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KAITIAKITANGA O TE TAI AO

Reconciling Legislative Provisions and Outcomes for Māori

A thesis
submitted in fulfilment
of the requirements for the degree
of
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Nathan Charles Karaua Kennedy



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Abstract

The Resource Management Act (1991) (RMA) was heralded as internationally ground-breaking for its integrated approach, and for cementing 'sustainable management' as its overarching purpose. It was ground-breaking also for its recognition of First Nations' rights and values. This includes directing decision-makers to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, waters and treasured resources, to have particular regard to Māori customary practices, and to take into account the principles of the Treaty of Waitangi. The RMA provides for councils to transfer or delegate functions and powers to Māori, and for joint management arrangements.

In 16 years as environment officer for my iwi, I witnessed the failure of the RMA to protect Māori values and interests. This experience prompted me to undertake research to thoroughly investigate outcomes of the operation of the RMA for Māori. Two questions framed my research; the first asking whether kaitiaki have been empowered by the Māori provisions in the RMA, and the second seeking to determine overall outcomes for Māori from the Act.

Assessing such outcomes required an understanding of Māori values and interests, evaluation of the law, of the statutory plans that govern council administration of the RMA, implementation of these by councils and the Crown, and their treatment by the courts. To answer the two questions I present in this thesis a geographically focused study of two *take* (causes or significant issues) at Whangamata, the construction of a marina, and the removal of mangroves.

I compare Ngāti Whanaunga experiences with those of Māori nationally. By doing so I provide the evidence base for an 'overall broad judgement' (as the RMA requires) that despite apparent empowerment by the Act and its statutory plans, Māori have suffered widespread and significantly negative outcomes under the RMA. Rather than being empowered, Māori struggle to participate in planning processes, and see ancestral values and interests eroded by waves of resource consent processes, in which effects on Māori are little considered.

Mihi

Ngā puke ki Hauraki ka tarehua The peaks of Hauraki are shrouded in mist

E Mihi ana ki te whenua We acknowledge the land

Tangi ana ki te tangata and lament the people

Ko Moehau ki tai Moehau stands on the shore

Ko Te Aroha ki uta Te Aroha stands inland

Ko Tikapa te Moana Tikapa is the ocean

Ko Hauraki te Whenua Hauraki is the land

Ko Marutūahu te Tangata ē Marutūahu is the ancestor

Tihei mauri ora A sneeze, and there is life

Ko te wehi ki te Atua o ngā mano, Tuauriuri, whāioio With awe for the Lord of hosts, of the many and the multitudes

Ki ana te rangi me te whenua i te nui o tōna korōria Both in heaven and on Earth, great is your glory

Ngā mihi ki a Ranginui e tū iho nei rāua ko Papatūānuku e takoto nei I pay respect to the Ranginui, the sky father, and to Papatūānuku, Mother Earth who lies before us

Kia tū mai anō ngā āhuetanga o te taiao Uphold all aspects of the natural world

He kōrero tēnei i āhau moo ngā mātauranga Māori ki roto i te hanga tikanga o ngā kaunihera, te karauna hoki This is what I have to say about the inclusion of Māori views and knowledge within the policies and the practices of councils and the Crown

Hei whakamāramatanga hoki ki te tangata e kimi nei i te mātauranga o te Ao Māori e pā ana ki te manaaki me te tiaki i te whenua I seek to find an explanation, some understanding, of the means by which Māori environmental knowledge can be applied to sustain and protect the land

Ko te wawata, te tūmanako, kia marama ake ai tātou, Ngāi Māori i ngā tikanga, i ngā kaupapa, me ngā kōrero a ngā mātua tupuna, kia kaha ake ai tātou ki te tiaki, te poipoi, te manaaki hoki i te taiao e noho nei tātou It is my hope and aspiration to shed light for all concerned, on how Māori practices and principles, the knowledge handed down from the ancestors, can strengthen our efforts to care for, nurture and sustain the natural environment that lies before us.

Nāku iti nei,

Nathan Charles Karaua Kennedy - Ngāti Whanaunga

He Maimai Aroha – In Memory

Sadly, several whanau, colleagues, friends and family members died before I completed this thesis. These include Dr Evelyn Stokes who was my supervisor for an unfinished master's thesis that later morphed into this research, and several of the elders who guided me, including my dear Dad, Kevin Kennedy, one of our great iwi knowledge holders Te Haumarangai Connor, my whāngai Mum Ngawhira Tanui II, and my aunty and mentor over my years as iwi environment officer, Carol Munroe. We also lost some dear PUCM friends and colleagues, Sarah Chapman was a brilliant planner, Dr Tom Fookes a champion of humane cities, and Dr Peter Kouwenhoven. We also lost my chief supervisor's wife Glennis Ericksen. I recall her warm hospitality, and laughter-filled evenings.

Ko te hunga kua whetūrangitia, i ngā marama, i ngā tau, ko Dad, Evelyn, ko Te Haumarangai, ko Ngawhira, ko Carol, ko Sarah, ko Tom, ko Peter, rātou ko Glennis. Ko rātou i para i te huarahi i whai nei ahau ngā mahuetanga iho o rātou. Ko rātou i whaka tōkia te mātauranga o Ngāti Whanaunga, o rātou ngā kaitiaki o te motu, ko o rātou tapuwae he tirohanga ake mō āpōpō, ko Whanaunga Kītahi e Kohikohi ki te rangi koea koea.

To these illustrious leaders who join the multitudes of stars in the heavens, those in recent times, and of years gone by, my Dad, Evelyn, Te Haumarangai, Ngawhira, Carol, Sarah, Tom, Peter, and Glennis. For they, through their hard work, have provided the wisdom and the guidance and created the pathway for this research. Through them the knowledge of Ngāti Whanaunga and of kaitiaki around the country is raised, along with our future leadership. I consider their footsteps of the past with an eye to the future, and in unity, in the clusters of stars in the heavens, I admire their achievements.

Āpiti hono tātai hono, hunga mate ki te hunga mate, āpiti hono tātai hono, tātou ra ki a tātou.

Join together the lines of people, the dead to the dead; and we, the living, to the living.

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Chapter 1 - Introduction

Ko Te Pū The Origin or cause
Te More The tap root - male and female elements
Te Weu The secondary roots - descendants
Te Aka The vine - the first sound - spark of life
Te Rea The resulting growth
Ko Te Waonui The expansion
Te Kune The swelling - the origins of knowledge
Te Whē Knowledge
Te Kore Nothingness - but also potential and eternity
Te Pō The darkness, and conception
Ki ngā tangata Māori The origin/connection of mankind
Ko Rangī rāua ko Papa Is Ranginui and Papatūānuku
Ko tēnei te tīmatanga o te ao This is the beginning of the world
Ko tēnei te tīmatanga o te ao This is the beginning of the world ¹

Ko Nathan Kennedy taku ingoa
Korua Moehau me Te Aroha ōku maunga
ko Tikapa te moana, ko Hauraki te whenua
Ngāti Karaua tōku hapū, ko Ngāti Whanaunga te iwi
Ko Marutūahu te tangata e

Tēnā koutou, my name is Nathan Kennedy, Moehau and Te Aroha are my tribal mountains, Tikapa is our ocean, and Hauraki is the land. Ngāti Karaua is my hapū, of Ngāti Whanaunga iwi, Marutūahu is our eponymous ancestor.

In approaching this thesis it is important to start by stating who I am, and my place in the research. My whakapapa (genealogy) to the case study harbour, Whangamatā, is through Mere Kaimanu, the older of two daughters of Wiremu Pātene and Maraea Tiki of Ngāti Karaua hapū. Maraea Tiki was born and grew up at Whangamatā. I grew up in nearby Waihi, where I still live, but stayed at Whangamatā in my youth during weekends and holidays.

A karakia (prayer) citing elements in a Māori explanation of the world's creation. Translations vary and in some traditions there are multiple names for some of the epoch. This form is taught as a waiata (song) at Kōhanga Reo (Māori preschools).

Some of my own environmental work and research has contributed to, and drawn on, my thesis research. These were: my position as Ngāti Whanaunga Environment Officer (and other work for the iwi), in which capacity I sat on various council-iwi forums and committees, and research officer on the Foundation for Research Science and Technology funded research programme called Planning Under a Cooperative Mandate (PUCM) from 2003 to 2009, co-authoring a series of Māori research reports. Before that I was the Thames-Coromandel District Council (TCDC) Geographic Information Systems (GIS) administrator for 3 years. As a consultant I was engaged by councils, Crown agencies, and iwi to research Māori and local government engagement, Treaty claims-related mapping work, and Māori planning. The two questions of this thesis stemmed from the iwi environment officer experience. It resulted in a strong conviction about the inadequacy of the law, and about poor performance by local and regional authorities, in relation to obligations to Māori.

Readers are directed to two fold outs, a Glossary of Māori words and List of Abbreviations at the back of the thesis (pages 355 and 357).

Recognition of Māori in Environmental Management

The Waitangi Tribunal observed that tino rangatiratanga in Te Tiriti o Waitangi - the Māori language version of the Treaty of Waitangi - referred not to separate sovereignty, but to tribal self-management in a manner similar to the operation of local government (Waitangi Tribunal, 1988). But Māori have struggled since signing the Treaty of Waitangi in 1840 to influence decisions about their own affairs, and over local resources. This has been the experience of Ngāti Whanaunga.

Iwi have ancestral kaitiaki (approximately guardianship/stewardship) obligations over tribal lands and waters. The importance of the relationship of Māori to their ancestral lands and waters, the kaitiaki responsibilities, and the Crown's responsibilities stemming from the Treaty of Waitangi and common law are recognised in New Zealand legislation. That recognition was not easily won. Māori, like First Nations (colonised indigenous peoples) elsewhere, were almost completely deprived of the right to participate in the management of ancestral lands, waters, and resources until recent decades. Recent significant advances include Waitangi Tribunal reports, Treaty claims settlements, and ground breaking court cases. There has also been some old fashioned good will.

International developments

Some important international court decisions have reinforced Māori rights. These include the American Supreme Court's *Boldt Decision* (*US v. Washington*, 1974), the Australian High Court's *Mabo v. Queensland* (1989), and the Canadian Supreme Court's *Sparrow v. the Queen* (1990). In Chapter 6 I argue that after 40 years of such judgements, local government and powerful interest groups continue to resist obligations relating to First Nations' people participation.

Aotearoa is signatory to international conventions that recognise and promote the roles and rights of First Nations in environmental management. These include the *Convention on Biological Diversity* (1992), the *Rio Declaration on Environment and Development* (1992a), and the resulting *Agenda 21*, and most recently, the UN General Assembly's (2007) *Declaration on the Rights of Indigenous Peoples*. Despite signing up to these conventions, the Crown has demonstrated modest support for the First Nations participation they promote.

Local developments

International developments energised minorities worldwide, including First Nations. Learnings from movements such as black American civil rights encouraged Māori to assert their own rights, and to resist poor treatment.

The part played by Māori (and other New Zealanders) should not be overlooked. Several decades of Māori activism provided a focus on Māori issues that resulted in the 'Māori renaissance' (Taonui, 2013). Local protests like the Māori land march of 1975, occupation of Raglan golf course in 1977, and of Bastion Point in 1978, were responses to Māori land being taken by the Crown.

By the mid-1980s Māori had successfully pushed for full immersion schools. Kōhanga reo (pre-schools), kura kaupapa (primary schools), whare kura (secondary schools) and whare wānanga (universities) taught in 'full emersion' Māori learning environments, elevating Māori expectations for recognition of the validity of their values and rights. Māori aspirations for greater control over their lives was given expression in Māori terms, with calls for recognition of rangatiratanga (chiefly authority or sovereignty), and mana motuhake (self-determination). The Māori renaissance reflected Māori determination to have more control over the institutions that directly affected them. These developments raised the profile of Māori in the public consciousness and political arena, and,

along with the international developments, were significant drivers in greater legislated recognition of Māori rights and values.

The Waitangi Tribunal, established in 1975, influenced how Māori rights and values in legislation have been treated. Various Tribunal reports have been critical of statutory interpretations and treatment of concepts such as kaitiakitanga and mana whenua (Waitangi Tribunal, 2001a). Such findings, along with the evolving international recognition of First Nations' rights and values, were important drivers for the inclusion of Māori-specific provisions in resource management legislation in Aotearoa, and Māori have pushed the boundaries.

Māori provisions in environmental management legislation

While there were some early Acts that included recognition of Māori rights and interests in locations or resources, provision for Māori values and rights in environmental legislation is a recent development. The Town and Country Planning Act (1977) was ground breaking in that it recognised as a matter of national importance 'the relationship of the Māori people and their culture and traditions with their ancestral land' (section 3g). However the effect of the section was narrow, as ancestral land was limited to land remaining in Māori ownership.

Tikanga Māori within the RMA

The Town and Country Planning Act was replaced by the Resource Management Act 1991. Despite the faults I describe in this thesis, the RMA was internationally ground-breaking, as both an early effects-based sustainability-purposed regime, and for its inclusion of First Nations' provisions.

The primary Māori provisions within the RMA are in section 6 (Matters of national importance), section 7 (Other matters), and section 8 (Treaty of Waitangi). Section 6(e) requires that administrators of the Act recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. Section 7(a) requires that all persons exercising powers and functions under the Act have particular regard to kaitiakitanga. Section 8 requires all persons exercising powers and functions under the Act to take into account the principles of the Treaty. The underlined directives get weaker for each provision, so that the Treaty reference imposes the weakest obligation.

Māori consider the Treaty of Waitangi to have entrenched the respective rights and responsibilities of Māori and the Crown in Aotearoa from 1840. It contains three articles. The first cedes kawanatanga (governance) in the Māori language version, and sovereignty in the English language version, to the Crown. The second guarantees to Māori the full exclusive and undisturbed possession of their lands, resources and other properties and provides for the alienation of these to the Crown by agreement. And the third article extends royal protection to Māori and imparts to them all the rights and privileges of British subjects.

However, in recent decades there has been a move by the Crown away from adherence to the articles of the Treaty, towards a number of Treaty derived principles. These have been defined over time by the Waitangi Tribunal and the courts, and given weight through incorporation in legislation, where references to the Treaty refer almost invariably to these principles. According to the Crown, Treaty principles are primarily concerned with the way in which the Crown and Māori behave in their interactions with one another (Te Puni Kokiri, 2001). In the broadcasting assets case, *New Zealand Māori Council v. Attorney-General* (1994) the court described the significance of the principles (p. 517 line 20):

The 'principles of the Treaty of Waitangi' referred to in the State-Owned Enterprises Act 1986, s 9, were the underlying mutual obligations and responsibilities which the Treaty placed on the parties. They reflected the intent of the Treaty as a whole and included, but were not confined to, the express terms of the Treaty. With the passage of time, the "principles" which underlie the Treaty had become much more important than its precise terms.

There remains debate about the exact list of Te Tiriti principles, but primary amongst them are the Crown's obligation of active protection, and the requirement that both treaty partners act in good faith. The Crown has been reported as neglecting its Treaty obligations when undertaking its functions under the RMA (Jefferies & Kennedy, 2009a; Ruru & Wheen, 2009; Tahana, 2012). The Treaty provisions within the RMA were criticised by the Waitangi Tribunal in its *Whanganui River Report* (1999 p. 330) as falling substantially short of the Crown's obligations to Māori stemming from Te Tiriti o Waitangi. Principally, the Tribunal observed that the RMA bundles Treaty obligations with a range of other matters that have to be balanced in decision-making, it reported:

We disagree with Crown submissions that section 8 of the Resource Management Act provides for recognition and implementation of the Crown's Treaty duties. It does not require those with responsibilities under the Act to give effect to Treaty principles but only to take them into account. This is less than an obligation to apply them. When ranked with the competing interests of others, this means that guaranteed Treaty rights may be diminished in the balancing exercise that the Act requires.

Furthermore, Treaty-related provisions within the RMA are at variance with other legislation governing councils, such as the Local Government Act (2002) (LGA), Hauraki Gulf Marine Park Act (2000) (HGMPA), and Conservation Act (1987). They impose different obligations on decision-makers, and there are instances where an activity triggers duties under multiple acts. This legislative interplay is not well understood by councils (Hauraki Gulf Forum, 2009; Peart, 2007).

Tikanga Māori (Māori values, traditional practices and correct behaviours) and mātauranga Māori (traditional Māori knowledge and world views) are widely treated as inferior to Western practices and scientific knowledge by RMA decision-makers. Accordingly, Māori regularly find themselves validating their knowledge and perspectives (Kennedy & Jefferies, 2008; Latimer, 2011), despite the previously mentioned international conventions, and international and local jurisprudence confirming the importance of First Nations' environmental knowledge and requiring that this be accorded significant recognition.

It has been shown that the inclusion of Māori concepts in laws can lead to their distortion (Memon, Sheeran, & Ririnui, 2003; New Zealand Law Commission, 2001; Tomas, 2006). Some statutory interpretations of tikanga and Māori values are inadequate or contrary to traditional understandings (Waitangi Tribunal, 2001a). In their role of interpreting and implementing plans the courts have found councils to be failing to understand Māori values and world views (Waitangi Tribunal, 1983). The RMA and related contemporary environmental resource management legislation have resulted in what has been described as a 'race for resources', where legal processes serve to privatise and alienate tribal interests (Hutching, 2008; McPherson, 2011; Rennie, 2002). This is particularly the case in relation to 'public sphere' resources, such as lands and waters within the coastal marine area.

RMA participation by Māori 'in the real world'

The Crown has claimed that Māori have widely benefitted from these legislative provisions. In its 1997 *New Zealand State of the Nation Report* (Ministry for the Environment, 1997 p. 2.17) the Ministry wrote:

The Treaty itself now has greater status than it ever had before, with central and local government obliged to consult with Māori before making decisions on matters affecting them. This means that Māori views on resource management and environmental issues are now more frequently heard and acted on.

While Māori participation in environmental resource management increased under the RMA, the bar was set low as participation was almost non-existent previously. Claims that Māori views are widely considered or that they often participate are based on council self-reporting using a flawed reporting framework. They significantly overstate Māori involvement (Department of Internal Affairs, 2009; Jefferies & Kennedy, 2009b; Te Hunga Roia Māori o Aotearoa, 2009).

Nationally, Māori RMA participation is minimal at a council level and reduces up through the courts. Māori are largely absent at the decision-making table, rarely elected to councils, or engaged as members of RMA decision-making committees. But this disparity appears to be gradually changing, particularly through Treaty settlements and the establishment of Auckland Council in 2009.

Administering the RMA is complicated for councils because many iwi rohe (tribal areas) cross council regions and districts, as well as other statutory boundaries. These include Department of Conservation (DoC) conservancies, Fisheries Management Areas, and ecological areas. Agencies must consider cross-boundary issues, and district and regional councils must keep records of areas over which one or more iwi or hapū exercise kaitiakitanga (section 35a.1.c).

Māori have participated little in the management of ancestral lands and waters. Mechanisms like section 33 transfers of powers or functions to iwi authorities, or section 188 heritage orders, have never been granted to Māori. Iwi and hapū attempt to participate in drafting statutory plans, and in decision-making processes. However, most are under-resourced and rely on volunteers (Kennedy, 2009a). This is despite some local and regional council plans that undertake to resource iwi participation.

Outcomes for Māori

Whangamatā is one of the earliest known settlements in Aotearoa. It has been intensively occupied and used ever since (Gumbley, 2003 p. 8). The area is subject to intense development pressure. Poor land use practices, periodic weather events, and infrastructure capacity issues arising from holiday population peaks all result in environmental degradation. The area's cultural heritage has been largely destroyed, with that remaining under constant threat.

Ngāti Whanaunga and other iwi organisations have been involved in numerous legal actions to preserve the cultural and environmental values of Whangamatā and its surrounding catchment. Whangamatā cases exemplify poor Crown and council performance, when measured against obligations to (variously) recognise, provide for, and protect Māori cultural values and legal rights (Hauraki Gulf Forum, 2011b p. 130). Legislative provisions and statutory plans appear to provide protection of Māori rights and values, but agencies fail to properly implement these (Bachurst, Jefferies, & Ericksen, 2004; Day, Mason, Crawford, & Kouwenhoven, 2009; Ericksen, Berke, Crawford, & Dixon, 2003).

Council monitoring and reporting of environmental outcomes and plan effectiveness is lacking or inconsistent, particularly for Māori matters (Day et al., 2009; Hauraki Gulf Forum, 2009; Kennedy, 2009a). But the reasons for this, and barriers to implementation of Māori-related provisions, are not well understood. Therefore councils have little idea of the effectiveness of their own planning instruments in terms of environmental and cultural outcomes for Māori, despite legislative obligations to monitor and report on both environmental outcomes and plan effectiveness.

For example, the Waikato Regional Council (WRC, trading as Environment Waikato until 2010) engaged a consultant to assess the effectiveness of the Waikato Regional Policy Statement. He found that there had been no regional level monitoring of cultural heritage protection or heritage loss (Willis, 2007), and that WRC held no relevant monitoring information about Māori cultural and spiritual values associated with natural character. The report concluded (based on related reporting on physical and ecological values) that it was unlikely that these qualities had been preserved. Despite having no idea of the effectiveness of its first-generation Regional Policy Statement in achieving Māori outcomes, WRC went on to draft a new one.

Research Goal and Questions

There has been little research into the extent to which the inclusion of Māori provisions within environmental and resource management legislation has benefitted Māori, and even less on whether statutory provisions relating to kaitiakitanga empower kaitiaki.

The goal of my research is to help fill this ‘gap in knowledge’. This will help evaluating legislative provisions for Māori, and those within statutory plans. My research goes further, considering regional and local council implementation of their environmental resource management responsibilities, and assessing outcomes for Māori.

A thorough Aotearoa-wide study is beyond the scope of this thesis. I therefore focus my research on two case studies located at Whangamatā, the construction of a marina, and removal of mangroves. I compare this local experience under the RMA with that of Māori generally. To evaluate the wider relevance of the case-study findings it is also necessary to analyse national and international jurisprudence.

Key research questions

The research is driven by two related questions, with five associated objectives, the answering/achievement of which rely on a range of research methods and tasks. The two questions are:

1. Are the Māori provisions within environmental resource management legislation resulting in meaningful empowerment of tangata whenua in their kaitiaki (environmental guardianship, stewardship) role? and;
2. Is the existing Aotearoa environmental resource management regime, and Māori provisions within environmental legislation, on balance, resulting in positive outcomes for Māori?

The two questions are related, in that they are both concerned with results of the environmental resource management legislation. However, the first question is more specific than the second. Question 1 requires assessing whether Māori are empowered in their environmental guardianship role as a result of the Māori-specific provisions in legislation, particularly the kaitiakitanga provision, RMA section 7a. Question 2 involves a broad consideration of whether environmental

legislation generally (albeit with consideration of Māori-specific provisions) has provided positive outcomes for Māori.

Both questions are phrased positively, are kaitiaki 'empowered', does the RMA produce 'positive outcomes'? This reflects my intention to look for both positive and negative results, and to develop a 'yard-stick', for measuring achievement of statutory obligations to Māori.

Research objectives

To answer the two questions I have five objectives. For each objective I explain what is being researched, why, and how the research is carried out through specified tasks. The alignment of objectives with thesis chapters, and the extent to which these answer the two research questions is shown in Table 1.1 (p. 16).

Objective 1 – Understanding kaitiakitanga and tikanga Māori

Objective 1 is to provide an understanding and explanation of kaitiakitanga, and associated tikanga referred to in legislation and statutory plans. Because of their use in the Whangamatā case study, particular emphasis is placed on identifying understandings and perspectives of Ngāti Whanaunga, as tangata whenua of Whangamatā.

Evaluating statutory provisions for protecting Māori interests, values, and practices is needed to anticipate their effectiveness. On a reasonable and qualified assessment, would the stated objectives be achieved by the plans? My research questions relate to empowerment of kaitiaki, and outcomes for Māori, and so I make an assessment of plans including Māori concepts, values, and practices. These vary between peoples and places, and I consider this dynamic, focusing on tikanga of Ngāti Whanaunga, and its ancestral relationship to Whangamatā.

