, and the possible effects of pollution on tourism. From that basis, an objective for water quality can be developed

- To maintain or enhance water quality:
  - in all areas, water quality should not be detrimental to human health (physical or spiritual);
  - quality of the highest standard is required in areas of breeding/spawning/ cultivation/harvesting;
  - the quality should be such that the integrity of waahi tapu is not compromised.

Next you need to think about how to achieve that objective. You will remember that policies and methods are tools to help us achieve objectives.

Policies are generally principles which guide the approach of an agency to a particular objective and direct the way decisions are made. They can be strict rules, for example, "there shall be no..."; or more inspiring, for example, "to encourage and promote..." Methods tend to be more on the "doing" side, such as planting, landscaping and so on. However, sometimes policies and methods can be the same thing. For instance, if the policy is to restrict or prohibit a certain activity, that act of restriction will often also be the method of achieving the objective.

Before you look at policies and methods you need to consider the question: "What are some of the effects of activities which would make it difficult to achieve the objective?" So, with regard to water quality, you would ask: "What are the effects of activities which would negatively affect water quality?".

Concentrate on the effects of activities, rather than the activity itself. There may be ways to avoid the effect other than just preventing the activity. For example, a water quality problem may be caused by the run-off from fertiliser applied to farming land rather than by the actual activity of farming. Stopping farming would stop the effect, but it would also have a drastic effect on the economy and lifestyle of the area. An alternative could be to alter the method of fertiliser application. If you concentrate on the activities rather than the effects you may ignore other options for addressing the issue.

The effects of activities which influence water quality include discharges of sewage and industrial waste, run-off of fertiliser from farms, the loss of soil from land into rivers and the coast, and the loss of wetlands which acted as filters for water. Again, you may need to get advice from people such as soil scientists, biologists, and water quality technicians.

At this point, you may also want to look at the aspirations or objectives of the non-Maori community to see whether there are any similarities. If there are similarities, you may find it more efficient to focus on the areas that are not being covered by other groups. The regional policy statement process should help you to assess this.

Policies relating to the water quality objective could include:

- The cessation of all discharges of human effluent to coastal and inland waterways by the year 2010.
- The treatment of industrial effluent to a level that is not harmful to human or marine health.

- The avoidance of any discharges to areas of tapu and kaimoana grounds.
- The promotion of land use practices which prevent or mitigate stormwater run-off.
- The promotion of land use practices which prevent or mitigate coastal erosion.
- The requirement to consider alternative methods of treating effluent, e.g. land-based treatment

(v) Choosing methods

The last phase of planning is to determine what methods will achieve our goals, objectives and policies. In many ways this is where all the "action" is, but you need to go through the process of developing goals and objectives first to make sure that the methods will do what you want them to do.

For each objective there are generally a variety of methods that can be used according to the circumstances. Some involve using statutory mechanisms (e.g. rules), some require an activity to be done (e.g. planting), some may relate to attitudes (e.g. land management practices), and some may relate to processes (e.g. the appointment of hearings commissioners).

This may also be an appropriate point at which to consider the use of traditional resource management methods such as rahui. There may be limits as to how far such methods can be recognised within the structures of the Resource Management Act 1991, and some iwi have expressed concern that any interaction between the Act and traditional methods might lead to an unacceptable dilution of those matters. However, those traditional methods do not need statutory recognition to continue to have application and authority for those who follow them, and legal rules are not the only way to achieve an objective.

It is important to think laterally when looking at the various methods available. People often focus on rules or bylaws as the way to achieve things. While rules are necessary, on their own they are not always the most effective way to achieve a goal or objective. For example, education and the provision of information which enables people to make informed decisions is a much cheaper way of achieving a goal than prosecuting or cleaning up the result of a bad decision. Therefore, even if some traditional methods can not be given effect through the force of law, you should still consider them when looking at what methods may be appropriate.

Some methods that might help maintain and improve water quality include:

- The inclusion of rules in the regional coastal plan setting minimum water quality standards.
- The review of existing consent conditions once the regional coastal plan is operational.
- The setting of appropriate conditions on new consent applications.
- The inclusion of policies in the regional coastal plan and district plan (where appropriate) to guide consent decision making.
- The establishment of policy-making committees for areas of particular significance.
- The identification of people to act as advisors to hearing committees or as hearing commissioners.
- Compliance monitoring.
- The preparation of marae development plans for effluent disposal.
- The use of rahui.
- A review of pest and weed management practices.
- Applications for enforcement orders where appropriate.
- A programme of re-establishment of wetlands.
- Revegetation programmes using harakeke, pingao, native trees in areas subject to erosion.
- The distribution of information on land management practices.

Again, you may need advice from other people about different methods. In particular, the staff of local authorities can assist you to identify the various alternative methods.

How long will it take?