Gaining an understanding of tikanga and perspectives involved three tasks. In reality some of the groups of research-informing activities took place primarily for other purposes, and over an extended period, while others were undertaken as a dedicated activity within a discrete period. But for the purpose of explanation I refer to them here as 'tasks' undertaken. The information yielding activities are shown over time in Figure 2.1 (p. 34). Task 1 was my review of published and unpublished literature relating to environmentally significant tikanga and mātauranga Māori (Māori knowledge systems and world views). This was needed for an overview and understanding of these nationally. Literature included

submissions, and evidence given within statutory processes, in court, and in the Waitangi Tribunal. These are first-hand explanations of tikanga.

The second task was to determine understandings of tikanga and mātauranga of Ngāti Whanaunga, and related iwi and hapū. For this, published descriptions of Ngāti Whanaunga tikanga were relied on, including the words of tribal elders and kaitiaki. The third task was to understand the complex nature of the Hauraki tribal rohe, and that of Ngāti Whanaunga, and to compare this nationally, considering implications of tribal complexity for contemporary environmental resource management. Completing the three tasks provided an understanding of Māori and tribal history, geography, tikanga, and perspectives, as these relate to contemporary environmental resource management.

Objective 2 – Māori provisions in legislation

My second objective is to determine how contemporary Aotearoa environmental resource management legislation provides for Māori. This includes references to specific tikanga in legislation, kaitiakitanga provisions, and others providing for Māori values, practices, or interests.

With numerous Māori provisions in environmental management-related statutes, including the RMA, it is important to determine whether they have had an effect. Māori provisions are inconsistent across statutes and internally. Definitions of tikanga vary, and are inconsistent with local understandings. It is necessary to understand Māori provisions within Acts, the interplay between them, and their overall affect. There has been some writing on Māori provisions in legislation, and some on the inclusion of tikanga Māori in environmental management. It is, therefore, possible and necessary to evaluate the quality and extent of Māori provisions in environmental legislation, assess results of their implementation, and see if legislative provisions and their implementation have produced desired outcomes.

There were several tasks associated with this Objective 2. The first was to identify the nature and extent of Māori-specific provisions in relevant legislation and consider these in terms of international conventions and treaties, the Crown's Treaty of Waitangi obligations, and international and local jurisprudence relating to the Crown's environmental resource management obligations to Māori. This included investigating developments that influenced statutory recognition of First

Nations' rights and values. The second task was to evaluate changes to legislation since the RMA, considering variations and trends in Māori-specific provisions.

The third task was to assess the quality and likely effectiveness of individual and combined current statutory Māori provisions, paying attention to definitions and interpretations of Māori concepts. I considered similar international equivalents, by analysing writing on First Nations (including Māori) legislative provisions, and findings of the Waitangi Tribunal and the Courts, and evaluated these against a range of criteria, in an 'effectiveness matrix'.

The completion of these three tasks provided a comprehensive view of Māori provisions in Aotearoa environmental resource management legislation. This assisted in answering my two research questions. My legislative evaluation provides an overview of the Crown's stated intent for Māori, against which plan provisions, and their combined implementation can be assessed to determine if Māori are 'empowered' in their kaitiaki role, and outcomes for them generally.

Objective 3 - Statutory instruments and their effectiveness

Objective 3 is to evaluate how legislative Māori provisions are given effect in environmental resource management statutory policy statements and plans. This is necessary because statutory instruments are intended to be the primary means by which effect is given. Statutory instruments include national, regional, and local council policy statements and plans, and plans of other agencies, such as the New Zealand Coastal Policy Statement and regional Conservation Management Strategies, both created and overseen by DoC. They are legally binding, and direct legislative implementation at various geographic levels, intended to take into account local circumstances, and reflect local communities, including tangata whenua (the people of the land - local Māori).

There is a reported tendency for plans to simply replicate legislative provisions, failing to provide for local circumstances or community aspirations and values (Fookes, 2005), this is particularly the case in relation to Māori provisions (Kennedy & Jefferies, 2009). Whether Māori provisions in plans are consistent with local tikanga, is of particular interest. Whether tangata whenua can fulfil kaitiaki obligations, and maintain relationships with ancestral lands, waters and taonga, is largely determined by the quality of plan Māori provisions.

To gain an understanding of the incidence, extent, and quality of Māori provisions in planning instruments three tasks were undertaken. The first was to

gain an overview of Māori provisions within environmental resource management planning instruments, by review relevant literature and identify noteworthy provisions and plans. The second task was to evaluate a range of plan types, selected nationally, taking into account factors including extent of area being urban versus rural, Māori as a proportion of total population, percentage of land within Māori ownership, and development pressure.

The third task was to evaluate the Māori provisions in the various statutory planning instruments of the case study area, including national policy statements, regional and district RMA planning instruments, and plans prepared under related Acts, including the LGA and Reserves Act (1977). This allowed a comparison between local and national findings, and identification of best practice examples.

The three Objective 3 tasks provided the information required for an assessment of the level and extent of provision for Māori, and the treatment of tikanga Māori within environmental plans. By combining a summary of previous literature dealing with Māori plan provisions, evaluation of a representative range of plans from across the country, and in-depth review of statutory instruments relating to the case study area, it is hoped that a clear view of the extent and quality, and likely effectiveness of Māori plan provisions will be obtained. Given the range of tikanga, manageable scope for the thesis was achieved by focusing on three, mana whenua, mauri, and wahi tapu.

Objective 4 – Implementation of Māori provisions

My fourth objective is to assess how tikanga Māori and Māori interests are recognised and provided for in the implementation of environmental resource management legislation.

This is important because it is in the implementation of environmental resource management legislation, using relevant planning instruments, that tikanga Māori and Māori interests are recognised and protected or not. This is where the 'rubber hits the road'. It has been reported that, even where legislation and statutory instruments would appear to include adequate Māori provisions, Māori interests and values are significantly negatively impacted by a failure to properly implement these (Day et al., 2009; Kennedy, 2009a).

Outcomes from the implementation of environmental resource management legislation are difficult to determine, and the underlying reasons even more so. This has been called the 'attribution problem'. In environmental

resource management terms, attribution is the difficulty in attributing environmental outcomes to planning interventions, or establishing causal links (Kouwenhoven, Mason, Ericksen, & Crawford, 2005). For this reason a combination of approaches was employed to identify the outcomes for Māori from implementation of legislative and statutory Māori-specific provisions.

My first task was to investigate resource consent processes over the last 10 years within the case study area, identifying stand out cases for Māori values. These will be assessed using an evaluation matrix of whether legislative directives have been met and Māori interests and values upheld and protected. Secondly, I sought to evaluate other statutory planning processes; the manner and extent to which these have involved Māori; and the results of these processes in terms of upholding and providing for Māori interests and tikanga Māori. My third implementation-related task was to assess Māori participation in operational, management, and governance level decision-making; first by considering how participation in decision-making occurs nationally, and then by comparing these findings with the experience of Ngāti Whanaunga within the case study area.

Fourth I investigated the extent and results of monitoring, evaluation, and reporting of outcomes for Māori that takes place both nationally and within the case study area, including that by councils, and other responsible agencies, such as MfE and the Parliamentary Commissioner for the Environment (PCE).

The fifth implementation-related task was to investigate other developments with a bearing on the treatment of Māori values and interests. I drew on my experience in iwi environmental resource management, and contracted research over more than 10 years. I also looked at trends in planning theory and practice, and shifts in longstanding institutional barriers to the implementation of Māori provisions. The five tasks of Objective 4 allow consideration of the factors influencing council resource management, focusing on Māori provisions. Investigation of a large number of planning processes, consideration of local and national experiences, analysis of monitoring and reporting, and broad consideration of other factors influencing environmental decision-making are meant to address the previously-noted attribution problem, allowing an informed assessment of the extent to which implementation contributes to kaitiaki empowerment, and outcomes for Māori.

Objective 5 - Treatment of tikanga Māori by the courts

My final objective is to understand how the courts have treated Māori values, rights, and interests in environmental resource management. Ngāti Whanaunga, Hauraki, and Māori nationally have engaged in litigation over decades, to protect their interests and values from the effects of ‘development’. Consideration of the courts is a critical element in answering my two research questions because the courts have been instrumental in the evolution of practice under the RMA.

In order to understand the part of the courts in outcomes for Māori from the RMA (and related legislation) my first task was to undertake a literature review, and analysis of commentary on Māori and environment-related litigation. The review had three foci: treatment of tikanga Māori; protection of Māori interests; and weight given to mātauranga Māori (Māori knowledge). My second task was to analyse significant Environment Court cases relating to the case study area and iwi, Whangamatā and Ngāti Whanaunga, within the last decade. The third courts-related task was to compare treatment by the courts of Māori with the treatment of First Nations elsewhere. The three tasks allowed me to gain an overview of the way the courts have treated tikanga, and where they have upheld Māori provisions within environmental resource management statutes and plans.

Objectives summary

Achieving these five objectives will allow me to provide a comprehensive view of the treatment of Māori values and interests within environmental resource management over recent decades. My analysis will assist in answering the two research questions, evaluating the extent to which the incorporation of Māori values and concepts within environmental legislation has empowered kaitiaki, and outcomes for Māori of two decades of RMA implementation. In this way, the research will make an original contribution to knowledge.

Focusing research tasks on the case study iwi and area provides for consideration of a specific cultural and geographic context. The tasks are intended to distil out particular factors influencing outcomes for Māori that are scrutinised in the case studies.

Thesis Structure

The thesis comprises 11 chapters. Two introductory chapters are followed by three parts containing eight 'substantive' chapters, and then a concluding chapter.

Table 1.1 below shows which of the substantive chapters (3 to 10) relate to which parts (I to III), and locates these in terms of the research questions and objectives.

Table 1.1: Research Questions and Objectives by part and chapter			
Thesis parts and chapters		Question & Objectives	
		Q.1	Q.2
	Ch.1 Introduction		
	Ch.2 Theory and methods		
Part I	Ch. 3 Ngāti Whanaunga	Obj. 1,3,5	Obj. 1,3,5
	Ch. 4 Whangamatā	Obj. 1,4,5	Obj. 1,4,5
	Ch.5 Tikanga	Obj. 1	Obj. 1
Part II	Ch. 6 The law	Obj. 2,5	Obj. 2,5
	Ch. 7 Plans	Obj.3	Obj.3
Part III	Ch. 8 Implementation	Obj.4	Obj.4
	Ch. 9 The courts	Obj.2-5	Obj.2-5
	Ch. 10 Local case studies	Obj.2-5	Obj.2-5
	Ch. 11 Conclusion		

Introduction, theory and methods

Chapter 1 furnishes the reader with an understanding of the treatment of Māori interests and values in environmental resource law by central, regional, and local government in Aotearoa. It lays out my research goal, presents the main research arguments, and explains the thesis structure.

In Chapter 2 I explain my theoretical approach, the rationale for selecting this, and the way it is applied. I describe Kaupapa Māori theory, the theoretical model that frames the research, and provide the rationale for the research methods adopted. The Kaupapa Māori outcomes and indicators framework developed under the PUCM research programme is described. This framework includes methods for evaluating council plans and environmental outcomes for Māori.

Part I: Ngāti Whanaunga, Whangamatā, and tikanga Māori

Part I includes three chapters that describe the case study iwi Ngāti Whanaunga, the geography and history of the case study area Whangamatā, and tribal values, interests and practices of that place. It is aimed largely at Research Question 1. Together, chapters 3 to 5 provide the base-line for assessing statutory treatment of tikanga Māori, compared to local traditional and contemporary Māori interpretations and usages. After introducing Ngāti Whanaunga and the Marutūahu confederation to which the iwi belongs in Chapter 3, Whangamatā is

described in Chapter 4. Consideration is given to both historical and present-day Whangamatā from an iwi perspective. This includes discussion of the ancestral relationship of Ngāti Whanaunga with the area, the contemporary environmental, social, and political conditions that exists there today, and implications of this in terms of efforts by the iwi at maintaining its ancestral relationship.

Having provided this tribal and geographic context, in Chapter 5 I describe tikanga Māori (Māori values and institutions) relating to the natural environment, to explain a Māori view, and particularly a Ngāti Whanaunga iwi understanding of the values that have recently been incorporated into legislation. Because tikanga covers a wide range of matters, it was necessary to focus my study on tikanga most relevant to environmental management. Accordingly, three tikanga were selected for study – mana whenua, mauri, and wāhi tapu.

The material in Chapters 3 through 5 is subsequently used to provide a base-line against which to determine the quality of outcomes for Māori, including whether decision-makers provide for customary values and practices and associated common law rights and interests. It also contributes to an understanding of kaitiakitanga, to help address Research Question 2.

Part II: Māori and environmental resource management

Part II highlights provisions relating to Māori rights, values, and practices in environmental resource management legislation and statutory plans in Aotearoa. Drawing on the explanation of tikanga Māori in Part I, it provides the information needed for helping to answer both of the research questions.

In Chapter 6 I describe international and local developments that have supported First Nations' calls for recognition of their interests and values in law, and describe the resulting Māori provisions in contemporary environmental legislation. In Chapter 7, I consider statutory plans, looking at how Māori legislative provisions have translated into statutory plan provisions, primarily under the RMA. Consideration is given to Māori-specific provisions in plans, and the quality and likely overall effectiveness of statutory plans for Māori.

Together these chapters explain the statutory rules relating to Māori and environmental management that are intended to recognise and protect Māori values and interests, and bind councils and the courts in the implementation of their respective statutory mandates.

Part III: Māori issues, implementation, and outcomes

Drawing on the analysis presented in Chapters 6 and 7, Part III presents arguments relating to both research questions. In Chapter 8, I describe the part of local government in implementing environmental legislation, and giving effect to Māori provisions. Māori participation in plan-writing processes is assessed, as is participation and the treatment of tikanga Māori in resource consent hearings and other planning processes. In Chapter 9, I evaluate the treatment of Māori provisions by the courts, making comparisons with other First Nations' experiences. I consider Waitangi Tribunal and court statements on environmental planning law in relation to Māori, and investigate how such findings have influenced the decisions of the Environment Court and higher courts. A Māori-specific jurisprudence is identified, and definitions of tikanga arising from the environment court or higher court decisions summarised.

The Part III chapters focus at a district and regional council level, comparing the case study councils with others in their RMA implementation.

The understandings relating to Māori legal environmental management rights and interests, the way in which these translate into plans, implementation by councils, and treatment by the courts, all feature in the evaluation of *take* in Chapter 10. There, I provide the detailed local foci of my research, considering two long-running environmental issues at Whangamatā that have resulted in significant effects on local Māori. These are put forward as exemplars of negative outcomes for Māori, despite the existence of statutory instruments recognising and protecting Māori interests and values in Whangamatā. The chapter also identifies good practice examples of Māori participation, to propose a range of steps that councils and iwi can take to improve compliance with legal obligations.

Conclusions

Pulling together learnings from Parts I, II, and III, Chapter 11 crystallises the research findings within a series of concise statements about kaitiaki empowerment and wider outcomes for Māori from the various Māori provisions within contemporary environmental resource management. In doing so the concluding chapter reveals whether the two research questions are answered, and how an original contribution to knowledge is made. Brief recommendations are then made for future research deemed necessary to increase understanding about Māori participation in resource management nationally.

Chapter 2 - Theory and Methods

It is reflective of an unshakeable belief, also prevalent in some Māori academic communities, that scientific knowledge production methods are the only way to produce and recognise 'real' knowledge. This comes at the expense of other ways of producing knowledge, and enacting different epistemic legacies. In my mind, it is inconceivable that our vibrant epistemic legacies, which served our ancestors so well, could so abruptly be rendered of no value (Cooper, 2012 p. 71).

My research methodology was informed and guided by Kaupapa Māori theory. Kaupapa Māori theory is premised on two fundamental elements. The first is an assumption of the centrality and validity of Māori values, ways of doing things, knowledge systems, and world views. The second is the motivation of Māori to address the devaluing of their knowledge and world views in favour of Western legal and scientific epistemologies, by the academy and societal decision-makers. A Kaupapa Māori research methodology was developed and specific methods fashioned to suit various foci of this research endeavour.

This chapter is in three sections; a literature review, relevant theory, and research methodology. First, the literature review addresses publications about problems dealt with by iwi in relation to environmental management legislation and its applications through Crown agencies, local councils, and the courts, and the development of Kaupapa Māori theory and practice.

Second, I discuss the theoretical framework that underpins my research and this thesis. I consider the influences of critical theory and constructivism on the development of Kaupapa Māori theory, and the influence of, or relationship to, Post-colonial Theory. I identify a discourse within which differences between the theories are highlighted, and consider the function of Kaupapa Māori theory, methodologies, and practice, and how they reflect a form of political expression, carrying a challenge to established power structures. For this study these include the councils, courts, and Crown agencies responsible for administering

environmental legislation affecting Māori. They also include the university within which this research was conducted.

Finally, I detail the range of methods employed for this research. In particular, I explain the objective-specific tasks listed in Chapter 1, and how these tasks were undertaken. I introduce a Kaupapa Māori-based Māori outcomes framework, this being the primary method employed for evaluating statutory plans and Council implementation, as shown in Part III. By these means the theoretical framework and research method are explained in this chapter.

Literature Review

The evaluation of literature relevant to this research started prior to my PhD enrolment. The literature review continued throughout the study, because of a stream of legislative changes, revisions and renewal of statutory plans, emerging research, and Māori participation in environmental management.

My reading fell generally into three phases. The first phase (1998-2003) involved pre-thesis reading and writing in my role as the Ngāti Whanaunga environment officer and researcher. The second phase (2003-2009) involved literature reviewed, and written, during my employment on the PUCM research programme, for part of which I was a PhD candidate. The third phase (2009-2013) included a range of readings and writings relating to both my PhD research and related research projects.

The first phase, 1998 to 2003

Material reviewed during this period included legislation, council plans, plan evaluation, Ngāti Whanaunga and Hauraki history, Māori environmentalism, and resource consent-specific literature. The iwi environmental work required reading across a range of areas, because of the need for a high degree of familiarity with Māori-relevant provisions in environmental legislation, the numerous statutory plans operating within the iwi area of interest, and case law. A lack of legal background led me to rely on several important legal commentaries, in particular the monthly *Māori Law Review*, and 'Review: Treaty of Waitangi and Māori Land Law' within the quarterly *NZ Law Review*.

My writing in this period included a number of Māori Values Assessments (project-specific cultural impact assessments), council plans reviews, RMA and LGA plan drafting, resource consent submissions, and court evidence including to

the Māori Land Court, Environment Court, High Court, and Waitangi Tribunal. Preparation for each required subject-specific reading, and several resulting documents are referenced in this thesis.

The second phase, 2003 to 2009

Literature reviewed when I was on the PUCM research programme included material on Kaupapa Māori-related theory and method and First Nations' (including Māori) outcomes and indicators. A particular focus of this period was on statutory plan provisions for, and agency treatment of, Māori, these being the focus of the primary Māori output from the PUCM research programme, the development of Kaupapa Māori outcomes and indicators kete.² Commencing my PhD candidacy during this period, I read widely about First Nations' provisions within environmental legislation, associated plans, and their implementation.

My writing relevant to the thesis during this time consisted mainly of co-authoring seven PUCM Māori reports, continued authoring of the previously mentioned iwi texts, and a number of conference papers on the subject of Māori outcomes and indicators.

The third phase, 2009 to 2013

In the third phase I focused on emerging literature dealing with legislative changes affecting Māori, second generation statutory plans, and significant literature relevant to my field, including on Kaupapa Māori and related theory, and on Māori environmentalism. I read several doctoral and masters theses dealing with similar issues to mine, including those of Ruru (2012), Latimer (2011), Simon (2007) and Tomas (2006).

During this period I researched and wrote several reports that both drew on, and contributed to, this study. In 2009-2010 I advised Auckland Regional Council (ARC) on Māori provisions for the proposed Regional Policy Statement on behalf of the Tamaki Regional Mana Whenua forum (Kennedy, 2009c). I was contracted by Te Puni Kokiri (TPK - The Ministry of Māori Development) reporting on Māori participation in local government (Kennedy, 2009b), co-

² Kete are Māori woven baskets. The PUCM team referred to their outcomes and indicators packages as kete, referencing Māori mythology in which 3 categories of knowledge were brought to earth from the celestial realm by the ancestor Tane in three kete: te kete tuatea, te kete tauari, and te kete Aronui.

authored the tangata whenua chapter of the 2011 State of the Hauraki Gulf Report (Hauraki Gulf Forum, 2011b), and co-authored a report on Auckland Council's Māori provisions for its first long term plan, on behalf of the Independent Māori Statutory Board (Kennedy & Vinall, 2011). I also prepared two reports for Manaaki Whenua (Landcare Research NZ) on mātauranga Māori and local government planning (Kennedy, 2012), and Auckland Council's efforts at implementing its Māori Responsiveness Framework (Kennedy, 2013). Again, iwi environmental work was of relevance to my PhD research, because of rapid developments in the field of Māori involvement in environmental management.

Relevant Theories

Kaupapa Māori provides the theoretical foundation for this research. However, I recognise that Kaupapa Māori, as a discrete body of theory, has drawn inspiration from other intellectual and theoretical traditions. Accordingly, this section is structured to introduce Kaupapa Māori, and consider theories that have influenced its evolution. It is presented in two subsections, headed Kaupapa Māori theory and Kaupapa Māori-related theory. In the latter I consider critical theory, social constructivism, postcolonial theory, and indigenous theory beyond Aotearoa.

Kaupapa Māori Theory

Kaupapa Māori theory asserts that there exist particular Māori cultural ways of operating, which serve to affirm Māori beliefs (Pihama, 2001 p. 77). Kaupapa Māori acknowledges and seeks to address Māori perspectives and experiences that have been overlooked or misinterpreted in academic research (Bishop, 1999 p. 1). Furthermore, mātauranga Māori (Māori world views and knowledge) has been interpreted according to Pakeha values, and generally accorded a lower status to Western knowledge, particularly Western scientific knowledge (Salmond, 1983). Pihama (1993 p. 57) articulates the political role of Kaupapa Māori theory:

Kaupapa Māori theory is a politicising agent that acts as a counter-hegemonic force to promote the conscientisation of Māori people, through a process of critiquing Pakeha definitions and constructions of Māori people, and asserting explicitly the validation and legitimation of te reo Māori and tikanga.

Pihama, Cram, and Walker (2002 p. 30) in their article 'Creating methodological space: A literature review of Kaupapa Māori research' suggest that the term Kaupapa Māori captures Māori desires to affirm Māori cultural philosophies and practices. It has been described as a discourse that emerged from and is legitimized within the Māori Community. Graham Smith described Kaupapa Māori as 'the philosophy and practice of being and acting Māori', observing that it assumes the taken-for-granted political, historical, intellectual, cultural, and social legitimacy of Māori people, in that it is an orientation in which Māori language, culture, knowledge, and values are accepted in their own right (Smith, 1992, p. 1). In this sense Kaupapa Māori theory is premised on a central tenet of the validity and authority of Māori world view, knowledge, and values. But Kaupapa Māori theory also includes a transformative element, in that it positions researchers to operationalise self-determination for research participants (Bishop, 1999 p. 1).

Kaupapa Māori theory has become widely adopted within the Māori research community since the early 1990s and applied to challenge a notion of universal authority attributed to Western world views and knowledge systems. In short, Kaupapa Māori is about challenging non-Māori discourses and world views that have been imposed on Māori. However, the implications of Kaupapa Māori extend further. As with this research, it is intended to confront Western epistemologies that purport to reflect a universal reality, including those underlying the rational adaptive planning model, the contemporary approach to environmental management and planning within Aotearoa. Collins expresses well the wider implications of such a challenge (Collins, 2000 p. 271):

If the epistemology used to validate knowledge comes into question, then all prior knowledge claims validated under the dominant model become suspect. An alternate epistemology challenges all certified knowledge and opens up the question of whether what has been taken to be true can stand the test of alternative ways of validating the truth.