The methods and policies outlined above are for one objective on one issue for one resource. From this you can see that planning can be quite a long process, but not everything has to be done at once. Tackle those parts of the process that must be addressed as a priority, and then work through other tasks as time permits. For instance, for the regional policy statement you may need initially only to identify the issues for each resource. As the drafting of the statement progresses, you can look at developing objectives, policies and methods for each of the issues.

It is important to remember that planning is a process of continual refinement. Your overall goal may not change much over time, but as our knowledge and understanding of resources and our relationship to them continues to increase, you may need to adjust or fine tune objectives, policies and methods that you have developed.

You should remember that any objectives, policies and methods that are included in statutory documents will be considered by council pursuant to legislation, and could be subject to challenge from others. This could ultimately mean going right through to the Planning Tribunal. This should not deter you, but it does mean that the basis on which you make decisions, including any information you use, needs to be sound.

Where can we get more information?

Information and the ability to analyse it is important to any planning process, whether it be a business plan, resource management plan or some other type of plan.

There are a number of different sources of information you can call on. Obviously, you will be aware of or may be able to access information held within iwi, either written or verbal, that can help you to draw up policies and methods. This information could be in waiata, pepeha, or oral narratives from elders.

Reports of the Waitangi Tribunal and evidence presented to any of their hearings will also be very useful. Regional and district councils may hold quite a bit of scientific information, as may the Department of Conservation, the Ministry of Agriculture and Fisheries and the Department of Survey and Land Information.

The collection and analysis of specific data may be something that you wish to discuss with these various agencies. It may also be worth approaching various departments of the universities in terms of input into or access to past, present and future research assignments.

The Ministry for the Environment has published a number of guidelines to help those working under the Resource Management Act. They include Guide to the Act, and Kia Matiratira: A Guide for Maori. These guidelines cost $10 and can be obtained from Ministry for the Environment offices or GP and Bennetts bookshops. The Ministry has also published a number of information sheets on aspects of the Resource Management Act. These are free from Ministry offices.

Copies of the Resource Management Act and associated regulations can be purchased from GP and Bennetts bookshops.

APPENDIX THREE:

PAPA KAINGA HOUSING - MINISTERIAL STATEMENT OF INTENT

PAPAKAINGA HOUSING

MINISTERIAL STATEMENT OF INTENT

The Minister of Maori Affairs, the Minister of Housing and the Minister for the Environment:

WISHING to give effect to the principles of the Treaty of Waitangi in respect of confirming to Maori their right to live on ancestral lands still in their possession, and;

WISHING to assist in the provision of papakainga housing on multiple-owned land which is subject to the Maori Affairs Act 1953,

INVITE the cooperation of regional and local government authorities to join with central government to achieve the following housing objectives:

> OBJECTIVE 1 That all district plans and, where appropriate, regional policy statements provide for suitable owner-occupied housing on Maori land as a matter of right, subject only to the need to ensure that such housing does not adversely degrade the natural environment, and are developments which are sustainable and environmentally sound.
>
> OBJECTIVE 2 That papakainga housing be a permitted activity which provides for the development of housing and other community uses on multiple-owned Maori land with or without an associated marae.
>
> OBJECTIVE 3 That papakainga housing be a permitted activity which does not require the partition or sub-division of the relevant land, nor should it require any material change in the nature of the tenure of that land as a pre-requisite of approval.
>
> OBJECTIVE 4 That because papakainga housing is built without the land being partitioned, councils rate papakainga housing on the individual land rather than on each individual house.
>
> OBJECTIVE 5 That councils report annually to the Ministry for the Environment on what provision has been made for papakainga housing in their jurisdiction, and on the extent to which these provisions have facilitated papakainga housing.

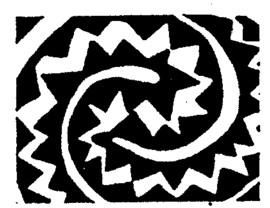
Further, we, as Ministers of the Crown will consider reports on papakainga housing from the Ministries for the Environment, Housing and Maori Development in twelve months time. Should progress on our five objectives stated above be unsatisfactory, we will invite the Minister for the Environment to initiate a National Policy Statement on Papakainga Housing under Section 45 of the Resource Management Act 1991.

Hon Doug Kidd
Minister of Maori Affairs

Hon Rob Storey
Minister for the Environment

Hon John Luxton
Minister of Housing

APPENDIX FOUR:
REFERENCES TO MAORI TERMS IN THE RESOURCE MANAGEMENT ACT



APPENDIX B
REFERENCE IN THE ACT TO MAORI TERMS

Part I

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

Part II

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

Part III

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

Part IV

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

Part VII

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

Part X

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

SCHEDULES

First Schedule

Part I

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

Second Schedule

Part I

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

Part II

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

Fifth Schedule

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

Eighth Schedule

Part I — Reference to the Maori Affairs Act 1953.