The origins of Kaupapa Māori theory

Kaupapa Māori theory developed largely within the field of education, and was driven by prominent Māori scholars, including Graham Hingangaroa Smith, Linda Tuhiwai Smith, Tuakana Mate Nepe, Leonie Pihama, and Russell Bishop, out of dissatisfaction at ongoing underachievement of Māori within the Pakeha

education system. Fitzsimons and Smith (2000 p. 35) identify the genesis of Kaupapa Māori theory as being the embedded theory contained in the Māori alternative education and schooling responses developed in the 1980s.

According to Pihama (2001 p. 94) the origin of the term Kaupapa Māori theory was a collective development, Kaupapa Māori having been articulated through discussions that culminated in an Auckland University Māori graduate education paper in 1990. She opined that it is important to note that the term Kaupapa Māori theory emerged from the development of Te Kohanga Reo (Māori language preschools) and Kura Kaupapa Māori (Māori primary schools), with the idea that Māori can and should develop their own theoretical frameworks based within te reo me ōna tikanga (Māori language values and customs).

While Kaupapa Māori theory has developed as a response to an imposed non-Māori education system, it should not be assumed that the concept of Kaupapa Māori is new, as explained by Pihama (1993 p. 24):

In the New Zealand context distinctive modes of theorising have emerged, from Māori communities, which have as a common element the validation of Te Reo and Tikanga Māori. These movements have been framed under a range of broad terms, 'Tino rangatiratanga', 'Māori Sovereignty', 'Māori perspectives', and 'Kaupapa Māori'. These modes of analysis and theory are by no means contemporary phenomena. Since colonisation Māori people have been actively asserting their positioning in this land as Tangata Whenua. Inherent in these struggles has been an ongoing demand for the recognition and legitimation of Te Reo Māori and Tikanga.

Smith (G. 1997) located its origins further back, to the resistance movements of the Māori prophets and the Kotahitanga and Kingitanga movements of the late nineteenth century. Smith (L. 1999 p. 63) said that colonisation, along with the globalization of knowledge and Western culture, constantly reaffirms the west's view of itself as the centre of legitimate knowledge. The centre-periphery is a well-used post-colonial metaphor (Mahuika, 2008 p. 1), and a feature of most movements that critique Western patriarchal knowledge traditions. More than a decade before Smith's observations, Walker (1985 p. 231) observed that being marginal to the social mainstream, Māori were not in a position to challenge the findings of published research or academic elites.

From the 1980s, however, Kōhanga Reo, Kura Kaupapa Māori, Whare Kura (Māori secondary schools), and similar Māori cultural-based educational institutions created a context in which Māori language, cultural practices, and values could be rejuvenated, while Kaupapa Māori was being refined and reshaped into what Graham Smith (1995 p. 21) called a 'theory of liberation'.

While not phrased as such at the time, the epistemology underlying this new suite of Māori education initiatives was clearly driven by, and consistent with, what has come to be known as Kaupapa Māori. The newly established immersion schools were called Kura Kaupapa Māori, and the foundation upon which all of the schools were built was the need for a dual focus on te reo me ōna ngā tikanga, the Māori language and tikanga (values and customs).

From its origins in education, Kaupapa Māori theory has become popular as a model for academic research, where (in similar manner to the education system context described above) it has emerged largely as a response to ongoing research on Māori by non-Māori, perceived as empowering the researcher and reconstructing Māori history and society according to Western prejudices (Royal, 1992), or what Bishop (1999 p. 1) calls epistemological racism.

Criticisms of Kaupapa Māori theory

Kaupapa Māori theory has been criticised by some commentators, who observed that if Kaupapa Māori has at its roots a decolonisation strategy, then it relies on circumstances of colonial oppression for its validity (Eketone, 2008). According to this view, Kaupapa Māori theory is reliant on colonialism, creating tension with another foundational Kaupapa Māori principle, being that, at its centre, it is about being Māori and viewing the world according to Māori values and understandings (Smith, 2003). Kaupapa Māori theory has also been criticised for failing to account for tribal and regional differences, by generalising geographically and culturally distinct iwi and hapū as 'Māori' (Hope, 2006; Mahuika, 2011 p. 16). Each of these can be characterised as 'internal' critiques, being articulated by Māori researchers.

Kaupapa Māori theory has been criticised for its perceived creation of a 'culturalist ideological conformity' within universities, and accused of limiting universities' ability to serve as the critical conscience of society (Openshaw, 2009; Openshaw & Rata, 2009). Concerned apparently as much with the influence Kaupapa Māori has had on academy in Aotearoa as with the epistemology itself,

Openshaw and Rata refer to Kaupapa Māori as an 'uncritiqued idea', and a danger to academic freedom (Openshaw & Rata, 2008). They argue that this reflects the influence of politically powerful interest groups resulting from the emergence of biculturalism in Aotearoa, and of rising prevalence of Treaty of Waitangi principles. They claim such developments create undesirable divisions within New Zealand society, including academia. Similar assertions about Kaupapa Māori have come from Marie and Haig, whose criticism is similarly located within an antibiculturalism agenda. Marie (2010), for example suggests New Zealand must 'actively move toward a post-ethnic future', to become 'scientifically literate'. Any manifestation of separate cultural identification is argued against in favour of a singular democracy and better-functioning society.

The critiques of Rata, Openshaw, Haig and Marie have been challenged. Andreotti argued that contrary to assertions of Kaupapa Māori theory being shielded from critical evaluation, these writers seek to preserve an environment in which Western science is deemed universal and placed beyond critique. She found that Openshaw and Rata don't leave much option apart from agreeing with their 'objective' position or being 'placed into the "enemy" box of the morally corrupt strand of identity politics and postcolonial theory, postmodernism and cultural studies' (Andreotti, 2009 p. 223). Pihama characterised Rata's 'critiques' as being motivated by outright racism, and pointed out that she fails to provide evidence for her argument that Kaupapa Māori is 'intellectually and scientifically flawed' (International Research Institute For Māori And Indigenous Education, 2004).

Hope (2006) expressed concern about the previously-discussed dual elements of Kaupapa Māori theory, tino rangatiratanga and the decolonisation effort, and a Māori epistemology. He argued that by grounding the justification for tino rangatiratanga in a conception of 'Māori epistemology' that is so opaque it precludes the possibility of most outsiders gaining understanding, defenders of Kaupapa Māori undermine demands for tino rangatiratanga. However, much Kaupapa Māori research, including my own, demonstrates that this is not the case, in that it both strive for greater Māori authority, and seek to explain a Māori world view to non-Māori, thereby reducing the opacity to which Hope refers.

Hope (2006 p. 32) also expressed concern at a principle that he ascribed to Kaupapa Māori theory, that only Māori can conduct Kaupapa Māori research. However, he failed to say that several of the writers to whom he pointed, who defend the need for researchers of Māori subjects to do so through a Māori lens,

are themselves non-Māori. Similarly, Hope states that some Kaupapa Māori writers assert that a Kaupapa Māori epistemology is fundamentally incompatible with the values and ways of knowing that make up 'the outsider's' world view. But he ignores the significant influence of Western discourses on the early proponents of Kaupapa Māori theory, as discussed below in relation to post-colonial theory.

Kaupapa Māori-related theory

Kaupapa Māori research aligns with other international research traditions, such as indigenous, feminist, and postcolonial theories. As observed by Stewart (2007 p.7), these traditions share an origin that includes a critical examination of how the notion of the 'other' in research reproduces disparities in societal power for the researched group, using this examination as a basis for advancement.

It has also been suggested that Kaupapa Māori theory is a derivative of other traditions. For example, Eketone argues that Kaupapa Māori is informed by two differing theoretical perspectives. The first he identifies as critical theory from the Marxist/socialist theoretical tradition, concerned with emancipation from disempowerment, alienation, or oppression. The second is Constructivism, which Eketone describes as being where knowledge is validated through a social construction of the world, and is thus located and specific (Eketone, 2008 p. 1). Constructivism and critical theory are considered separately below.

Critical theory

Kaupapa Māori has been described by some theorists as a form of critical theory (Eketone, 2008; Pihama, 2001; Smith, 1997; Stewart, 2007). Others suggest that, while distinct, Kaupapa Māori theory has its roots in critical theory (Kiro, 2000). Such an evolution has been refuted by others. For example, Pihama (2001 p. 104) makes two distinctions between Kaupapa Māori theory and critical theory. First, Kaupapa Māori theory is founded in Aotearoa, and critical theory in Europe. Second, Kaupapa Māori theory is driven by whānau, hapū, iwi, and Māori understandings, while critical theory is driven by European-sourced philosophies and understandings. She refers to critical theory as a 'hoa mahi', a companion work, to Kaupapa Māori (Pihama, 2001 p. 31).

Critical theory, stems from the work of several generations of German philosophers and social theorists in the Marxist tradition, known as the Frankfurt School. According to these theorists, a 'critical' theory may be distinguished from

a 'traditional' theory according to a specific practical purpose. A theory is critical inasmuch as it seeks human emancipation, 'to liberate human beings from the circumstances that enslave them' (Horkheimer, 1982 p. 244). According to the *Stanford Encyclopaedia of Philosophy*, a critical theory provides the descriptive and normative bases for social inquiry aimed at decreasing domination and increasing freedom in all their forms (Bohman, 2013).

Kaupapa Māori theory, can be seen as a response to colonial control and dispossession. This is a common theme in Kaupapa Māori writing. Smith (1995), for example, referred to Kaupapa Māori as a theory of liberation, and a Kaupapa Māori praxis being a strategy for change. Similarly, it has been argued that a critical theory framework also must be connected to the complex, historical, and cultural realities of research participants (Berryman, SooHoo, & Nevin, 2013).

Kaupapa Māori is concerned with influencing change and addressing power imbalances, these also being central motivations underlying critical theory in the Marxist tradition. However, it has been distinguished from critical theory by its assertion of Māori world views, values, and practices as being fundamental.

Social constructivism and native theory

Some practitioners describe Kaupapa Māori as being concerned less with liberation than with the articulation and application of mātauranga (Māori knowledge and world views) and tikanga (values and customs). In this sense it is about Māori being Māori, doing their research their way (Pihama et al., 2002 p. 30). Eketone (2008) referred to this aspect of Kaupapa Māori as constructivist. He argues that a critical theory explanation is inconsistent with the understanding of Kaupapa Māori of many Māori. Instead, he advocates a constructivist approach, as being one that fits better with the community view, as well as being a theoretical explanation that is more conducive to Māori development.

Constructivism (or social constructivism) is based on the premise that knowledge is a social construct. According to Toulmin (1995 p. xiv) socio-cultural constructivist theorists were among the first to embrace this idea, which he identifies as a key tenet of post-modern thought, and calls 'a property of organized collectives'. Applying this view to the way humans understand the world in which they live, Proctor (2004 p. 649) observes that one of the primary tenets of social constructivism is that biophysical and human nature are incomprehensible outside of culturally based knowledge schemes. In this sense,

constructivism rejects the assertion of a universal truth, positing instead that there are multiple ways of constructing or viewing reality, and multiple 'truths'.

According to this understanding, the process of socially constructing reality is influenced by cultural, historical, political, and economic factors (Payne, 1997).

Native theory is a derivation of constructivism that has been proposed as an analytical framework for Māori research, defined as 'the right of indigenous people to make sense of their time and place in this world' (Russell, 2000 p. 10). According to Eketone (2008, p.11), native theory acknowledges that what many Māori seek is to move forward culturally as Māori in Māori contexts. It has been proposed as a solution to the paradox that arises out of conducting Māori research within non-Māori institutions such as universities. Such research endeavours have been described as resulting in Māori knowledge and experience being defined in terms of Western concepts. Eketone attributes the Native Theory approach to his Master's thesis supervisor Khyla Russell. However it has received little attention as a Māori research model, other than by these two.

While I share concerns about issues arising from conducting Māori research within the academy, it is my position that Kaupapa Māori theory adequately addresses these. In this regard I make the point that as a theoretical framework, Kaupapa Māori is not static or fixed, but flexible, and that its advocates have demonstrated its effective application to substantially different Māori-specific enquiries across a range of disciplines.

Postcolonial Theory

According to Panoho (2007) postcolonial theory and critique or postcolonialism is the nominated term for the collective (albeit eclectic) body of work that purports to privilege the position, experience, and history of the colonised into an analysis of contemporary life. It has enjoyed growing attention since its genesis from Edward Said's (1978) influential book *Orientalism* and Gayatri Spivak's (1988) essay 'Can the Subaltern Speak?', these two works being described as quasi-canonical contributions to the field (Kohn, 2012).

Like critical theory, postcolonialism has within its roots Marxist thinking. Gandhi posits that postcolonial theory is marked by a dialectic between Marxism, on the one hand, and poststructuralism/postmodernism, on the other (Gandhi, 1988). It has been described as the main mode in which the West's relation to its

'other' is critically explored (Fitzpatrick & Darian-Smith, 1999; Roy, 2008 p. 315), and gained popularity in recent decades as a Māori research model.

Kaupapa Māori has been referred to as a form of postcolonial theory by some scholars (Battiste, 2004 p. 60). However, this is contrary to my own understanding, and inconsistent with the position taken by some Kaupapa Māori theorists (Mahuika, 2011 p. 28; Panoho, 2007 p. 2). I discuss distinctions between the two here, then consider positive and negative features of postcolonial theory as a foundation for Māori research.

Postcolonialism is, like Kaupapa Māori, a critical theory in that it is concerned with addressing societal power imbalances. Both seek to scrutinise the power relationships between the colonized and the colonizer (Mahuika, 2011 p. 18). However, there are a number of distinguishing characteristics between the two theoretical approaches.

Relying on Said's (1978) formative text, Panoho and Stablein (2005 p. 2) opine that one of the key insights of postcolonial scholarship is its identification of the homogenisation of the other. Yet, postcolonialism has been criticised for failing to properly account for cultural differences within and between colonised peoples. McClintock (1992, p.86) observes that via postcolonialism the world's multitudinous cultures are marked, not positively by what distinguishes them, but by a subordinate, retrospective relation to linear, European time. Similarly, Shohat (1992, p.99) raises questions about postcolonialism's ahistorical and universalizing deployments, and Gandhi observes that it continues to render non-Western knowledge and culture as 'other' in relation to the normative 'self' of Western epistemology and rationality (Gandhi, 1988 p. x (Roman 10)). In this sense, postcolonialism is at a disadvantage to Kaupapa Māori as a model for socio-cultural analysis and as an agent for change, in that the latter originates from, and is expressed in terms of, Māori experiences, values, and world views.

Despite the observation, that postcolonialism purports to privilege the position, experience, and history of the colonised into an analysis of contemporary life, there is some disagreement about whether this is a universal tenet of the theory. During (2000, p.385) for example, distinguishes between 'critical' and 'reconciliatory' postcolonialisms, arguing that the former seeks radical alternatives to modernity based on non-Western traditions and life-ways, while the latter works to reconcile colonized peoples to colonialism. Shohat (1992, p.105) opined that, as a signifier of a new historical epoch, the term 'post-colonialism' comes

with little evocation of contemporary power relations, preferring the term 'neo-colonialism'.

An issue I have with postcolonial theory, as a paradigm for Māori research, is the inherent suggestion that Aotearoa has outgrown colonialism. As observed by d'Hautesserre (2005 p. 105), conventionally, the postcolonial period follows colonisation, but decolonisation is incomplete for many First Nations. Shohat (1992 p. 105) draws attention to places where conflicts persist, such as the chasm between First Nations' beliefs in which ancestral lands are held as a 'sacred and communal trust', and the Western view of the world as being property. So called 'postcolonial' institutions continue to entrench Western approaches.

In a speech following the enactment of the Foreshore and Seabed Act (2004), Auckland University law Professor Jane Kelsey (2004) argued that Aotearoa is far from post-colonial, describing the Act as 'the most crude and instrumentalist practices of an old colonial state'.

Māori remain at the bottom of the heap for educational achievement, health, crime statistics, and levels of income. They have no political or legal autonomy, such as the localised jurisdictions operating within USA First Nations' reservations. Māori exercise minimal authority over their own affairs, and less across the communities that now occupy their ancestral lands. It is difficult to reconcile these lived realities with notions of Aotearoa as a postcolonial society.

Despite these factors, it has been argued that Postcolonial Theory can provide a useful framework for the analysis of the situation of Māori in contemporary Aotearoa (Mahuika, 2011; Panoho, 2007). However, its genesis out of Western theoretical traditions, albeit ones that challenge entrenched notions and assumptions, renders postcolonialism at a disadvantage as a medium for Māori studies, in that it is not embedded in the values and world views of Māori.

Indigenous theories elsewhere

I briefly locate Kaupapa Māori theory in terms of the efforts of researchers in First Nations to articulate their world views, knowledge, and values within their own theoretical frameworks. Indigenous research has generally been conducted on, and on behalf of, First Nations.

Kaupapa Māori theory emerged at a time in the early 1990s when there was little international discussion of distinct First Nations' approaches to research. In the *American Handbook for Research* it was observed in the mid-1990s that

there was little work published on indigenous ethnic models of qualitative research (Stanfield, 1994). In fact, Kaupapa Māori writing has been seen as internationally significant in terms of providing First Nations' researchers with a paradigm for consideration in the formulation of their own models.

As an example, Bishop's (1998) article 'Freeing ourselves from neo-colonial domination in research: a Māori approach to creating knowledge' received considerable attention, motivating responses from First Nations and minority theorists, who commented on a previous lack of attention to First Nations' models (Lopez, 1998; Tillman, 1998).

In the intervening decade there was a significant emergence of First Nations' theories, including: Martin's (2003) indigenist research theory 'Ways of Knowing, Ways of Being and Ways of Doing', Lavallée's (2009) 'Indigenous Research Framework', and Foley's (2002) 'Indigenous Standpoint Theory', to name just a few. There is a corresponding increase in academic institutions in colonised countries promoting First Nations' theories and approaches to research. Recent course examples include *Theorizing Indigeneity / Indigenizing Theory* offered by the University of Western Ontario, *Indigenous Nations and the Problems of Sovereignty* at the University of Hawaii, Race, Ethnicity and Indigeneity at York University, Indigenous Critical Theory at the University of Illinois, Indigeneity, Critical Theory and Social Justice at Murdoch University, and Indigenous Peoples and Globalization at Cornell. Several of the introductions for these courses cite Kaupapa Māori theory. In Aotearoa recent courses include Ngā Tikanga Tuku Iho/Māori Customary Concepts at Victoria University, Rangahau Taketake - Research Methodologies: Indigenizing the Disciplines at Canterbury University, and Advanced Māori/Indigenous Management Practices and Kaitiakitanga at Te Whare Wānanga o Awanuiārangi.

These and other universities have First Nations' schools, departments, and research institutes. In Aotearoa, in addition to several Whare Wananga (Māori universities), each of the mainstream universities has Māori studies departments. Specialist Māori research institutes include the Te Kotahi Research Institute at the University of Waikato. Others are the pan-university Ngā Pae o Te Māramatanga, the James Henare Māori Research Centre at University of Auckland, and Mira Szászy Research Centre for Māori and Pacific Economic Development.

While First Nations' theories have been borne out of varied traditions and circumstances, they have much in common. Two such elements are assertion of

the centrality and authority of indigenous world views and knowledge, and their response to 'colonial' treatment. But, while it is important to recognise the commonality between First Nations' theoretical approaches, care needs to be taken in recognising distinct cultural, socio-political, and geographic differences that exist. As Lopez expressed 'when we read other peoples text, even other First Nations' peoples, we filter these through our own baggage, and make sense with and through our own experiences' (Lopez, 1998 p. 227). Yet the shared colonial experience and the 'postcolonial' circumstances they find themselves in mean there is much for First Nations' peoples to learn from each other. Accordingly, it is interesting to note that Kaupapa Māori writing is widely referenced in indigenous transformational theory literature.

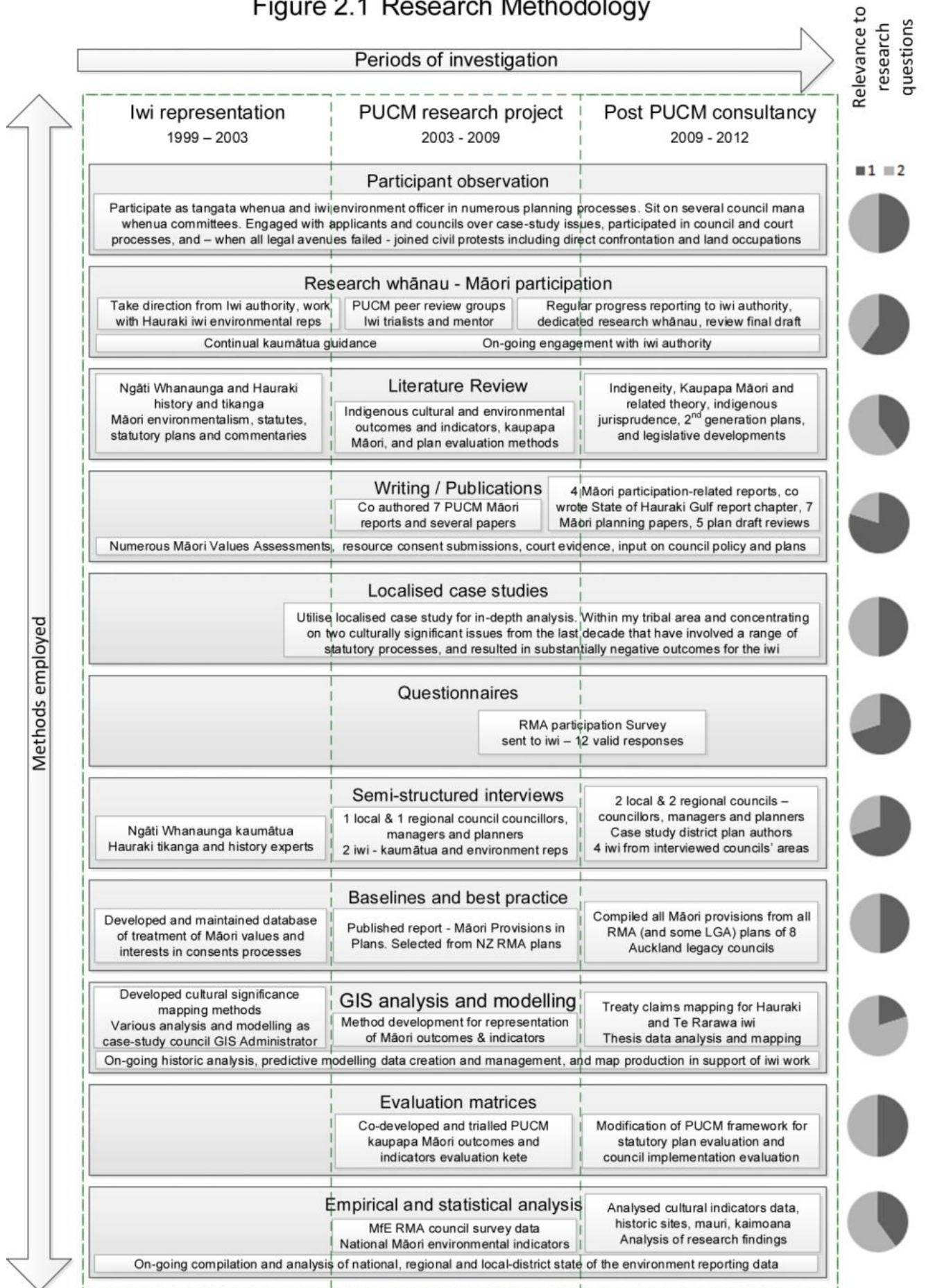
Research Methodology

I employed a range of research methods for this research, with the overarching methodology designed to best provide for a thorough investigation into Māori participation in, and results from, environmental resource management. As noted above, research informing this thesis took place over a considerably longer period than the PhD enrolment, being conducted initially as part of my role as Ngāti Whanaunga Environment Officer. It was my initial observations and experience in this role that alerted me to what appeared to be a widespread failure to protect Māori rights and interests under the existing resource management regime, prompting the need to develop methods to determine the accuracy of this observation through a Kaupapa Māori lens. My research methodology is shown in Figure 2.1 (next page).

Key methodological issues

As is evident from Figure 2.1, methods employed for this research included a mix of quantitative and qualitative approaches, with effort made to utilise multiple methods in most areas of enquiry to 'triangulate' and verify findings. Given the breadth of the research, evaluating Māori provisions in legislation, planning instruments, implementation of multiple statutory mandates, judicial findings, and environmental and cultural outcomes, wide-ranging approaches were required.

Figure 2.1 Research Methodology



The previously explained ‘attribution problem’ presented particular challenges for my research, and necessitated a rigorous research approach. It arises as multiple human or natural factors may contribute to a particular outcome, and it can be difficult to distinguish with confidence the relative influence of planning interventions from other multi-causal factors (Kouwenhoven et al., 2005).

There are several associated factors that cause difficulty in evaluating the outcomes of council planning, including those for Māori. One is cumulative effects, being how to assess individual versus combined effects of activities that cumulatively affect the environment. Like other’s (Oram, 2007 p. 1; Peart, 2007 p. 4) I argue that councils widely fail to assess cumulative effects when deciding consent applications. These are difficult to assess anyway because of what Day et al. (2009 p. 8) called ‘maturation’, arising because environmental impacts may take years to become apparent, and monitoring data may show results of impacts created long before plan provisions were in effect.

Another factor that causing difficulty for the research was assessing ‘intangible’ values-related outcomes. Māori environmental practitioners are familiar with this issue, and have methods for measuring cultural effects and articulating these to decision-makers to ensure that they are accorded appropriate weight in the decision-making process. But these people are rarely Māori, and have little understanding or sympathy for the matters before them. Finally I note a combined deliberate and unintended obscuration of environmental results by councils and responsible agencies, resulting from their failure to undertake monitoring and reporting.

The multiple lines of enquiry in this study are the means by which I try to overcome these issues, in my effort to determine results for Māori from the RMA.

Kaupapa Māori approaches

It was important to develop a research methodology that reflects Kaupapa Māori, and builds on First Nations’ research approaches. Research into participation in environmental management by First Nations of Washington (Pinkerton, 1992) and British Columbia (Pinkerton & Leonard, 2008) was of particular help. First Nations’ experiences in North America mirror those of Māori in that they won the legal right to participate in environmental management, but struggled to translate rights into practice. Given that such a failure was the motivation for this research, lessons learnt by Pinkerton were important to shaping my approach.

One of the tenets of Kaupapa Māori research is that it be 'by Māori for Māori', with Māori not just as research subjects, but involved at all stages, from design, field work and evaluation, through to research completion. Furthermore, Kaupapa Māori research is expected to make a positive difference for Māori, to act as a driver for social change or transformation, and to privilege Māori knowledge and ways of being (Smith, 2005 p. 90). Ultimately, Kaupapa Māori research should benefit groups involved, rather than only the researcher and academic institution. In this sense, Kaupapa Māori starts from the position that research should contribute to achieving Māori communities' aspirations, in Māori terms (Panoho & Stablein, 2005 p. 9). Such approaches are exemplified by participant community and expert groups helping to develop and trial methods.

For this research, several Kaupapa Māori requirements were partially met through my dual roles as researcher and subject. As a member of the case study iwi, and as its environment officer, I am answerable to my people. I also have vested interest in the research generating positive outcomes for Ngāti Whanaunga, and this was a key motivation in undertaking the research.

Research Methods

As illustrated in Figure 2.1 (p. 34), my research involved a wide range of methods. Much of the research was undertaken in the course of my roles as Ngāti Whanaunga Environment Officer and as a planning consultant. A commission by Te Puni Kokiri – the Ministry for Māori Development (TPK) to evaluate Māori participation in local government aligned substantially with this investigation, and provided an opportunity to interview senior managers, planners, and councillors from a number of councils across the North Island, including the case study WRC. That research contributed to gaining both a localised and a nation-wide understanding of the treatment of Māori under contemporary environmental legislation, and was conducted both prior to and during my PhD research.

Ngāti Whanaunga investigations

Research into the case study iwi, Ngāti Whanaunga, was similarly assisted by my prior knowledge as an iwi member and through historical research that I had undertaken on behalf of the iwi as part of their Treaty claims research team. It is this knowledge that informed Chapter 3, which provides a historic and geographical overview of the iwi, and Chapter 5, which relates to tribal tikanga.

In addition to many years of informal education by my elders and other iwi members, I was fortunate to have studied in tribal whare wānanga under tribal pukenga (knowledge holder) Te Haumarangai Connor, had the ongoing guidance of my kuia (elderly women) Ngawhira Tanui-Fleet and Carol Munro, and guidance of rangatira (chief) Toko Renata over the course of the numerous environmental issues we have faced as an iwi. Additionally, I enjoyed the guidance of fellow iwi authority committee members during the research period. These, along with my supervisors, constituted my research whānau, in accordance with the Kaupapa Māori tenet of whanaungatanga (familial relationships) and the need for substantive involvement of the subject group.

To supplement this learning, confirm my understanding, and provide opportunities for iwi input in the research, seven semiformal interviews were held with the four above-named kaumātua, and other iwi members. Meeting structure was deliberately informal, this being appropriate given our familial relationships, and that the individuals concerned had been informed about the research from its beginning. Each meeting was approached with desired outcomes, and questions to be covered. The cue card is attached as Appendix A (p. 350).

Evaluating council plans and actions using the PUCM methods

Some of the research that informed this thesis was undertaken within the PUCM research programme. From mid-1995, PUCM sequentially examined the quality of policies and plans (Phase 1), plan implementation (Phase 2), and environmental outcomes under the RMA (Phase 3), and under the 2002 LGA (Phase 4).

PUCM Phase 1 – plan evaluation method

Phase 1 involved overall assessment of 34 district plans and 16 regional policy statements, and included consideration of Māori provisions. The work was undertaken by a team of non-Māori experienced planning practitioners and theorists.

The PUCM plan evaluation method consisted of eight criteria, derived from the international literature, peer reviews by Aotearoa practitioners, and professional experience. They were: interpretation of the national mandate, clarity of purpose, identification of issues, the quality of the facts base, internal consistency, integration with other plans and policy instruments, provisions for monitoring and responsibilities, and, organization and presentation.

PUCM also evaluated plan quality in terms of Māori interests, using four of the eight criteria used for the overall plan analysis: clarity of interpretation of provisions of the Treaty of Waitangi, issue identification, the fact base of the plan, and the plan's internal consistency. I rely on that analysis for a national comparison for my Māori-specific plan evaluation. An explanation of the PUCM plan evaluation criteria is attached as Appendix B (p. 352), and plan evaluation results are presented in Chapter 7 and tabulated in Appendix E (p. 362).

PUCM Phases 2 and 3: Māori outcome evaluation method

For subsequent phases of the PUCM research a dedicated Māori work programme was established, with Māori experts engaged to develop a Kaupapa Māori environmental outcomes evaluation framework.

The resulting Māori Outcome Evaluation methodology sought to fill a void in environmental reporting tools for both councils and Māori organisations. It did this by linking kaupapa principles of important environmental tikanga (fundamental rules and values), and environmental indicators. The objective was to provide Māori values-based method with which councils or iwi might interpret the effectiveness of local plans and interventions (Jefferies & Kennedy, 2009b p. 2). To ensure adherence to Kaupapa Māori principles, it was deemed necessary to develop a framework that would guide the development process, resulting structure, and content of the final outcomes and indicators.

An initial search was undertaken for similar First Nations' work. It was important to learn from the experiences of other First Nations' peoples, and that our work ultimately provided tools for others. This element of reciprocity was deemed appropriate given that Māori are at the forefront of First Nations' participation in environmental management. We found a significant international literature on cultural and environmental indicators, and created a repository of these. The research was included in PUCM Māori Report No. 4, *Environmental Performance Outcomes and Indicators for Indigenous Peoples: Review of Literature* (Jefferies & Kennedy, 2009a).

In keeping with the tenets of Kaupapa Māori research, the PUCM Māori Outcome Evaluation Methodology was developed with substantial Māori input, consisting of four parts. First, a core Māori research team was established. This was led by Richard Jefferies, director of KCSM Consultants. I was engaged over 6 years to undertake research and report writing, and KCSM staff assisted as

required. Second, we established a Māori experts' group comprised of Māori academics with substantial planning or related experience. Third, an iwi environmental practitioners' group was set up. They were consulted in relation to research design, development, compilation, research synthesis, and assessment of results. Membership of the groups changed over time. Finally, two iwi (and councils) were engaged to trial the draft outcome evaluation kete.

The PUCM Kaupapa Māori kete

After discussion and deliberation by the expert and practitioner groups, a Māori Outcome Evaluation method was developed, conceptualised as three kete, one for each of three environmentally-relevant kaupapa (tapu, mauri, and mana) and three associated tikanga (wāhi tapu, the mauri of waterways, and mana whenua).

Each kete contained indices grouping cultural and environmental outcomes with relevant indicators. These were not all home-grown, with some indicators being adapted from those of Canadian, American, Australian, and other First Nations. For example, the most comprehensive First Nations' heritage indicators work identified from the Australian Department of the Environment (Pearson, 1998), and wāhi tapu outcomes and indicators developed combined that work with local examples. In each instance, it was necessary to establish whether indicators remained useful and valid outside the cultural, political, and geographic environments from which they came.

We considered it important to ask what the Crown and councils were doing to protect Māori values in their management decisions, but also what Māori were doing. Therefore, the kete each included three indices, for assessing: 1) how local authorities protect/provide for the particular tikanga, 2) how other Crown agencies protect/provide for the tikanga, and 3) how Māori do so.

Each of the Council and Crown related indices included three indicators, the first being the respondents' experience or perception of whether the agency protects/provides for the particular tikanga, the second a series of plan evaluation criteria, and the third measures of implementation by the agency. The mauri and wāhi tapu kete included a fourth index, comprised of physical-condition indicators for assessing how the relevant tikanga was protected.

Two iwi authorities trialled the draft kete, Ngāti Maru of Hauraki, and Ngāti Awa of Whakatane. Two councils also trialled the kete, Matamata Piako District Council, and BOPRC. The trialling groups confirmed the usefulness of

the Kaupapa Māori outcome evaluation framework, and effectiveness of the three kete for evaluating environmental outcomes from a Māori perspective.

An accompaniment to the PUCM kete was the report *Māori Provisions within Plans* (Kennedy & Jefferies, 2008). This brought together Māori provisions from RMA and LGA statutory plans, and grouped them according to the three kete tikanga. It provided a reference with which council and Māori could assess the quality of local provisions, and was a valuable reference for this research, allowing comparison of subject plans against best practice examples.³

My adapted plan evaluation method

I utilised the original PUCM Phase 1 plan evaluation method to evaluate the effectiveness of the RMA plans, and modified the PUCM Phase 2 kete for the purpose of evaluating plan implementation. This strategy was necessary as neither approach on its own provided a complete assessment method for an evaluation of plan quality, implementation and outcomes for Māori.

The kete were not intended to be used for exhaustive whole-of-council investigations, but as a first-cut assessment to allow councils or hapū/iwi to assess planning outcomes from their perspective, and to consider how councils, Crown agencies, and other factors contributed to cultural/environmental outcomes. The kete had insufficient indicators to comprehensively address the range of factors that might influence outcomes, partly because of the previously discussed 'attribution problem'. Secondly, the kete were intended for fairly high level assessments by iwi of the combined plans and implementation of agencies within their rohe, not for comprehensive plan evaluations.

The Phase 1 plan evaluation matrix similarly didn't provide all the criteria I required. This is because, unlike PUCM Phase 1, I did not undertake a separate full plan-quality assessment in advance of a Māori specific study. The PUCM Māori-specific assessment concentrated on obligations stemming from the Treaty of Waitangi, while mine considered plan quality, in relation to three tikanga. Also, the PUCM Phase 1 study assessed individual regional policy statements and district plans, while I assessed the combined effectiveness for mana whenua of the plan hierarchy, from national coastal policy statement down to district plan. Such

³ All of the PUCM Māori reports are available for download, they can be found at: <http://researchcommons.waikato.ac.nz/handle/10289/895/browse?value=PUCM+M%C4%81ori+Report&type=series>

an assessment required an in-depth study of plan quality, and of relationships between plan provisions, both vertically within the RMA hierarchy, and between plans of neighbouring councils.

Plan quality and extent

The PUCM study referred to criteria used as measures of plan 'quality'. To assist in assessing the subject plans, individually and in combination, I grouped criteria by two foci, first, quality of plan provisions, and second, the extent of provisions. I considered that plan quality and extent together provided an indication of (likely) plan effectiveness for Māori, measured in terms of three tikanga.

I assessed quality against six criteria: 1) strength of wording, 2) interpretation and explanation provided, 3) identification of issues, 4) fact base, 5) related plan provisions, and 6) identification of potential effects. Extent was assessed as the degree to which provisions extended across and between plans against five further criteria: 7) completeness of the plan 'cascade' (issues, objectives, policies, methods, and monitoring provisions), 8) plan logic mapping (signposting and navigation aids), 9) internal consistency, 10) links to equivalent provisions in higher and lower order plans, and 11) integration with neighbouring plans. Explanations of these criteria are provided in Chapter 7.

Criteria 8 and 11 did not apply to the New Zealand Coastal Policy Statement so a maximum score of 35 could be achieved, compared to 50 for the other plans. The NZCPS extent result was factored (by 50/35) to provide a total value comparable to those for the remaining plans. This compromises the comparability of the NZCPS assessment with the other plans, but I believe the exercise provide a reasonable determination of the effectiveness of each plan, in terms of what it is tasked to do.

Survey of iwi and hapū environmental representatives

From my iwi work I developed strong relationships with neighbouring Hauraki and Auckland hapū and iwi, and was aware that their experiences were largely similar to ours. I was mindful that my involvement might represent a 'double-edged sword', in that it created the potential for a predetermined view about Māori outcomes from environmental management that might bias my conclusions. To address this I conducted a survey of Māori environmental representatives.

In addition to providing a wider Māori view, it was hoped that the survey would provide a picture of Māori capacity to participate, relationships with councils, and experiences in environmental management. The survey was sent with a covering letter via email. Addresses were collected from an Ngāti Whanaunga iwi and hapū database, a search of Māori organisations, contacts from council and iwi websites, and from the Crown's Te Kahui Mangai list of iwi organisations for RMA purposes.

I first sent the survey in June 2009. To reach the widest possible sample, recipients were asked to forward the survey on to other hapū and iwi environmental representatives. Where emails bounced I attempted by phone to locate an address for the intended recipient. A follow-up letter was emailed two weeks later. In total I emailed 216 addresses, however delivery failed for 40. The covering letter and questionnaire are attached as Appendix C (p. 354).

It is not certain how many iwi exist, and even more difficult to identify all of their constituent hapū. The Māori Fisheries Act (2004), under which fisheries settlement resources were to be vested in iwi, listed 54 iwi. But others have been recognised by the Crown through the Treaty settlements process, bringing the number to about 60.

I received 12 completed survey forms, and responses from another 11 groups, saying either that they were not involved in RMA processes, or did not have the capacity to participate in the survey. The latter is, in itself a relevant finding, and consistent with other analyses of Māori participation.

Council engagement

Council engagement for the research was restricted to the two case study councils, Thames-Coromandel District Council (TCDC) and WRC. While neither wanted to make any formal statement about the case study issues, planning staff from both councils made themselves available to meet, share their understandings of the two issues (mangrove removal at Whangamatā and the Whangamatā marina), and to answer questions. I was told these were not to be taken as statements of either council's position. In particular, TCDC Forward Planning Manager Peter Wishart made all of their files relating to the two case studies available, and shared his analysis of the most significant Māori issues-related resource consents.

Engagement with other experts

Some other informal engagements warrant mention. Various planners outside of the subject councils provided advice throughout the research, including former TCDC head planner, Graeme Lawrence, Sarah Chapman, and Bain Cross, who together drafted the Thames-Coromandel District Plan. I held several meetings with each about the intentions of the district plan (and of the RMA) for Māori, seeking their views on planning issues, including the case studies. Bain was a hearings commissioner for the first marina consent application, and had granted consent, although his decision was immediately appealed. He was therefore in a position to challenge some of my views and assumptions about the marina.

The second group that contributed to my wider planning understanding were my colleagues on PUCM, which pulled together a number of long-time planning practitioners and academics. I held lengthy discussions about my research with these colleagues over a period of 6 years. They include my PhD supervisor (then) Professor Neil Ericksen, Sarah Chapman, Jan Crawford, an experienced planner and RMA hearings commissioner, Professor Ali Memon of Lincoln University, who has written extensively on Māori involvement in environmental management, and Dr Tom Fookes, former Associate Professor of Planning at Auckland University. Tom was also an Environment Court commissioner, hearing one case at which I gave evidence.

I got advice on matters of RMA law from Marutūahu lawyer and friend Paul Majurey. Paul is a Māori issues and environmental lawyer, and co-author of the 'Māori Values Supplement' to the *Making Good Decisions* workbook (Majurey, Atkins, Morrison, & Hovell, 2010). He appeared for Ngāti Whanaunga in the Whangamatā mangrove-related Environment Court hearings, and advised me on questions of environmental law as it relates to Māori. As I don't have a legal background, this advice was of great assistance.

Taking a wider view of councils

I took a number of approaches to investigating the implementation of the RMA as relates to Māori. At a national level, I relied on Māori participation literature, and on council self-reporting. I also assessed state of the environment reporting from both MfE and the Hauraki Gulf Forum (HGF).

Research for TPK into Māori responsiveness included interviews with key staff, management, and elected representatives of four councils, WRC, BOPRC,

Matamata Piako District Council, and Rotorua District Council. Information obtained was supplemented by a desktop assessment of each council's RMA plans, and state of the environment reporting. Interviews were also conducted with one iwi from each council area, to ascertain their views about the council's performance for Māori.

The TPK research allowed me to gauge differences between approaches of two district and two regional councils toward Māori. Interview responses were confidential, but I refer here to findings from the final report. TPK contracted me on the basis of my involvement with the PUCM Māori research, which had been presented to them. The interview questions were modelled on the PUCM iwi and council questionnaires, and similar to the iwi survey conducted for this research.

Two other projects were important for providing insight into Auckland Council, the unitary authority neighbouring my case study region to the north. Both were commissioned by the Crown research institute Manaaki Whenua - Landcare Research NZ. The manager leading the project, Shaun Awatere, was involved with the PUCM research, and the Landcare project had considerable overlap with the PUCM Māori work.

The first project was a study of the treatment of mātauranga Māori by councils, using the newly formed Auckland Council as a case study. Research methods included interviews with council management, including that of its Māori relations team, a review of all relevant Council plans, policies and reports, and a review of RMA plans from the eight legacy councils. The final report included a substantial compilation of Māori statutory plan provisions from these various plans (Kennedy, 2012). This was the most substantial compilation of Auckland plan Māori provisions then undertaken, and provided a valuable reference for comparing the Māori provisions in the plans referred to in this thesis. The second Landcare project involved an analysis of Auckland Council's implementation of its own Māori Responsiveness Framework.

I undertook an in-depth analysis for the case study regional and district councils, including key monitoring GIS (Geographic Information Systems) datasets such the historic sites database, water quality monitoring results, stream benthic surveys, harbour sedimentation and dredging data, recent harbour vegetation survey data, and shellfish monitoring data. This exercise was supplemented by a review of council state of the environment reporting, which was minimal, and a range of recently commissioned plan-effectiveness reports.

These reports were concerned almost entirely with Western measures of environmental quality.

My most exhaustive evaluation was into the two case study issues, mangrove removal and a marina at Whangamatā. I was involved in both as Ngāti Whanaunga environment officer, and read the relevant documentation then (see Literature Review in Figure 2.1, p. 34), assessing it in terms of effects on the iwi.

I used the revised PUCM kete to provide a standardised Māori values-based evaluation of environmental outcomes for Whangamatā, adapting it to provide a Māori values-based statutory plan and process evaluative framework. This took some effort, as the kete were not designed for this purpose. Adapting the kete provides a greater likelihood of generating results that can be qualified and compared to council processes elsewhere, with some standardisation.

Part I

Ngāti Whanaunga, Whangamatā and Tikanga Māori

Part I provides the 'background' information required to understand the Māori relevance of the findings reported in Parts II and III. In it I describe the mana whenua iwi that is the focus of my research. I briefly state the tribe's whakapapa (genealogical connections), and describe its history, rohe (tribal domain), and tikanga (customs). I also introduce the iwi relationship with its ancestral lands and waters, its institutions, and its values. Each of these is argued to represent a cultural base-line for the Māori provisions in environmental resource management law discussed in Part III.

In Chapter 3, I give an historical account of Ngāti Whanaunga and the Marutūahu confederation to which it belongs, and a geographical description of the tribal rohe.

My focus in Chapter 4 is the case study area, Whangamatā. I give a historical and geographic description of Whangamatā, to convey a sense of 'cultural place' and provide a Ngāti perspective of this significant ancestral harbour and its catchment. In Chapters 3 and 4, I give brief consideration to the importance of this iwi history and geography for understanding the contemporary experience of the iwi in environmental management and under the RMA.

Finally in Chapter 5, I explain tikanga relevant to Māori environmental management. Ngāti Whanaunga tikanga (values and behaviours) and mātauranga (world views and knowledge) are briefly described, I give thought to variations between tribal tikanga, and implications of this in terms of legislated definitions of tikanga. As with the geographic and historical accounts in Chapters 3 and 4, the explanations of tikanga in Chapter 5 are the cultural base-line against which statutory treatment of tikanga Māori is later assessed in Parts II and III.

Chapter 3 - Hauraki, Marutūahu and Ngāti Whanaunga

Whanaunga Kītahi Kohikohi e - Ngāti Whanaunga of one voice

A Ngāti Whanaunga pepeha (saying) about the tribe's reputation for unity and decisive action.

The Marutūahu confederation, to which Ngāti Whanaunga belongs, was at the time of European contact a powerful military force, exercising authority over a vast rohe stretching from Matakana north of Auckland south to Matakana Island. Today Marutūahu are almost landless, have few resources, and a scattered population. Despite this they continue to engage in environmental management processes, in an effort to protect ancestral interests and fulfil kaitiaki obligations.

In Chapter 3, I provide a history of Ngāti Whanaunga and Marutūahu. The complex nature of their rohe is explained, and compared with other areas, and this complexity is considered in terms of the iwi's experience under the RMA. I describe the events that ended in landlessness and marginalisation. I highlight the relationship of Ngāti Whanaunga with its ancestral lands and waters, in terms of iwi practices and values that have evolved over centuries. In doing so I provide the geographic and historic context for the case study area, Whangamatā (Chapter 4), Ngāti Whanaunga tikanga (customs and values) (Chapter 5), and the case study issues presented in Chapter 10.

Next, I describe contemporary experiences of Ngāti Whanaunga, and compare them with other iwi. Areas of comparison include: 1) the nature of the Ngāti Whanaunga rohe and relationships with neighbouring tribes; 2) development and other land use pressures within the tribal rohe; and 3) the current capacity of Ngāti Whanaunga to participate in environmental planning processes.

I argue that contemporary tribal circumstances, along with the geographic distribution of the iwi and the extensive and fragmented nature of the Marutūahu rohe, are important factors in the experience of Ngāti Whanaunga under the RMA.

Hauraki, Marutūahu and Ngāti Whanaunga

I begin this historical account with a brief description of the Hauraki region and the distribution of its traditional peoples, then go on to describe the Marutūahu tribal confederation and one of its iwi, Ngāti Whanaunga.

Hauraki – the place and the people

Hauraki means 'warm wind'. The term referred to the favourable north wind that blew across the Coromandel Peninsular, Hauraki Plains, and land on the west of the Firth of Thames. Historic evidence suggests that the frost-free microclimates and fertile soils found on Hauraki offshore islands provided the original nurseries for acclimatised food plants (particularly kumara and taro) brought from Hawaiki (a Māori term for islands of origin), before knowledge was gained to enable these to be successfully cultivated on the mainland of Aotearoa. Ahuahu (Great Mercury Island was among the earliest of these (Turoa, 1997).

For this reason Hauraki is amongst the earliest inhabited areas in Aotearoa (Belich, 1996 p. 46; Monin, 1996 p. 10). Evidence of this includes a pearl shell fishing lure found at Tairua, linking to the earliest arrivals from the Pacific, and the only example of its kind known in Aotearoa (Monin, 2001). Hauraki holds a large portion of the country's rare 'archaic' archaeological sites. Eleven have been identified on the Coromandel Peninsula. In a report on one such Whangamatā site, Archaeologist Warren Gumbley said it is axiomatic among archaeologists in New Zealand that sites relating to the Archaic Phase (to the earliest period of New Zealand history) of Eastern Polynesian Culture are valuable. These were relatively few in the first instance, and had become less common through natural and human processes. Gumbley (2003 p. 8) called such sites 'rich in a variety of natural and cultural artefacts rare or simply absent from later archaeological sites':

These early sites set the context for the study of human settlement of New Zealand and the adaptation of a culture developed for tropical island environments. Their value relates also to the study of the human settlement of Oceania. New Zealand was the last land-mass of significant size to be settled by humans and as such represents an important laboratory for the study of the inter-relationship of humans with the natural environment. Archaeological sites of this age are central to that study and so have international value.

Hauraki was (and remains) prized for its resources, including kaimoana (seafood), timber and birdlife, rich arable lands, and mineral resources, including basalts suitable for making weapons and tools. It is located at a crossroads of historic travel routes between Tamaki Makaurau (Auckland), and the Tauranga-Moana, Waikato, and East Coast tribes, and it was fiercely contested.

This turbulent history is consistent with Maui traditions, where the Coromandel Peninsula is referred to as 'Te Paeroa o Toi' (the long mountain range of the early Polynesian voyager Toi) or 'Te Whai o Te Ika a Maui' (the barb of the great fish of Maui). The latter metaphor reflects the area's reputation as a place of danger. This history is evidenced today by more than 10,000 listed archaeological sites within the rohe, many being defensive pa. Furthermore, as a result of many sites either being destroyed, or never surveyed, it is likely that this number represents only 30% of those that once existed (Furey, 1980; Phillips, 2000).

Hauraki peoples

The name Hauraki is variously used today in relation to a council district, a tribal people, and tribal rohe. Hauraki historian Tai Turoa used the term 'Pare-Hauraki' for the tribes who collectively reside in the region, including the Marutūahu iwi despite their rohe extending northward into Tamaki Makaurau and Mahurangi.

The Hauraki tribal pepeha *Te Papa ki Toru* refers to three waves of peoples inhabiting the region, these being; the early 'known' iwi, the Marutūahu, and more recent *tuku whenua* iwi (those gifted lands). However, the first wave iwi acknowledged that they were preceded by peoples that did not identify as iwi. Turoa and Royal write that there remains little firm knowledge about these peoples, and refers to them as *Te Tini o Maui* (the multitudes of Maui), *Maruiwi*, and *Te Tini o Toi* (the multitudes of Toi) peoples (Turoa & Royal, 2000). These earliest peoples are believed to have been assimilated into the first wave iwi.

The 'three waves' metaphor is widely used by Hauraki iwi. First wave iwi were Ngāti Hako, Te Kahui Ariki, Te Uri o Pou, Ngāti Huarere, Ngāti Hei, Ngā Marama, Ngāi Tai, Ngāti Rahiri, and Patukirikiri. Marutūahu was the second wave, including Ngāti Rongo u, Ngāti Tamaterā, Ngāti Whanaunga, Ngāti Maru, and Ngāti Pāoa. The third wave included Ngāti Tara, Ngāti Koi, Te Whakatohea, Ngāti Tautahi, Ngāti Porou, Ngāti Pukenga, and Tuhourangi. Several of these latter arrivals were gifted lands by Marutūahu iwi, a *tikanga* called '*tuku whenua*'.

Marutūahu

The eponymous ancestor Marutūahu travelled to Hauraki from Kawhia, in search of his father Hotunui. Hotunui was a rangatira (person of high lineage) from Kawhia, who previously suffered humiliation when accused of stealing kumara seedlings from a relation. This led to his leaving his home and whānau. His wife was pregnant at that time, and he bid her to name the child Marutūahu should it be a son, to recall the insult he had suffered. Hotunui and entourage travelled to Whakatiwai on the western shores of the Firth of Thames, where he settled with the local Te Uri o Pou people. He was a renowned net maker and his skills were gratefully employed by Te Uri o Pou. It is thought that his migration took place in the late 16th century AD (Monin, 1996 p. 14; Te Taniwha, 1929). When Marutūahu reached adulthood he set out to find his father. On his journey to Whakatiwai he encountered two sisters, Paremoehau and Hineurunga, daughters of a prominent Te Uri o Pou chief. They both fell for Marutūahu, and he accompanied them to their village, Watoetoe, and took both as wives. From these unions Marutūahu had five sons, shown in Figure 3.1.

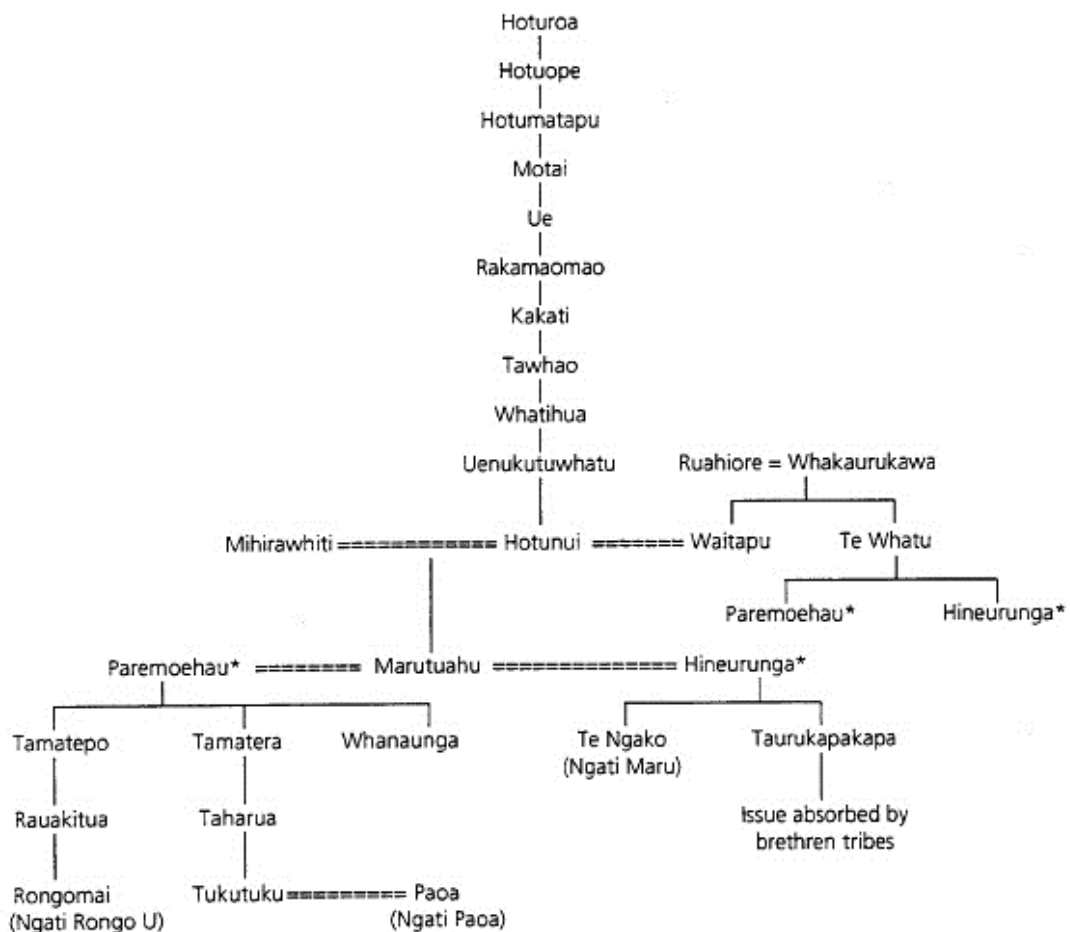


Figure 3.1: Whakapapa (geneology) of Marutūahu. From Turoa (1997) *Ngā Iwi o Hauraki*. Copyright (1997) by Hauraki Māori Trust Board. Reprinted with permission.

The Marutūahu confederation was comprised of four descendant iwi, Ngāti Tamaterā, Ngāti Whanaunga, Ngāti Maru, and Ngāti Pāoa. Although being the tuakana (first born) and having children, there is no Tamatepō iwi, with Ngāti Rongo U having been considered to have been absorbed into the other Marutūahu iwi by early 19th century (Turoa, 1997).

Ngāti Tamaterā and Ngāti Whanaunga descend from the ancestor after which they are each named, while Ngāti Maru descends from Te Ngako. Ngāti Pāoa come from the Waikato chief Pāoa, who married Tukutuku, a granddaughter of Tamaterā when he moved to Hauraki.

Ngāti Whanaunga

Whanaunga was the youngest son of Marutūahu, from the marriage between Marutūahu and Paremoehau. He is reputed to have been the most aggressive of all the brothers (Turoa & Royal, 2000). Despite being teina (last born), Whanaunga established his mana and elevated his position when his older brother Tamaterā took his father's second wife, Hineurunga, as his own wife following Marutūahu's death. Whanaunga took offence and prepared to visit Tamaterā to address his brother's actions, and Tamatepō for failing to intervene to prevent the union.

Tamatepō and Tamaterā were warned by their mother to leave, as Whanaunga intended to kill them, saying 'Ki te haere, ka ora koutou, ki te noho, ka mate koutou' - If you flee now you will survive, but if you stay you will die (Cooper & Compain, 2002). Tamatepō said he would stay and risk being killed, but Tamaterā departed that night and eventually settled at Ohoroa, Katikati. This event established Whanaunga as Te Mātāmua, holding the status of first-born.

It was several generations after that time before the distinct iwi of Marutūahu emerged. The sons of Marutūahu, their children and grandchildren eventually organised into the four iwi known today, incorporating elements of their in-laws and those who they previously assisted. Little is written about this evolution. However, there is reference in oral histories to the Marutūahu iwi and even to specific hapū, in relation to events at which the involvement of the grandsons of Marutūahu are recorded.

Ngāti Whanaunga traditions identify at least 12 hapū (sub tribes). These are: Ngāti Karaua, Ngāti Matau, Ngāti Kotinga, Ngāti Puku, Te Mateawa, Ngāti Rangiaohia, Ngāti Rāmuri, Ngāti Ngaropapa, Ngāti Rangiuiira, Ngāti Hinerangi,

Ngāti Pakira, and Ngāti Tauaiwi. In addition there were a number of hapū whose connection to Ngāti Whanaunga is less clear. Some were 'taharua' hapū, who maintained connections with Ngāti Whanaunga and another of the Marutūahu or neighbouring tribes. Te Rapupo, of Whitianga, was an example of this.

Furthermore, there were some hapū that were effectively merged into Ngāti Whanaunga. This was the case for three hapū of Te Arawa lineage Ngāti Piri, Ngāti Hinu and Ngāti Koheru. The last, Ngāti Koheru, is considered to have become a hapū of Ngāti Karaua (Cooper & Compain, 2002).

The ascendance of Marutūahu

Rights to land in tikanga Māori were derived from three *take* (causes or origins of tribal rights to land); whakapapa (inherited rights), raupatu (conquest), and tuku (gifting). Regardless of origin, mana whenua (authority over tribal lands) had to be reinforced by ahi kā - the practice of keeping tribal fires alight. By the time Marutūahu arrived in Hauraki several iwi occupied parts of the region, including Te Uri o Pou, Ngāti Hako, Ngā Marama, Ngāti Huarere and Ngāti Hei. Through a combination of conquest and intermarriage the Marutūahu iwi established their mana, and by 1840 they were entrenched as the region's dominant people.

Ngāti Whanaunga played a significant part in the ascendance of Marutūahu. They fought in campaigns against each of the peoples mentioned above, and led the battles in which Ngāti Huarere are considered to have been conquered as a people, this being a pivotal point in Marutūahu history.

The descendants of Marutūahu gradually established themselves as the dominant land holders in Hauraki and much of Tamaki Makaurau over several centuries following fighting and intermarriage with earlier peoples including Te Uri o Pou, Ngā Marama, Ngāti Huarere, Ngāti Hei, Ngāti Hako and Waiohua. Such events are relied on in contemporary environmental management as a means of establishing mana whenua status, particularly where this is disputed between parties. The RMA (1991) makes reference to 'tangata whenua' and 'mana whenua', and requires that decision-makers recognise and provide for, as a matter of national significance, the relationship of 'Māori' and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.

Whanaungatanga

Following the ascendance of Marutūahu, Ngāti Whanaunga tribal traditions state that Te Uri o Pou ceased to remain as an organised people, while Ngā Marama were driven permanently from the area. Ngāti Huarere was considered to have been extinguished as an iwi, although it is important to recognise that many Hauraki people acknowledge their descent from these early tribes, this being an important unifying aspect of Hauraki whakapapa.

Ngāti Hako and Ngāti Hei were spared this fate, surviving as distinct iwi, albeit with substantially reduced rohe and often reliant on the patronage of Marutūahu iwi. Survival was largely a result of historic relationships, including marriages with Marutūahu (Cooper & Compain, 2002). For example, Whanaunga married a high-ranking Ngāti Hei woman named Hei Tawhiri, so all Ngāti Whanaunga are also of Ngāti Hei descent.

The importance of whanaungatanga (familial relationships) is a recurring theme throughout Ngāti Whanaunga narratives. Family disputes often factor in triggering hostilities, and are almost always cited as a reason for, or means to, ending them. Marriages were often used as a way of sealing an agreement to cease hostilities, and resulting children established a common link to lands previously the subject of dispute. This important tikanga is discussed further in Chapter 5.

Accordingly, it would be incorrect to suggest that the relationship between the Marutūahu and other iwi was simply one of conquest and domination. Rather, relationships had been cemented through intermarriage and kinship, and such relationships continued to be dynamic. Historian Dr Cybele Locke (2002 p. 8) explained the result of these relationships during the early colonial period, in terms of the overarching authority of Marutūahu:

Marutūahu represented a network of relationships that included all the resident hapū and iwi in the Hauraki rohe, those original occupiers, conquerors, and those who were later gifted land. All these tribal groupings had the right to occupy land but Marutūahu was the framework for external relationships outside the rohe, with Māori, Pakeha and the Crown.

The Marutūahu rohe is described in the tribal expression 'Mai Matakana ki Ngā Kuri a Wharei', Matakana being a place near Leigh north of Auckland and Ngā Kuri a Wharei a group of sunken rocks near Matakana Island.

As a result of the previously described tribal evolution and expansion, prior to European colonisation the Marutūahu confederation established mana whenua (tribal authority over land) across this vast area, over 1,500,000 acres. Marutūahu held some of this rohe exclusively, but shared rights to other lands and waters with neighbouring and interrelated whānau, hapū and iwi. The tribal coastline is one of the longest and most richly resourced in the North Island (Turoa, 1997). Hence, the Marutūahu were very much a maritime people (Peters, 2010), reliant on the ocean for travel and food, and this relationship with the sea was, and remains, a central aspect of tribal identity.

Figure 3.3 (next page) is a representation of wide iwi areas of interest. It shows only nine of perhaps 30 Crown-recognised iwi whose claimed rohe overlaps that of Marutūahu. The Te Kāhui Mangai rohe of Ngāti Hako is not shown, it would cover the unshaded part of the Marutūahu rohe.

Actual land holdings were much more complex, characterised by what Taimoana Turoa (1997 p. 4) called 'kainga pockets':

A Hauraki example in respect of their muddled settlement is the intermingling of related tribes and sub tribes who have firmly established 'kainga-pockets' within each other's territories, without the loss of their individual identity. Where intermarriages occur, then the custom often requires affiliation with the tribe resident on the ancestral land.

The result might be compared to a 1000 piece jigsaw, in which iwi have tens or hundreds of pieces (depending upon their size and strength), scattered across the jigsaw in patterns like those shown in Figure 3.3 (next page). This contrasts with the contiguous and discrete rohe of most iwi. As Monin observed, 'the needs of political autonomy were balanced with those of material self-sufficiency', resulting in a 'patchwork of customary rights' (Monin, 2001 p. 87).

Survival and tribal wellbeing depended on access to resources including kaimoana (shellfish and fish), tuna (eels), rongoa (medicinal plants), flax for weaving, timber for waka, housing and weapons, and arable land for cultivation.

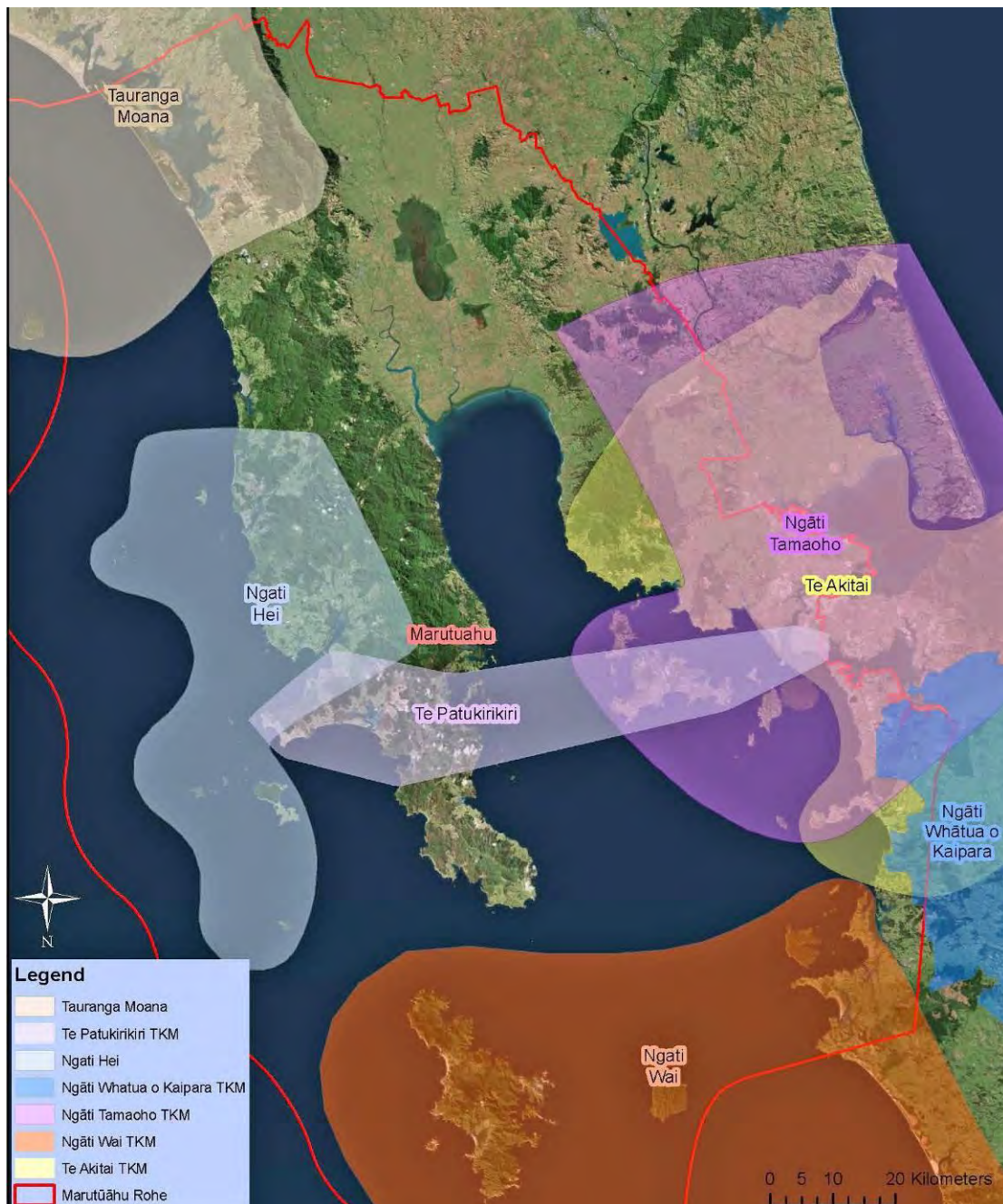


Figure 3.3 Crown website of iwi boundaries for RMA purposes - showing 9 out of nearly 30 iwi (Tauranga Moana includes 3 iwi) whose rohe intersects that of Marutūāhu. *Source of iwi boundaries Te Kahui Mangai website, Aerial Photography Bing.*

Belgrave, Tulloch and Young (2002 p. 114) explained customary rights in their Treaty claims report *The Operation of the Native Land Court in Hauraki*:

Let there be no ambiguity: Māori customary rights to land did not exist in the abstract. Rather they were a practical application of tribal political and civil rights together with economic, social and cultural rights applied to particular situations. Māori customary rights to land were fundamentally about relationships. That is, how people interacted with each other over

access to resources and land. They were always in flux and always subject to debate. This can be seen both in how Māori claimants, including Marutūahu, acted in the Courtroom and how the Court responded to the complexity of claims.

Figure 3.4 (next page) shows the distribution of Hauraki iwi over the Coromandel Peninsula and some of Auckland, according to Hauraki historian Tai Turoa. While it is not fine grained enough to show intricate local level tribal interests, and the distribution shown not agreed by all the iwi shown, the map serves to illustrate the nature of interwoven lands.

Another important dynamic of Marutūahu mana whenua is that hapū did not reside permanently in each of their places. This was the case for Ngāti Whanaunga; their ancestor Horeta Te Taniwha described the nature of the relationship to Whitianga at the time of James Cook's visit in 1769 (White, 1888):

We did not live there as our permanent home, but were there according to our custom of living for some time on each of our blocks of land, to keep our claim to each, and that our fire might be kept alive on each block, so that it might not be taken from us by another tribe.

Some areas were occupied seasonally, aligning with the availability of local resources, and in some instances a small group stayed permanently to maintain ahi kā. It was also common practice for Marutūahu iwi to leave rahi (slaves) in occupation of their lands. The slaves were required to maintain cultivations and provide tribute from local resources. In other places related hapū with shared interests resided on lands.

Ngāti Whanaunga mana whenua

Ngāti Whanaunga hapū spread across the Hauraki and Tamaki Makaurau following the previously discussed events. They maintained close relationships with each other and lent support when needed, particularly in response to external threats. As a result of military campaigns and changing tribal relationships Ngāti Whanaunga expanded eastward from the western shores of Tikapa Moana (the Firth of Thames), over Te Pae roa a Toi Te Huatahi (the long range of Toi) into the traditional lands of Ngāti Hei. They eventually occupied lands on both sides of the Coromandel Peninsula as far south as Whangamatā, as shown in Figure 3.4.

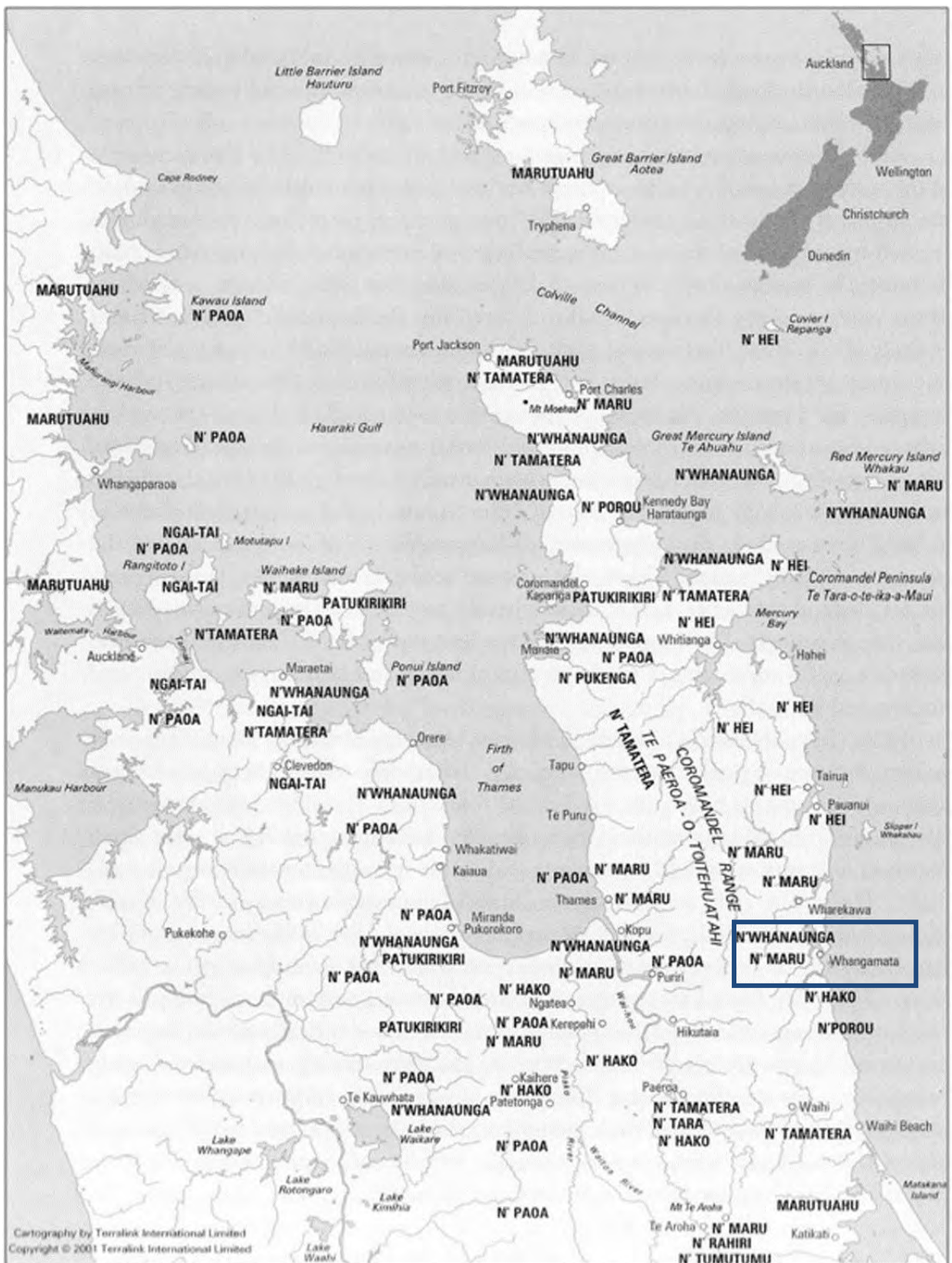


Figure 3.4 - Distribution of Marutūahu (Ngāti Whanaunga, Ngāti Tamaterā, Ngāti Pāoa and Ngāti Maru) and neighbouring Hauraki iwi as at 1840. Whangamatā within the blue box. From Turoa (1997) *Ngā Iwi o Hauraki*. Copyright (1997) by Hauraki Māori Trust Board. Reprinted with permission.

The complex tribal land tenure arrangements in place at 1840 were subjected to a Crown-imposed delineation of customary interests. Māori were required to define

ancestral rights with discrete legal land boundaries through the work of surveyors and the Native Land Court (as discussed below). Figure 3.5 shows the early Native Land Court blocks awarded either exclusively to Ngāti Whanaunga or in combination with other tribes.

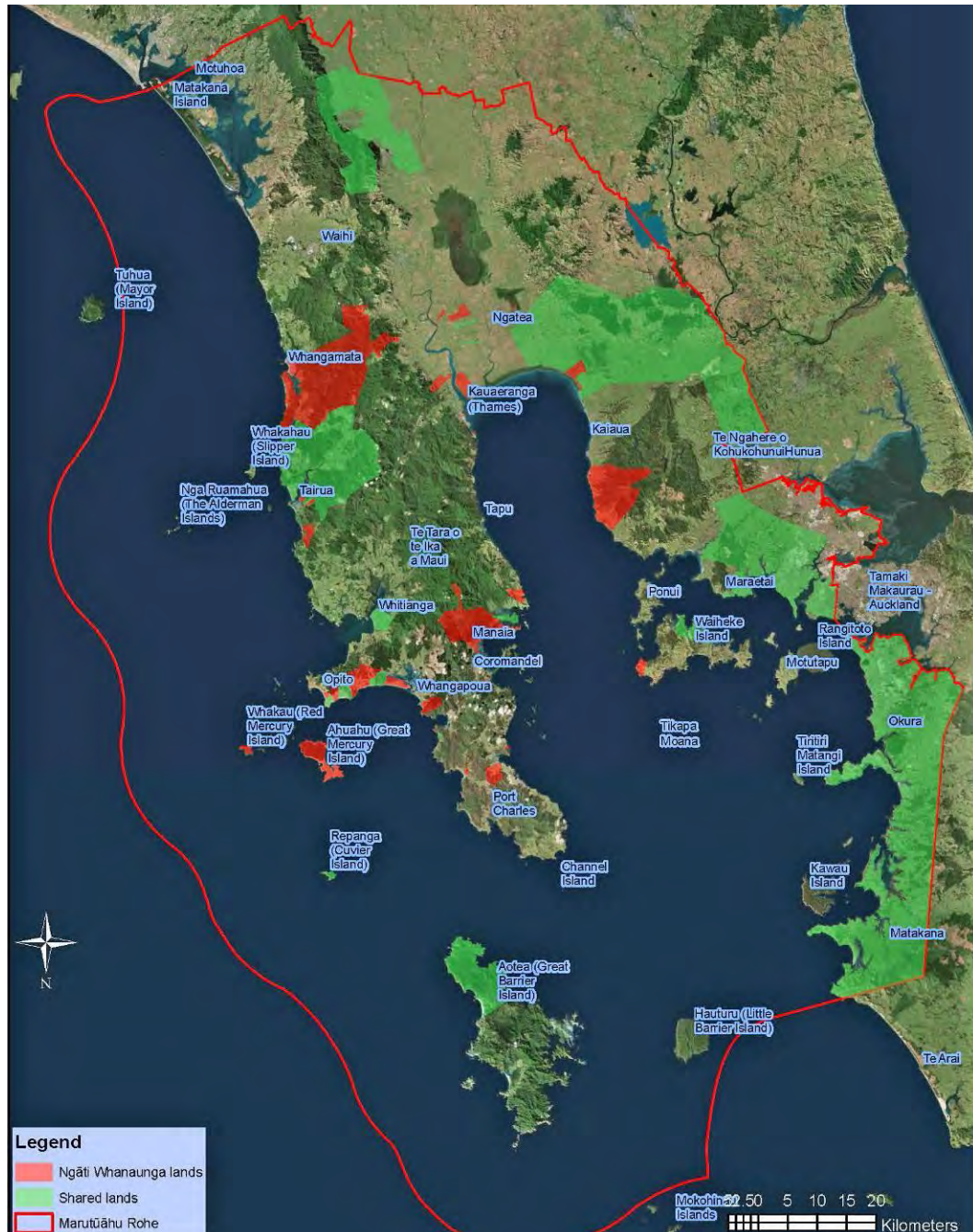


Figure 3.5: Ngāti Whanaunga interests in early Native Land Court-created Hauraki land blocks (red = exclusive) and (green = shared). *Source N Kennedy, Aerials Bing.*

Ngāti Whanaunga had papakāinga (villages and occupation areas) at Wairoa, Papakura, East Tamaki, Maungarei (Mt Wellington), Waipapa (Mechanics Bay), and Takapuna. Wharekawa, the western coast of the Firth of Thames, was shared with Ngāti Pāoa. In Hauraki, the Ngāti Whanaunga hapū Ngāti Karaua occupied

several of the off-shore islands, including Ahuahu and Whakau (the Mercury Islands), and Ruamahua (the Alderman Islands) to the south. Other Ngāti Whanaunga hapū lived in the Thames and Waihou areas, alongside hapū of Ngāti Maru and Ngāti Hako respectively. Others occupied lands between Manaia and Coromandel, south of Thames and on the Hauraki Plains. The Ngāti Whanaunga hapū Ngāti Karaua and Ngāti Matau held mana whenua at Whangamatā.

Colonisation

Ngāti Whanaunga tupuna signed the Treaty of Waitangi at Waiiau (modern day Coromandel) and at Tamaki Makaurau. The English text version of Article Two guaranteed to Māori 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.' This guarantee was subject to Crown pre-emption. Yet, the Treaty was the single most significant factor for Marutūahu iwi in terms of undermining and eventually leading to the erosion of tribal land holdings. In this section I consider the impacts of colonisation on Ngāti Whanaunga.

Land loss

While the signing of the Treaty and subsequent influx of Europeans resulted in many changes for Marutūahu, the most significant of these was to be the almost total loss of tribal lands. I have previously described a massive tribal estate, covering more than 1,500,000 acres, yet, within the first 100 years of colonisation Marutūahu were virtually landless. This is argued in subsequent chapters to be a significant factor in the contemporary experience of Ngāti Whanaunga, including in terms of participation in environmental resource management.

The primary means for alienating Māori land was the Native Land Court, established in 1865. Proclaimed by the Crown to place Māori on the same footing as other British subjects with respect to land tenure, and to bring their lands under the protection of British law, the Act's real purpose was individualisation of collectively held Māori land, to allow the transfer of Māori land to European settlers (Loveridge, 2000 p. 237). This undermined tribal relationships in that it became easier for individuals to sell without the sanction of the collective (Belgrave, 2002 p. 117).

The Crown actively sought to minimise the price paid for Māori land in a number of ways. Crown pre-emption meant that Māori could only sell to the Crown. The Crown sought to conceal from Māori owners any knowledge of resources, the presence of which might drive up prices, such as gold or coal (Anderson, 1997 p. 227). At Whangamatā the Crown Land Agent noted resistance by the Crown to paying for Māori land at a 'market' rate (Mackay, 1873).

The Native Lands Act (1862) required that the Native Land Court ensure that Māori retain sufficient lands to provide for their own needs. But titles granted as inalienable were later allowed to be sold, and promised reserves often didn't eventuate. Both of these were the case for Ngāti Whanaunga lands.

Surveyed boundaries impacted on the fabric of Māori society. In addition to growing landlessness, they imposed a distinct legal separation, cutting lines across areas that were previously subject to overlapping and shared resource access rights and relationships. Apart from property allocation, legal rights delineated by block boundaries caused disputes between neighbours and whānau lasting long after alienation of the land, sometimes for generations.

Court and survey charges were also effective means of alienating Māori land. The Waitangi Tribunal acknowledged the Crown's practice of using survey debts as leverage to force the sale of Hauraki land (Waitangi Tribunal, 2006). In some instances massive survey, court, and legal costs were paid by the transfer of whole land blocks to surveyors, the Crown, or directly to government land agents. Thousands of acres of Hauraki land were taken under various 'waste lands' acts, and growing debt was used by the Crown and eventually settlers to gain more land. The practice of raihana, or rations, was responsible for the transfer of large areas of Marutūahu land, as reported by Hauraki land agent James Mackay (1872 p. 1), about Ngāti Tamaterā land:

But for the fact of their requiring advances to procure provisions for the tangi over the late rangatira Taraia it is improbable that the purchase [of Moehau/Waikewau] would have been affected at the present rate.

Additionally, Ngāti Whanaunga and Ngāti Pāoa had large areas of land at East Wairoa confiscated for assistance lent to the Kingitanga against incursions by the Crown into Waikato. For this involvement a Ngāti Whanaunga and Pāoa village was bombarded at Pukorokoro (later renamed Miranda after the offending gunboat). Marutūahu villages were also bombarded at Papa Aroha.

Public works takings were another means by which Marutūahu land was lost. The Crown used public works legislation to undermine resistance to land sales (Anderson, 1997 p. 301). Lands were taken for roads, public utilities and infrastructure, and culturally significant islands taken for the purpose of building lighthouses, including Tiritiri Matangi (1867), Repanga (Cuvier Island) (1888), and Ohinau (1923).

Ngāti Whanaunga land at Waharau south of Auckland was compulsorily acquired as recently as 1973, nearly 600 acres of remaining tribal land acquired to ensure Auckland access to Hunua water catchments (Auckland Regional Council, 2010 p. 349). This land is now a regional park, and Ngāti Whanaunga plays no part in its management. The other way local government has acquired Māori land is through unpaid rates. This has happened in Hauraki since the 1920s, for Ngāti Whanaunga and Ngāti Maru particularly in and around Thames. Appearing before the Waitangi Tribunal, historian David Alexander (1998 p. 3) noted that Māori rates debt served a dual purpose for the Thames Borough Council:

Māori ownership of town sections was perceived as a problem, in the sense that Māori were not regarded as using their land to best advantage, and the lands were eyesores in the town; europeanising the land and removing the Māori ownership from the picture was seen to be in the town's best interests, and the active pursuit of the payment of rates debt in land was thus seen as serving a dual purpose.

This is not an entirely historic phenomena. There continue to be instances of Councils taking Māori land as payment for rates owed as recently as the 1990s. The net effect of the land alienation methods described above was that each of the Marutūahu iwi is today virtually landless. This landlessness, the associated loss of resources, and alienation of their people from their ancestral areas, are argued to be significant factors in terms of the experience of Marutūahu iwi in environmental resource management today. However, the issues raised above have been dismissed as ancient history by decision-makers under the RMA, or more often simply ignored when presented in submissions and evidence.

But for Ngāti Whanaunga the issues remain an important component in establishing mana whenua and explaining relationships to ancestral lands, for example during consent hearings in which residual iwi interests, such as those in their harbours, are being privatised. In these instances Ngāti Whanaunga have

argued that such further alienation of tribal interests should be considered in terms of cumulative effects to the land alienation and historic environmental degradation described here. I discuss this theme in Chapter 8, in relation to resource consents.

Participation in the new settler economy

Marutūahu iwi contributed to the new settler economy through the huge areas of tribal land given, taken, or sold for minimal amounts. This passed quickly from the Crown to settlers at greatly inflated prices. However, Marutūahu were also early and eager participants in the emerging settler economy in various ways.

Early Pakeha were seen as an opportunity to secure European goods, learn English, and gain influence in a growing colonial society. Trading relationships with Europeans offered a means of increasing prestige over that of neighbouring tribes. In the 1830s there grew a need to acquire guns, following recent devastation from Ngā Puhī (a northern iwi) firearms. Marutūahu engagement in trade was necessary for survival, in both the Pakeha and Māori worlds. Hauraki Māori traded with Europeans from 1795. Initially, Marutūahu iwi gained access to European goods and knowledge through 'Pakeha-Māori', settler men sponsored by local chiefs, under whose patronage they established businesses. The Europeans were early sailors, whalers, and sealers. A small missionary presence arrived in 1833, and the first European settlements in about 1835 (Monin, 1995).

As settlements expanded, Marutūahu iwi took advantage of the economic opportunities they brought. For example, Ngāti Whanaunga rangatira Te Horeta Te Taniwha moved some of his people to Coromandel to take advantage of work and trading opportunities there. His daughter married a local trader.

Marutūahu quickly established themselves as successful traders, both within Hauraki and across the Hauraki Gulf to the fast expanding town of Auckland, being for some decades one of the town's main food suppliers. But due to factors like the 1856 Australian market crash, and extractive industries becoming more highly capitalised, Marutūahu began to experience growing indebtedness as markets declined for the agricultural systems in which they had invested (Locke, 2002). This situation was aggravated by the Waikato Wars, in response to which the Crown imposed economic and physical blockades for Auckland to nearby Ngāti Pāoa and Ngāti Whanaunga, who had lent assistance to the Kingitanga. This action closed off Marutūahu access to Auckland markets for some years, significantly impoverishing the iwi.

It has been argued that the Crown's motivation was not only to obtain Māori land for its own purposes and for settlers, but also to undermine Māori enterprise (Tulloch, 2000). Historian Alan Ward (1999 p. 157) described the Crown's 'jealous opposition to Māori efforts to foster their own economic development through leasehold and joint-venture arrangements', calling this the most serious Treaty breach by the Crown between 1840 and 1865:

.....the great period of Crown monopoly of land purchase, from 1840 to 1865, worked to marginalise Māori from the commercial economy, which was largely based on owning and letting land, both in rural areas and in the main towns'.

Marutūahu were similarly deprived of benefits from timber extraction and gold mining, with promised royalties or rentals often unpaid. Furthermore, transactions with the likes of the Kauri Timber Company in Hauraki resulted in large tracts of leased land being sold, with the Crown retrospectively issuing titles. Gold mining and timber extraction were undertaken in Hauraki with little consideration of environmental damage. These activities made up what Russell Stone called a 'robber economy', able to survive only by ruinous exploitation, and destroying resources as it went along (Stone, 1997). Of the great kauri forests of Hauraki only small pockets remained by the turn of the 20th century.

There was a long prioritisation of extractive industries' interests over promises to Māori (Anderson, 1997 p. 108). The Crown also prevented Hauraki Māori from leveraging any benefit from the minerals in their lands. Control over subsurface resources was achieved by declaring likely gold bearing blocks to be within the 'Hauraki Gold Mining District' in 1875 (Anderson, 1997 p. 218).

By the early 1870s Hauraki Māori were outnumbered by Pakeha, and their authority greatly diminished, in what Stone (1997) refers to as 'subordination'. The little land Hauraki retained by 1900 was mainly in small, multiply-owned, and uneconomic lots. Group ownership became a barrier to getting finance as a means of improving land or purchasing more. As reported by Anderson (1997 p. 27):

Left with very little resource base, Hauraki Māori were denied any chance of recovery, precluded from even a modest participation in the twentieth century economy, and as Oliver points out, 'relegated to the bottom of the socio-economic heap'.

Growing landlessness resulted in increasingly poor living conditions for Hauraki Māori communities. This ultimately led to ill-health and low life expectancy. A related factor in the decline of Hauraki Māori in the early 1900s was mortality suffered from introduced epidemic diseases. Māori suffered far greater losses than the settler community in the face of epidemics such as smallpox, influenza, and tuberculosis, because they lacked immunity, and because they lived in crowded and often substandard accommodation where diseases spread easily.

The reports commissioned for the Hauraki and Marutūahu Treaty hearings included numerous case studies highlighting the conditions of poverty Māori were living in by the early 1900s (Anderson, 1997; Belgrave, Tulloch, & Young, 2002; Locke, 2002; Oliver, 1997). Key factors were unemployment, minimal land with which to sustain themselves, ill-health and the increased burden on extended whānau when relatives died, leaving orphaned children. A recurring theme was difficulty encountered in obtaining any assistance from the state. Such treatment clearly fell short of the promise made by the Crown to Māori in Article Three of the Treaty of Waitangi, of royal protection and all the rights and privileges of British subjects.

Increasingly, as a result of the previously described conditions, Marutūahu people moved from their ancestral lands, migrating to the district's larger Pakeha towns, and eventually to the newly establishing cities. In the early decades of the 20th century, this involved moving to mining centres like Waihi or Karangahake, or following other labour trails. By the 1960s migration was almost entirely to the cities, where Marutūahu joined Māori from elsewhere in low socio-economic neighbourhoods.

In search of economic opportunities, many Māori have lost touch with their iwi and marae. This has resulted in cultural dislocation and tribal alienation. The exception are the hau kainga, those who remained on or near their tribal lands. These are the ahi kā, the people that kept the home fires burning. However, for Marutūahu these are now few, having become the most landless iwi in the country (Locke, 2002).

Environmental degradation

The final issue I discuss, in terms of results of the new settler economy, is that of environmental impacts. Significant damage was done to Hauraki land and rivers during the early colonisation period in pursuit of economic advancement. In spite

of Article II of the Treaty, Marutūāhu suffered a massive loss of traditional resources. Eel weirs were destroyed in timber drives, and the waterways were polluted by mining waste dumped in rivers that were re-designated as 'sludge channels'. Hauraki hills were denuded of ancient forests, resulting in erosion and sedimentation of tribal watercourses, and ultimately harbours.

Clearing forestry for farming caused substantial habitat destruction and erosion, and farming contributed to the pollution of rivers, particularly after the advent of spreading fertiliser. There was additionally environmental damage from growing towns. Hauraki's regenerating forests have been ravaged by introduced deer, goats, and possums. Invasive weeds and exotic plant species have flourished, and native birds have been killed off by introduced rats, stoats, feral cats, and possums (Waitangi Tribunal, 2006 p. 1159).

The Hauraki environment was a victim to economic forces at work in the 19th century. No protective mechanisms were enacted to regulate environmental impacts from commercial activity, as acknowledged by the Waitangi Tribunal (2006 p. 1160):

The Treaty was also breached in that Māori concerns, expressed consistently in petitions and at parliamentary inquiries over the many instances of damage to their lands and resources outlined in this chapter, were almost always the Crown's last priority. The evidence has shown an official attitude of neglect towards Māori, whose lands Crown officials often regarded as an impediment to their development schemes and whose presence was to be circumvented. The Crown's duty of active protection towards Māori was often not honoured in Hauraki.

The Waitangi Tribunal has found that the environment today is a product of this neglect, and that the pre-colonial-destruction landscape is the base-line for assessing effects, cumulative effects, efforts at restoring natural character, and environmental outcomes, in contemporary environmental decision-making (Waitangi Tribunal, 2011). Despite this, I argue in later chapters that Māori involvement in RMA processes remains widely circumvented by councils in the manner identified in the Hauraki report.

Ngāti Whanaunga Today

As a result of the previously described events following the signing of the Treaty by iwi leaders, Ngāti Whanaunga, and Marutūahu, are virtually landless. There are a number of consequences attributable to this condition. The many previously-described developments resulted in landlessness, dislocation from ancestral places, and impoverishment. The active part played in these by the Crown was a central theme of the Hauraki Waitangi Tribunal Claims, substantially upheld by the Tribunal (2006 p. xlvii) in its *Hauraki Report*.

The loss of ancestral resources is of particular significance for this thesis, in that the iwi struggles to assert and substantiate its relationships with ancestral lands, waters, and other taonga. Māori continue to struggle with courts, which accord greater weight to written records than oral history, and Western science based knowledge to that of Māori. While iwi may have taken a holistic approach to management, not inconsistent with a catchment-based one, private interests, councils and the courts are preoccupied with property rights and boundaries.

Despite these developments, Ngāti Whanaunga and their Marutūahu relations continue to strive to represent and protect the interests of their people, one means by which this is achieved is through participation in statutory processes. However, lack of resources means that iwi representatives act largely in a voluntary capacity, this for a massive rohe that experiences as great a development pressure as any in the country.

Tribal structures

Impacts on Marutūahu iwi from colonisation continue. I argued in Chapter 2 that it is incorrect to speak of Aotearoa as a postcolonial society. At the same time as the Crown seeks to settle all historic claims with Hauraki and Tamaki Makaurau iwi, including Ngāti Whanaunga and Marutūahu, they continue to suffer encroachments into their residual customary estate.

Ngāti Whanaunga, like Ngāti Maru, Pāoa and Tamaterā, is represented today by an iwi authority with a Western legal structure, in Ngāti Whanaunga's case an incorporated society. The Ngāti Whanaunga Incorporated Society (NWIS) has operated for more than 20 years. It has operational arms relating to the environment, education, customary fisheries, treaty claims, communications, and a research unit - Te Rangahau o Ngāti Whanaunga. Until recently these were operated by volunteers, and although NWIS has built capacity and employs a

small number of staff, this is still largely the case. Reliance on voluntary workers is less than ideal, and substantially reduces the ability of NWIS to engage effectively, including in RMA processes.

The iwi is currently working toward a new iwi organisation as part of claims negotiations. This post-settlement governance entity is required to meet a high standard in terms of accountability, transparency, and representation, to receive Treaty settlement from the Crown. A challenge for the iwi lies in achieving satisfactory organisational standards, while also ensuring that the structure incorporates, reflects, and is driven by, iwi tikanga.

Ngāti Whanaunga Hapū

Most of the Ngāti Whanaunga hapū described on pages 51 and 52 have no formal organisation today, and manifest largely to the extent that their descendants still identify as particular hapū. This is a modern development for Ngāti Whanaunga, and not the case for many iwi, particularly those that retain tribal lands.

Despite this, Ngāti Whanaunga strongly supports the reestablishment of its hapū. In relation to resource consents processes, for example, the iwi authority engages with descendants of local hapū, and ensures that it either support hapū members in planning processes, or speaks on their behalf, having first consulted to determine whānau and hapū positions. This is important, as mana whenua, authority over local lands, resided with the hapū rather than with the iwi.

Hapū representation is intended for the new post governance settlement entity described above, and the Society is undertaking a programme of assisting hapū to establish formal hapū entities.

Treaty of Waitangi settlements

Ngāti Whanaunga took claims of historic Crown breaches of the Treaty of Waitangi to the Waitangi Tribunal as part of the combined Hauraki Wai 100 hearings. Hearings ran from September 1998 to November 2002. The Waitangi Tribunal's (2006) *Hauraki Report* found the claims to have substance and concluded that Treaty principles of dealing fairly and with utmost good faith had been breached, that substantial restitution is due, and that the quantum should be settled by prompt negotiation. It then took 5 years to get the Crown to recognise the mandate of the Marutūahu and Hauraki iwi, resulting in the establishment of

Hauraki and Tamaki Makaurau iwi collectives. Each iwi has negotiators at the table, I am one of two for Ngāti Whanaunga.

The Crown acknowledged its part in the alienation of Marutūahu and Hauraki iwi lands, relieving the burden of proving each breach to proceed to substantive negotiations. While negotiations have not at the time of writing resulted in settlement, Ngāti Whanaunga Hauraki and Tamaki Makaurau iwi and the Crown have signed Agreement in Principle Equivalents. These non-binding agreements include statements of the respective intentions of the Crown and an iwi, how they intend to work together to settle claims, and an approximated expected settlement package. Agreements in Principle have been used in previous claims settlements, Agreement in Principle Equivalents are a variation of this mechanism intended to reflect the complexity of negotiating with numerous different iwi within a single geographically defined area, as is the case in Hauraki and Tamaki Makaurau.

Negotiations continue around settlement for iwi. These are distinguished as financial, commercial, and cultural redress, and consist of many elements, such as Crown apologies, language revitalisation, statutory acknowledgements over significant places, and restoring traditional place names.

Some elements of settlements are collective, for example titles to the volcanic cones of Auckland being returned to the collective iwi. A similar collective entity is intended for receiving and managing Crown Forest lands in Hauraki, and another to receive and manage DoC lands and other cultural redress places. Iwi and sometimes hapū (sub tribes) receive individual redress, the Crown's test for recognition being a 'large natural grouping'.

Commercial and financial redress likely to be received, represents as little as one percent of iwi resources lost in real terms, as has been the case for settlements elsewhere, with none having reached three percent. However, it is intended that funds provide an economic base with which Māori can build a future for their people, and restore some of their former land base.

Despite these positive recent developments, as iwi negotiate and settle historic breaches contemporary ones arise out of RMA processes and from other Acts. Māori land alienation and taonga destruction continues, and iwi interests in 'public sphere' resources such as streams and harbours are whittled away, creating new Treaty of Waitangi grievances.

Māori participation in resource management

The loss of ancestral lands and associated resources is of particular interest for this thesis, in that, as I explain in Part III, the case study iwi struggles to assert and substantiate its relationships with ancestral lands, waters and other taonga (protected by RMA section 6.e). This is the case because almost invariably Ngāti Whanaunga, like its Marutūahu cousins, has long been physically removed from their lands, and deprived of any tangible means of maintaining a relationship. They could effectively look from afar and keep it in their thoughts.

Participation in the management of ancestral lands in private ownership is seldom possible, but iwi struggle also for engagement in the management of Council and Crown lands, as until recent years relationships between Marutūahu iwi and Crown agencies have been poor.

Despite this Ngāti Whanaunga and other Marutūahu iwi, continue to strive to represent and protect the interests of their people. One means by which they do so is through participation in council planning processes. This is a difficult task, particularly given limited iwi capacity. Furthermore, until the recent advent of the Auckland Council, Ngāti Whanaunga's rohe extended across 11 local and four regional councils. This placed great demands on the iwi authority, and engagement across the 15 councils became almost entirely reactionary, iwi responding only to those issues assessed as representing the greatest risk. While the creation of Auckland Council in 2010 reduced the number of councils in the Ngāti Whanaunga rohe to nine, engaging with each of these represents a substantial burden.

However, as I explain elsewhere in the thesis, it appears to be a changing world for Māori participation in planning and environmental management, largely as a result of Treaty settlements. For Ngāti Whanaunga, Marutūahu, and Hauraki this includes the creation of a natural resources co-management body for the Hauraki Plains and Coromandel Peninsula waterways. But the Crown best offer is a massively downgraded version of the arrangement in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act (2010), has far fewer statutory functions, and will be funded to about 1% of the Waikato River Authority.

Chapter 4 - Whangamatā History and Geography

Me aha koe Hauraki, arā Tūtonu Matau
Ki te rau o te patu, ki te Toki o Paihau, he taonga tūpatō e

This line from a Ngāti Whanaunga pepeha recalls their coming to Whangamatā. 'Me aha koe Hauraki' was a taunt shouted from the island fortress of Hauturu by the invading Ngā Marama, meaning 'what are you going to do about it?' The line 'Ki te Toki o Paihau' refers to an incident on the journey, when Paihau threw his adze, lodging it in a tree trunk. Considered a positive omen for the pending war, Te Toki o Paihau remains a Ngāti Whanaunga metaphor for a good omen. The final line reminds us there is wisdom in caution.

Having sought to provide an overall sense of place for Hauraki in Chapter 3, in this chapter I describe the relationships of Ngāti Whanaunga with their ancestral lands, waters, sites, wāhi tapu, and taonga at Whangamatā, the focus of my case study in Chapter 10. These relationships are central to my later evaluation of statutory obligations to Māori in Chapters 6 and 7 and treatment of Māori by local government in Chapter 8.

In Chapter 4 I provide a description of the long, intense Māori occupation of Whangamatā, important for understanding the contemporary environmental management *take* at Whangamatā. I describe the environmental, political, historic, and cultural landscape of Whangamatā from a Ngāti Whanaunga and Hauraki point of view. I describe modern Whangamatā, environment conditions, and community dynamics. Whangamatā and its catchment are shown in Figure 4.1 (next page).

I investigate Whangamatā within its catchment, in order to assess effects on the harbour. This perspective is consistent with an 'holistic' Māori environmental approach. I give consideration to the condition of the cultural landscape and outcomes of 20 years of planning under the RMA for Māori.

By these means I provide important information for approaching both of the research questions in subsequent chapters, question 1 asking whether Māori

provisions in environmental law is resulting in meaningful empowerment of kaitiaki, and question 2 asking whether the environmental management regime produces positive outcomes for Māori.

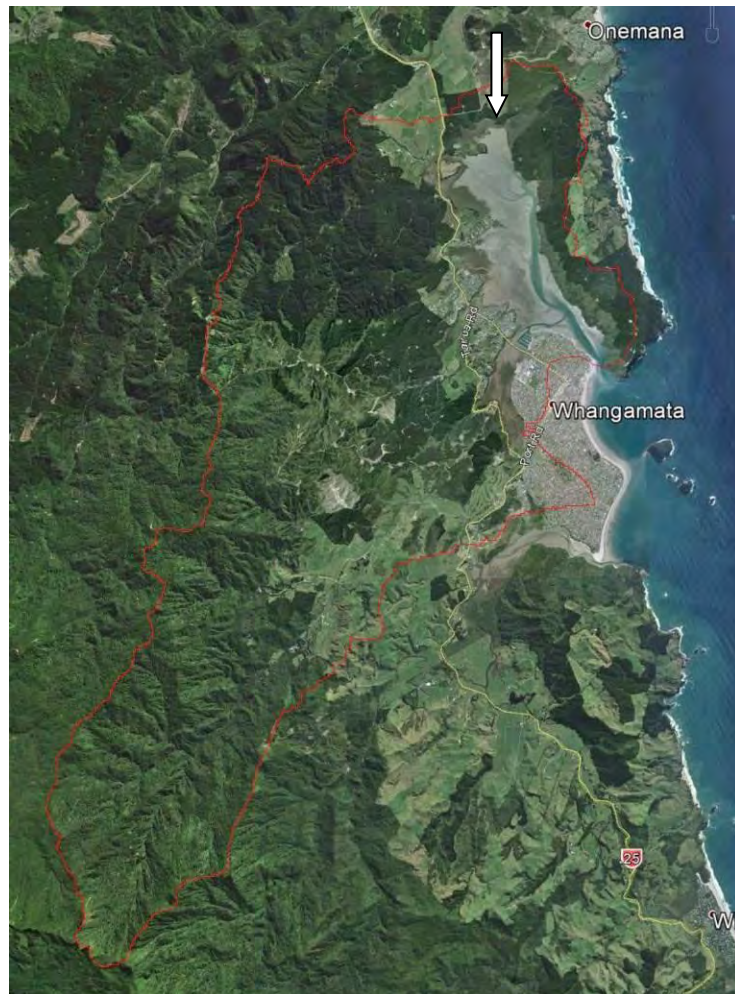


Figure 4.1 - Whangamata and its catchment (Red). White arrow top right shows the perspective shown in Figure 4.2 (Page 73). *Source Google Earth/WRC 2013.*

In so doing Chapter 4 builds on Chapter 3 in achieving research Objective 1, being: to provide an understanding of kaitiakitanga, and associated tikanga that are referred to in legislation, statutory plans, or court and tribunal decisions. Chapter 4 also contributes to Objective 4, which is: to assess how tikanga Māori and Māori interests are recognised and provided for in the implementation of environmental resource management legislation.

Historic Whangamata

Due to the abundance of food and resources found there Whangamata has had a turbulent history for over 1000 years. Whangamata (Whanga meaning harbour

and matā being the locally sourced obsidian) is one of the shallowest harbours on the east coast of Aotearoa. Over 75% of its water leaves the estuary at low tide, when over 80% of harbour bed is exposed. The large inter-tidal flats support rich shellfish beds that attract a range of birds, including rare dotterel and godwits. The harbour was and is populated by a range of marine and coastal vegetation types. The harbour and surroundings are shown in the oblique photograph in Figure 4.2.



Figure 4.2. Whangamatā near high tide, 2004. *Source: Google Earth 2013*

While relatively small, the harbour is a resilient source of kaimoana (seafood). Species found included pipi, tio (oysters), tuangi (cockles), patiki (flounder), shark, and many others. Local streams and wetlands were abundant with kokopū (native fish species), koura (freshwater crayfish), and tuna (eels), and the adjacent forests provided plants used for shelter, carving waka (canoes), weapons, raranga (weaving) and rongoa (traditional medicines). The surrounding north facing valleys and foothills were heavily modified to create extensive māra (gardens).

Locally sourced matā was of particular cultural and utility value. This volcanic glass, created by the rapid cooling of silica-rich lava, was sought after for its fine cutting edge. It provided a valuable tool, and was a widely traded commodity. Whangamatā was one of only three locations on the mainland of Aotearoa where matā was found, although the highest quality obsidian was sourced from Tuhua (Mayor Island), some 20 miles off-shore from Whangamatā.

Remnants of matā (also called Tuhua), can be found across Aotearoa, demonstrating the value of such a resource in a society lacking iron cutting tools.

Mana Whenua at Whangamatā

Mana whenua (chiefly authority over lands) at was formalised into surveyed land blocks by the Native Land Court. Shown in Figure 4.3, Whangamatā land holdings derive from historic events, and resulting inter-iwi relationships.

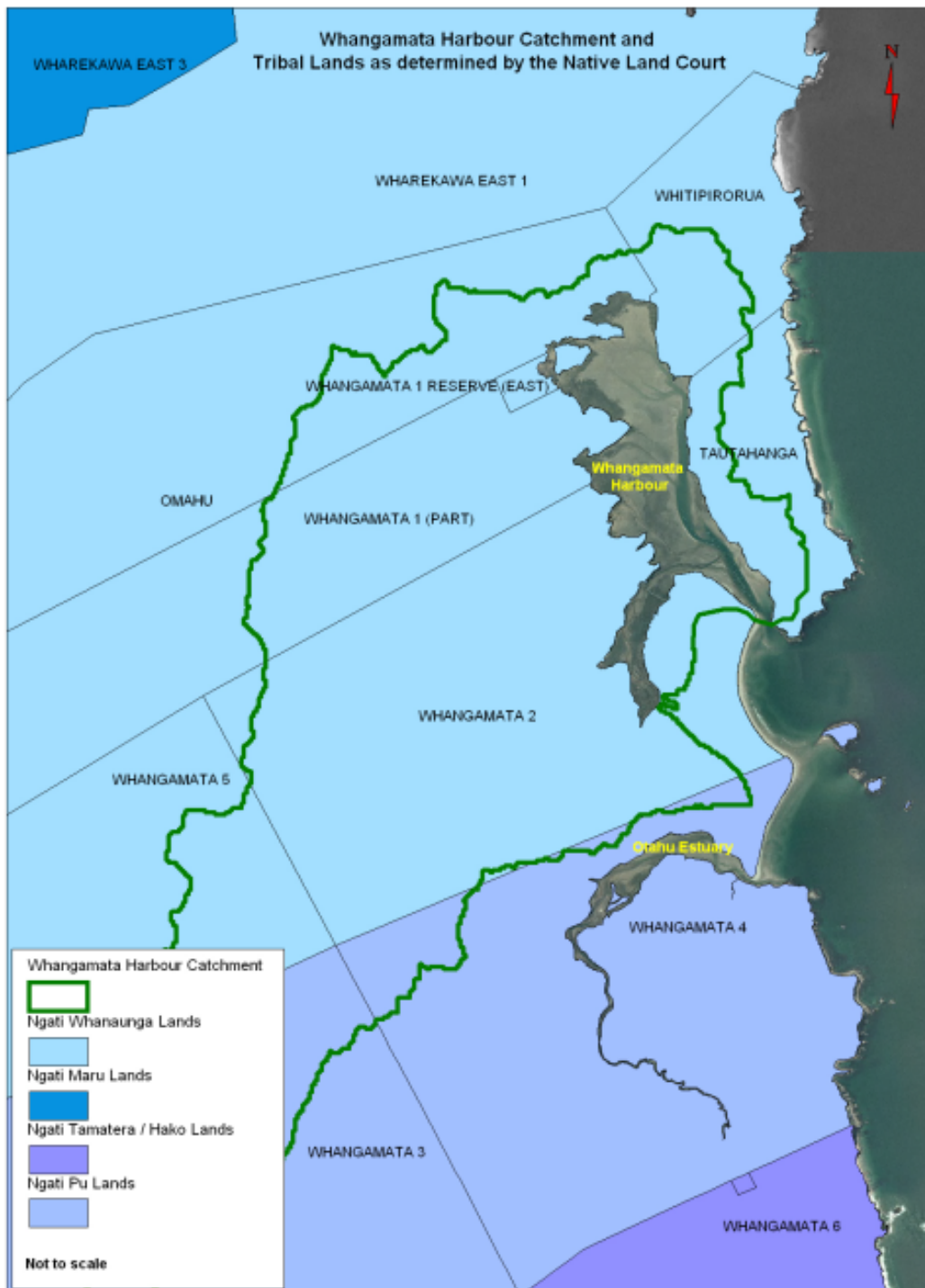


Figure 4.3. Whangamatā tribal lands as determined by the Native Land Court.

Source: Kennedy 2007.

According to Ngāti Whanaunga, Whangamatā came into their possession in the early decades of the 17th century. The Ngāti Whanaunga *take* at Whangamatā stems from assistance lent to Ngāti Hako after Hako was defeated in battle at Whangamatā by Ngā Marama. Because of intermarriage between the tribes, Ngāti Hako called on Ngāti Whanaunga to recover their lands, and to free captives that included Ngāti Whanaunga women who had married into Ngāti Hako. Ngāti Whanaunga defeated Ngā Marama, for which Ngāti Hako ceded their Whangamatā lands to Ngāti Whanaunga. The event was formalised by marriages to cement the relationship of both iwi with the area.

This event was discussed at length during the Whangamatā-Hikutaia Native Land Court hearing in 1872. Lands in and around Whangamatā were claimed by Ngāti Maru, Ngāti Tamaterā, Ngāti Hako, Ngāti Pū, and Ngāti Karaua/Ngāti Whanaunga. Lands adjacent to Whangamatā were claimed by Ngāti Pū and Ngāti Whanaunga. Ngāti Whanaunga witnesses acknowledged that Ngāti Pū claimants had a valid claim to Otahu (the estuary south of Whangamatā) on the basis of shared descent from the Ngāti Whanaunga ancestor Matau. Ngāti Pū claimed that Ngāti Whanaunga had no rights to the area, and that their own rights stemmed from a conquest by an ancestor called Whenua. The Court awarded title to all land adjacent to Whangamatā (the harbour) to Ngāti Whanaunga hapū, and lands to the south to Ngāti Pū, as illustrated previously in Figure 4.3.

Mātauranga Whangamatā - local Māori knowledge

Residing in a particular area for many centuries results in an immense knowledge being built up. Whangamatā is imbued with a rich history through the naming of streams, bays, wetlands, headlands, and other natural features. This practice, called taunahanahatanga, is explained in Chapter 5. Ancestral names for lands and waters on the west side of Whangamatā are shown in Figure 4.4 (next page). Traditional names and their meanings are also recorded in histories, waiata (songs), mōteatea (laments) and whakatauākī (sayings / proverbs), handed down within the iwi over generations. These provide a living record linking tangata whenua with their places, through recollections of the deeds of tupuna.

Land loss at Whangamatā

I describe the alienation of Ngāti Whanaunga's Whangamatā lands in some detail here, because the resulting dislocation resulted in an almost total destruction of the

Māori cultural landscape. This was an outcome of the construction of the township, and nearby land use practices of farming, gold mining, and forestry.



Figure 4.4. Partial view of early survey plan ML3033 showing Whangamatā place names. A reserve promised but never created is shown top left-centre, labelled 3033.

In the second half of the 19th century Hauraki Māori were under great pressure to sell land to make way for timber extraction and gold mining. After the Crown had succeeded in securing some lands on the Coromandel Peninsula, Ngāti Whanaunga joined with Ngāti Tamaterā and the Kingitanga in declaring an aukati, a sale prohibition line westward from Omaha (immediately north of Whangamatā). The iwi stated that no further land was to be alienated from Omaha south. This became known as the Omaha Divide, and from the 1870s the Crown became determined to break down resistance in any way possible, mainly to access gold. The Crown frequently used its land agents to manipulate Māori disputes through the Native Land Court. At the end of 1872, the Court took

advantage of disputes between Ngāti Karaua and Ngāti Pū to push for surveys and title applications that would split land ownership between the hapū, and impose individualised title. The imposition of discrete boundary lines along tribal lines ignored centuries of overlapping and shared use-rights, and resulted in the artificial blocks previously shown in Figure 4.3 (p. 74). Paul Monin (2001 p. 233) writes about the Crown's efforts to break the aukati:

The Omahu divide came under direct attack, with the hearing of the 80,000 acre Hikutaia-Whangamatā block at the end of 1872. Again the Native Land Court made capital from the disputed Māori interests, this time between Ngāti Pu and Ngāti Whanaunga. With the awarding of Crown grants and the sale of much of this land to the Crown in January 1873, the Omahu divide ceased to exist as a political demarcation. Meanwhile, an insidious accumulation of debt was undermining the ownership of the Ohinemuri itself.

The Waitangi Tribunal wrote about the aukati in its Hauraki Report (Waitangi Tribunal, 2006), finding that the Auckland superintendent of lands was anxious to acquire the Whangamatā Hikutaia blocks because they were scarce arable land, desirable for settlement, straddled the strategic route southeast from Thames, were within the aukati, and were believed to be auriferous.

Ngāti Whanaunga's Whangamatā lands were alienated by a combination of sale, confiscation, raihana (advances) and resulting forced repayment of debt in land, the imposition of survey and court costs, and failure by the Crown to provide promised reserves (Kennedy, 2006; Monin, 1995).

Crown land agent James Mackay wrote about Ngāti Whanaunga lands at Whangamatā, revealing the Crown's practice of concealing the true value of land so as to pay as little as possible to obtain it, and resistance to paying Māori an equitable rate (Mackay, 1873). In that communication he was referring to all the blocks surrounding Whangamatā No. 2 for which the Crown was forced to pay a greater sum than elsewhere because of the news that the land contained gold.

These blocks were sold subject to two 150 acre reserves being set aside for Ngati Whanaunga. The reserve in Omahu was never created, and the other was alienated soon after it was created, as a result of debt.

Whangamatā No.2, the land adjacent to much of Whangamatā and including the majority of the township, was confirmed by Crown grant and

certificate of title given to 10 Ngāti Karaua ancestors. The Court ordered that the estate be inalienable by sale or mortgage and vest from January 10th 1873. About Whangamatā No. 2 the Waitangi Tribunal (2006 p. 516) observed that Crown interest intensified when gold was discovered in the adjoining Wentworth Valley. The block was not part of any mining agreement, and as reports of gold finds came in 1888, the Native Minister instructed his officers to seek either the purchase of the land or a mining cession, stating that his agents would have to be very careful in their negotiations ‘not to raise the cupidity of the Natives or give them an exaggerated idea of the value of their land’.

The Crown having reversed the inalienable status, by January 1891 all signatures had been obtained for the Whangamatā No.2 block, and the block was alienated. Regarding the Whangamatā-Hikutaia hearings, Belgrave (2002) observed that the Whangamatā-Hikutaia block was the first instance in which the Native Land Court was used by the Crown to bring a sale to a conclusion.

Other Ngāti Whanaunga Whangamatā lands were alienated by methods including confiscation, takings under various public works acts, and declarations as wasteland. The latter was the case for Ngāti Whanaunga’s interests in their Tairua lands to the north, which were declared wasteland under the Wastelands Act (1858), and surplus to Māori requirement, with minimal compensation. While deemed legal at the time, the Waitangi Tribunal criticised the small prices paid by the Crown and the large number of people this money had to sustain, finding that the move from ancestral lands to nearby towns meant that moneys from land sales were quickly exhausted, forcing the sale of more land (Young & Belgrave, 2002).

In 1887, before all Ngāti Whanaunga land interests had been extinguished, the Crown allowed mining at Whangamatā to commence, despite sustained Māori opposition, and by that year a small miners’ settlement had been established. A telegraph line had been run to the area, accompanied by a rough road, and communications were taking place between MacKay and the Crown about requirements to facilitate easier access (Mackay, 1887). Ngāti Whanaunga was excluded from participation in the new mining enterprise.

By 1900, 60 years after Ngāti Whanaunga rangatira signed the Te Tiriti o Waitangi (the Māori language version of the Treaty of Waitangi) at Waiiau (Coromandel) and Auckland, the Crown had driven Ngāti Whanaunga out of Whangamatā by alienating all their lands. This process preceded the Crown’s on-selling to colonial settlers for massive profit (Waitangi Tribunal, 2006).

Europeanising the landscape

Following Crown efforts to acquire much of Hauraki, and subsequent on selling, Ngāti Whanaunga was to witness a more insidious, but no less effective, process for erasing any trace of their history at Whangamatā - replacing Māori names with European ones. So effective were the combined actions of alienation, dislocation from ancestral lands, and renaming, that the cultural landscape at Whangamatā is now largely buried or destroyed. This process is explained in the *New Zealand Historical Atlas* (McKinnon, Bradley, & Kirkpatrick, 1997 Plate 33):

Colonists sought to remake the physical and spiritual 'wilderness' they encountered into an image of their homeland. This was achieved not only through large-scale landscape change, but also using the more subtle, but no less effective, means of renaming the landscape. By the time that acclimatisation societies introduced flora and fauna, completing the transformation of the landscape, explorers, settlers and surveyors had all introduced exotic names. The first explorers, such as Cook, named the sea; from 1840 onwards colonists carried the process inland. The namers were generally aware that Māori had names for most geographical features. The failure to even record, let alone retain, most of the Māori names on maps contributed to their demise, and large areas of land formerly rich in indigenous names were rendered nameless. This process parallels the alienation of Māori land.

Traditional names were not only replaced by English ones, but also Māori names from elsewhere with no relevance to the area. Nevertheless, Ngāti Whanaunga was fortunate to have accompanied early surveyors, thereby preserving many of the traditional names on early survey plans, and in surveyors' field notebooks. These have assisted in the retention of a fragmented mātauranga for Whangamatā.

Ngāti Whanaunga wellbeing

Crown-assisted and private settler enterprises within the Whangamatā catchment following the alienations of the 1870s included farming, mining, and forestry, and each was to prove effective as a means of changing the landscape Māori dramatically and erasing most of the evidence of earlier occupation. The purchase of the freehold gold-bearing blocks at Whangamatā prevented local Māori from participating in the future economic development of the area. Deprived of any

land base or associated income those Ngāti Whanaunga people then living at Whangamatā were forced to leave the area.

Human wellbeing is considered by Māori to be dependent on a healthy and strong mauri (spirit or life-force), as explained in Chapter 5. Land alienation weakened tribal mauri, leading to poverty, poor health, low education, and loss of tribal identity. So effective were Crown efforts at acquiring Māori land, that Ngāti Whanaunga, as an iwi, retains none of their ancestral land at Whangamatā. The little that is held elsewhere is largely held by individual whānau. While some of the people still reside at Whangamatā they have no visible presence. This is also an important factor in the experiences of the iwi described in Part III.

Modern Whangamatā

Whangamatā and its catchment today are heavily modified (see Figures 4.1, p. 72 and Figure 4.2, on p. 73), and numerous Māori cultural and environmental values have been destroyed. Much of the indigenous forest surrounding the harbour has been replaced with plantation forestry, only a small percentage of historic wetlands remain around the harbour, varying substantially in their level of intactness. Relying on a mix of fresh and salt water, estuarine wetlands provide habitat for tuna (eels) and marine fish species, coastal reptiles, and birds and kaimoana. They are important to the juvenile development of several marine species, and are biodiversity hotspots. Despite layers of statutory protection, Whangamatā wetlands continue to be destroyed today.

Whangamatā is a classic example of a developmental race for space. Following alienation of ancestral lands from tangata whenua, on-selling land by the Crown was followed by sporadic subdivision. In recent decades escalating coastal land prices have led to intense property speculation. This has raised not only environmental issues, but also cultural ones with respect to tangata whenua.

The statistics

Whangamatā is one of the fastest growing towns in the Waikato region (Waikato Regional Council, 2000), its resident population growing almost 70% between 1986 and 1996, but slowing in the last decade to its current population of about 5000. While population growth has slowed, the property market at Whangamatā, like that of other Coromandel Peninsula eastern seaboard towns, remains driven by strong demand for holiday homes, and continues to command high prices.

Close proximity to Hamilton and Auckland has compounded demand, with 65% absentee land ownership at Whangamatā (Thames-Coromandel District Council, 2012). High absenteeism changes the social dynamic of coastal towns, as full-time and holiday residents have different aspirations and expectations of the area. This impacts on the local sense of community. This dynamic is aggravated by Coromandel eastern seaboard settlements experiencing a peak population increase as high as 26 times the usual number of residents in the Christmas-New Year period (Thames-Coromandel District Council, 2009). Whangamatā itself experiences a holiday period total population of almost 50,000 (Thames-Coromandel District Council, 2004). These fluctuations also place significant pressure on local infrastructure, which can affect the health of ecosystems and the community, and the physical form of the surrounding catchment and Whangamatā (Parliamentary Commissioner for the Environment, 2005b).

Population age is relevant to the experience of tangata whenua at Whangamatā. The median Whangamatā population age of 51 years is significantly older than the national median of 36 (Thames-Coromandel District Council, 2012). Of the Whangamatā population 28.4% are aged 65 years and over, compared with 12.4% for the Waikato Region.

This is relevant because Ngāti Whanaunga values have conflicted with those being championed largely by the local Grey Power group over the issues described in Chapters 7 and 10, where iwi members suffered anti-Māori hostility. This is something that is difficult to deal with, given that we are all, Māori and Pakeha, brought up to treat our elders with respect. Racist attitudes exhibited by local community members still worry tangata whenua in their efforts to protect cultural values and interests in the area, and are a recurring theme in tangata whenua descriptions of their experience at Whangamatā.

The proportion of Māori is another factor considered relevant in terms of the experience of tangata whenua at Whangamatā. Māori made up 13.9% of the Whangamatā population in 2006, whereas for the Thames-Coromandel District it was 16.96%, for the Waikato Region 21%, and the proportion of Māori nationally was 14.7% (Statistics New Zealand, 2007).

Māori are conspicuously absent from public office. No identifiably Māori people have been elected to the local community board, and few to the district or regional councils. This absence of Māori representation is considered material to their experience in statutory processes, and is discussed further in Chapter 7.

Land commodification and Treaty claims

At Whangamatā green-fields development is hampered by a lack of suitable land within the catchment, hemmed in by the adjacent mountain ranges and the sea. Limited space for expansion and an unrelenting demand for new housing combine to maintain pressure on residential property prices.

The high prices commanded for Whangamatā, and similar coastal properties, act as a barrier to the recovery of ancestral lands and repatriation of Ngāti Whanaunga people. For example the extent of current Treaty Claims-related lands being offered for return by the Crown to Ngāti Whanaunga is small compared to lands returned elsewhere. This is magnified by the insistence of the Crown on iwi buying back settlement redress property from financial redress, or using other financing. The Crown insists on maintaining relativity between iwi settlements between tribal rohe with dramatically varying land prices. Symptomatic of a failure of process, in this sense Marutūahu must fare amongst the least fortunate iwi because of the massive land prices within its rohe.

High property values drive on-going residential development that results in a continuous flow of resource consent applications under the RMA. Dealing with consents has been one of the greatest drains on iwi resources in recent decades. It angers local Maori that alienated ancestral lands are becoming increasingly the exclusive domain of the wealthy (Cumming, 2012), few of which are Māori. These competing demands for use of ancestral space have resulted in numerous cultural clashes, as evidenced in Part II.

The treatment of tikanga at Whangamatā

In this section I describe the three tikanga featured in the Māori Outcome Evaluation Method summarised in Chapter 2 as they relate to Whangamatā. Their place in Māori society is explained in Chapter 5, and they provide the lens for plan analysis in Chapter 7, and for the case studies in Part III.

Mana Whenua

Mana whenua means territorial authority. Unfortunately, as previously stated, Ngāti Whanaunga retains no ancestral land at Whangamatā. Ngāti Pū whānau have held on to a small area to the south of Whangamatā township.

However, Ngāti Whanaunga never ceded mana moana over Whangamatā, or its associated foreshore and seabed interests. Accordingly, the iwi continues to

assert ownership of the harbour. Furthermore, given the dubious circumstances in which much of its lands at Whangamatā and elsewhere were alienated, Ngāti Whanaunga maintains claims to much of the Whangamatā catchment.

Ngāti Whanaunga seeks to maintain ancestral relationships with lands alienated at Whangamatā, a significant portion of which are still owned by the Crown and administered as DoC stewardship or conservation lands, Crown forestry, and reserves. TCDC (Thames Coromandel District Council) is a large landowner in the catchment, but WRC owns minimal land, mainly stream margins. The iwi has struggled to participate in the management of these ancestral lands. Accordingly, today Ngāti Whanaunga asserts mana whenua largely through statutory processes of the RMA and other legislation, and through the Courts. The RMA recognises the relationship of Māori with their ancestral lands, not only those remaining in Māori ownership. I discuss the legal basis for this in Chapter 9.

As a further consequence of dislocation from its ancestral lands, Ngāti Whanaunga retains fragmented Whangamatā mātauranga (traditional local knowledge), such as the origins/meanings of place names (see Figure 4.4, p. 76), and precise locations of ancestral places. For example, traditions recall that kōiwi (human remains) were buried on both sides of Te Wairoa, and that some were removed in the early 1900s, while others remain. However, knowledge is incomplete about exact locations of remaining wāhi tapu. This has caused problems when seeking to protect areas threatened by proposed developments, when applicants have challenged the validity of iwi evidence on the basis that information provided is not sufficiently specific.

These are matters of particular concern to the iwi, as is the erasure of ancestral names a matter raised again in Chapter 5, and further in Chapter 8.

Mauri

The mauri (life force or essential energy) of Whangamatā was repeatedly and cumulatively impacted by human activity. The major pollutants have been sedimentation from forestry and unfenced farm streams, runoff from residential development, and eutrophication resulting from excessive waste water irrigation. These sources at Whangamatā over the last decade have resulted in frequent episodes of harbour pollution, with on-going residual impacts on tangata whenua, including long-term contamination of kaimoana.

In its report entitled *Turning hopes and dreams into actions and results: Whangamata, a case study of community planning in a coastal area* the PCE (Parliamentary Commissioner for the Environment, 2005a p. 11) observed:

The water quality of the Whangamatā has degraded. Some areas are probably unsafe for swimming and shellfish gathering at most times and it is probably unsafe to swim in the harbour immediately after heavy rain.

Whangamatā remains an important pātaka kai (food store) of Hauraki iwi, but has suffered from decades of pollution, including occasionally semi and untreated human waste. A stretch of coastline north and south of Whangamatā was closed for kaimoana for several years due to the presence of toxic algae (Bay of Plenty DHB, 2011). Otāwhiwhi pipi beds to the south were previously closed by the Ministry of Health because of the presence of effluent-related bacteria and other nutrients. This closure increased pressure on Whangamatā kaimoana, but was relieved by the regional closure due to paralytic algae. Furthermore, Whangamatā has suffered from invasion by exotic marine species in recent decades, including some that pose an immediate threat to local kaimoana (Gower, 2002).

During recent decades WRC reported harbour pollution, identifying potential health issues arising (Vant, 2000). Monitoring findings included periphyton growth downstream of waste water irrigation areas, the absence of taonga fish species (Kessels, 2005), and excessive levels of various pollutants.

Furthermore, structural changes to the harbour over recent decades have affected natural harbour processes. In particular, the construction of two causeways has created substantial low energy areas. This was identified by the PCE (2005a p. 11), who noted 'past and proposed physical changes to the harbour's structure will have long-term adverse environmental effects on the harbour and the coastal processes that shape it'.

However, since the release of that report the local and regional councils continued to allow major modifications to the harbour. Material WRC removed for stream maintenance was left piled within the harbour, despite tāngata whenua identifying inadequate energy for dispersal. As well, significant modification has resulted from the dredging of a marina basin, construction of rock wall, and on-going maintenance dredging of boat channels.

Manawa - mangroves

One consequence of the previously described land use effects is a proliferation of manawa (mangroves) in Whangamatā, as in many other upper North Island harbours. Ngāti Whanaunga tikanga relating to manawa is described in Chapter 5.

Manawa are significant to Ngāti Whanaunga, as a kōhanga, a nursery for juvenile kaimoana, and for their role as a buffer and filter of run-off from adjacent land. A particular delicacy, tio (oysters) thrive in the mud in which mangroves grow. The expansion of manawa at Whangamatā was exacerbated by the two previously mentioned low energy areas created by causeways, which were constructed despite engineering warning of this very result. The contributing factors have been the excessive levels of sedimentation from adjacent land-uses, and nutrients, in particular nitrogen, flowing from (until recently) a deficient waste water treatment plant.

Manawa have led to tension between Ngāti Whanaunga and a section of the Whangamatā Pākehā community in recent years. Illegal removal of hectares of mangroves has taken place, but despite long-standing opposition to this being expressed by tangata whenua, the regional council has supported the anti-mangrove lobby and lodged applications for consent to remove large areas of Whangamatā mangroves.

Te Matatuhi – the saltmarsh

Te Matatuhi was of particular significance to Ngāti Whanaunga. It is the only location on the harbour that carries the name matā, and was a place where harbour processes deposited obsidian, and where it was worked into tools. Much of Te Matatuhi was built over in the 1960s, but the harbour margin and ancient saltmarsh survived human encroachment until the Whangamatā marina destroyed them entirely, to make way for a car park.

Amongst the taonga destroyed at Te Matatuhi were two puna (fresh water springs). The southern extent of the saltmarsh merged into a freshwater wetland, periodically flooded with saltwater about five days every lunar (tidal) cycle. The puna provided a continuous source of fresh water to the wetlands, and they contributed to the particular environmental conditions that sustained the mauri of the wetland. These resulted in a continuum of marine to largely fresh water environments in which oioi (marsh reeds) and surrounding vegetation provided habitat in which numerous tuna and juvenile fish thrived. A third puna emerged

within the harbour to the east of the causeway, between mean high and low water springs in a place that was known to be a kōhanga, a seeding ground for juvenile pipi and tuangi. This puna now emerges within the excavated marina basin.

The existence of the springs in combination with the relatively high energy at the mouth of the wetland meant that tides flushed Te Matatuhi well and it thrived for centuries as a discrete micro-environment. This resilience and ability to survive in this location despite local residential intrusion are explained in local Māori tradition as being testimony to the strength of the mauri of this place.

The puna are now capped by three meters of sand and asphalt, this loss being one of many individual *take* in the Whangamatā marina case. The mauri of the wetland was extinguished, its resident populations bulldozed and destroyed. Similarly, the mauri of the oioi (marsh rushes) was destroyed, despite Environment Court direction they be saved.

Manākitanga – hospitality and sustenance

In times when there have been tangi and other kaimoana beds have been depleted or closed, tangata whenua have relied on the traditional pātaka kai (food cupboard) at Whangamatā to manaaki manuhiri (provide for visitors). This tikanga is particularly important for upholding tribal mana. Manaakitanga is pervasive in that it operates across iwi, hapū, whānau, and individual levels. Because it is such an important tikanga, manaaki obligations are taken very seriously. Whangamatā has long been an important resource for Ngāti Whanaunga, Marutūahu, and other Hauraki iwi in enabling them to manaaki visitors, as well as providing a food source for the hau kainga (local hapū members), and the wider community.

However, Whangamatā is a small harbour, compared to many of those where Ngāti Whanaunga resides. Its resources are therefore limited, and it has suffered from frequent contamination in recent decades. Whangamatā kaimoana has also been under additional pressure resulting from Ministry of Health closures of kaimoana beds to the north and south, leading to more whānau coming to Whangamatā, both to feed themselves, and to fulfil manaakitanga obligations.

Recently, the pipi beds at Whangamatā have thrived, their mauri strong, and good numbers of large pipi present. This is a result of two things: first, the digging of the Whangamatā marina channel (which deprives less mobile and elderly tribal members accessing the pipi beds); and second, closures due to the

presence of paralytic algae along the coastline. While both developments have prevented tangata whenua from gathering kaimoana at Whangamatā, rāhui (closure) have helped partially restore the pipi beds. Pressures on Whangamatā and the pipi there are discussed further in Chapters 8 and 10.

Wāhi Tapu

Because Whangamatā is known to be among the earliest inhabited places in Aotearoa, and heavily contested ever since, many wāhi tapu (sacred or significant ancestral sites) are located there, as shown in Figure 4.5 (next page). Despite the large number of recorded sites surrounding Whangamatā, these provide only a partial picture of the extensive occupation, use, and significance of the area.

Many ancestral sites were destroyed in the early colonial period by activities such as forestry and mining (Cumming, 2012), and those that remained in the early 20th century fared little better. While some sites remain within the Whangamatā catchment, many are substantially degraded, and more than a century of development has mostly obliterated this significant cultural legacy.

Ngāti Whanaunga considers that the management of Whangamatā and cultural landscape should not be approached as discrete sites that can be picked off one by one, but as an interconnected and nationally significant cultural landscape. However, despite obligations to the contrary, decision-makers continue to consider individual sites, and grant permission to destroy them one by one.

This destruction continues on private, Crown, and Council land. Of particular concern to Ngāti Whanaunga, a significant number of sites have been destroyed recently as part of TCDC projects. This is considered a travesty by iwi, given that TCDC is a heritage authority charged with protecting historic heritage, whose plans include provisions protect historic sites. TCDC wahi tapu-related plan provisions are considered in Chapter 7.

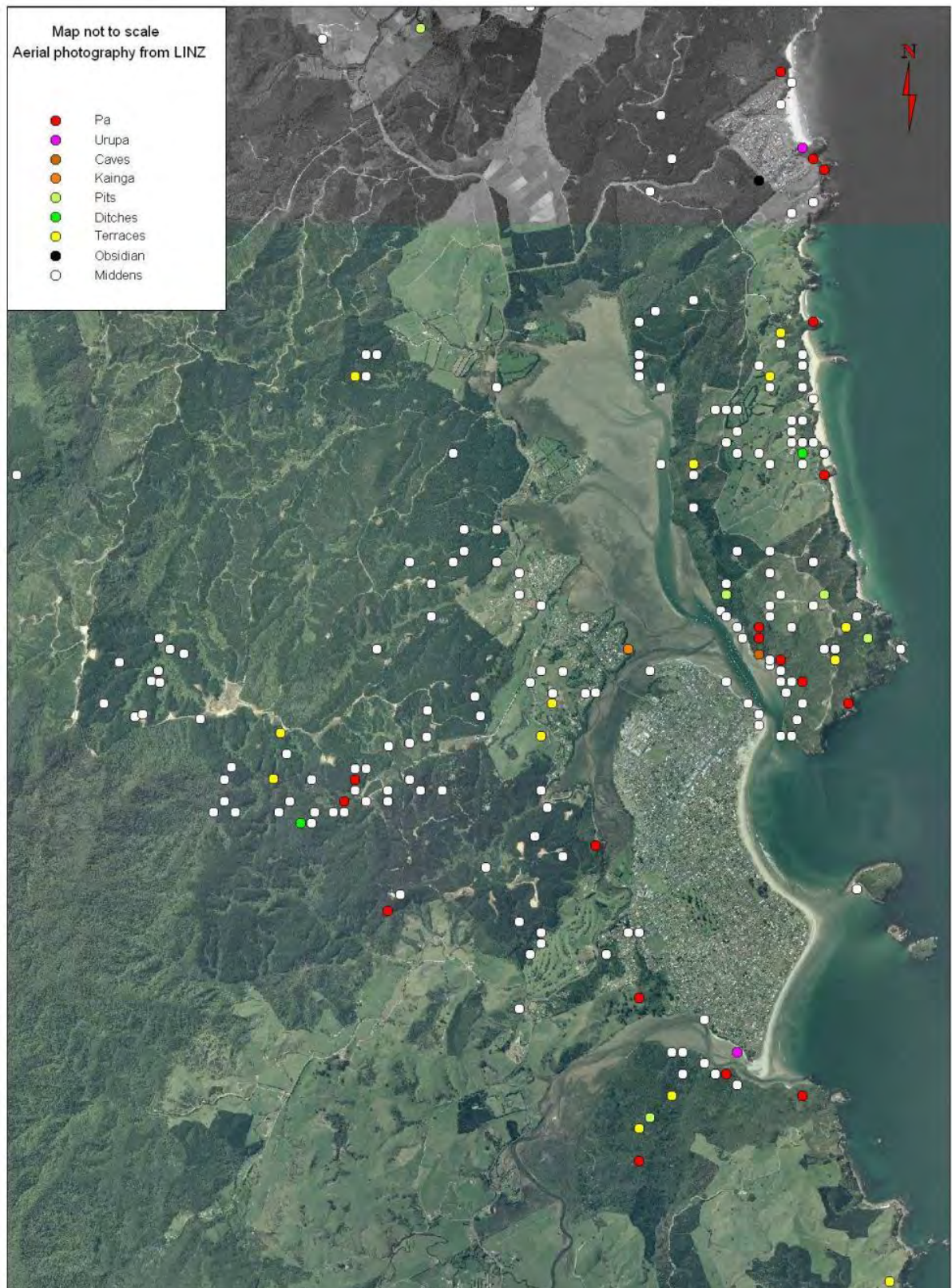


Figure 4.5. Wahi Tupuna (ancestral sites) by type at Whangamatā in New Zealand Archaeological Association recorded sites database. *Source: Kennedy 2007. Aerial Photography LINZ.*

Chapter 5 - Tikanga Māori

Living at Manaia my people and I have watched the mangroves in our harbour over many years. I was taught from when I was a young child that manawa grew where they grew, that is, it is not for people to decide where they should or should not grow. We have always seen that the mangroves will move out into the moana at different times and places, and at other times they will fall back. We have watched for long enough to know that this is a natural cycle ⁴

Having provided a description of the Whangamatā case study area in the previous chapter, I now focus on the world views and knowledge (mātauranga), and values and customs (tikanga) of its tangata whenua (people of the land). The way mātauranga underpins Māori environmental management approaches is explained, because it is later relied on as part of an investigation into the relative treatment of Māori ‘traditional ecological knowledge’ and ‘Western scientific knowledge’, in environmental decision-making by local government. This investigation will help to address Research Question 1, which is:

Are the Māori provisions within environmental resource management legislation resulting in meaningful empowerment of tangata whenua in their kaitiaki (environmental guardianship, stewardship) role?

Intended to help answer Question 1, Objective 1 was:

to provide an understanding of kaitiakitanga, and associated tikanga that are referred to in legislation, statutory plans, or court and tribunal decisions.

For Ngāti Whanaunga, at Whangamatā, and elsewhere, Tikanga Māori has provided the environmental management framework for a millennium before

⁴ Extract from evidence of Toko Renata in *Forest and Bird Protection Society of New Zealand and Ngāti Whanaunga Incorporated Society v. Waikato Regional Council* A1571/06.

modern environmental management law existed. Tikanga Māori includes those beliefs and customs that guide Māori behaviour and practices. In this chapter the main elements of tikanga Māori with particular significance in terms of environmental management are described, including mana whenua, whanaungatanga, kaitiakitanga, manākitanga, wāhi tapu, utu, taonga, and mauri.

I first explain the meaning and relevance of these particular tikanga, considering in each instance a wider Māori understanding, and then identify particular Ngāti Whanaunga usages. I do not intend to provide a comprehensive explanation of tikanga Māori, this being beyond the scope of this thesis.

I group the various tikanga according to three themes: mana, tapu, and mauri, the overarching tikanga featured in the *PUCM Kaupapa Māori Outcomes Framework* explained in Chapter 2 and adapted for use in this research. I follow these three tikanga with an explanation of mātauranga Māori, being Māori knowledge and world views.

My aim in Chapter 5 is to report on two tasks for meeting Objective 1: Task 1, to undertake a review of both published and unpublished literature relating to environmentally significant tikanga and mātauranga Māori (Māori knowledge systems and world views), to arrive at an overview and understanding of these nationally; and Task 2, to determine understandings of tikanga and mātauranga of Ngāti Whanaunga, and of related and neighbouring iwi and hapū. Understandings gained from these tasks assists me with my subsequent assessment of the legal treatment of Māori values in terms of its consistency with tangata whenua beliefs. This in turn will assist in answering Research Question 2:

Is the existing Aotearoa environmental resource management regime, and in particular the Māori provisions within relevant legislation, resulting in - on balance - positive outcomes for Māori?

Primary research reports relied on

My descriptions of tikanga are taken largely from one or more of four reports, three of which were authored by me and the fourth I co-authored. These reports had, in turn, drawn largely on my thesis research. Collectively they provide a substantial description of environmentally relevant tikanga. The first two reports reference wider Māori understandings, although the second also includes a substantial Ngāti Whanaunga component. The last two reports reflect Ngāti

Whanaunga perspectives. Additionally, two of the reports relate directly to the case study area, Whangamatā.

Kaupapa Māori framework and literature review of key principles

PUCM Māori Report 4 (Jefferies & Kennedy, 2009a) provides a national level discussion of a wide range of tikanga. It includes a substantial summary of explanations in the national Māori environmentalism literature, focusing on kaitiakitanga (environmental stewardship or guardianship) and related tikanga.

Chapter 2 highlighted the use of the PUCM Kaupapa Māori outcomes and indicators framework as a means of evaluating Crown and council performance. The three tikanga-specific kete developed as part of that programme were mana whenua, and mauri of waterways, and wāhi tapu. Each tikanga has received attention under the RMA, and is argued here to be a key tikanga for environmental planning. Their treatment under the RMA is considered in Part III.

Mātauranga Māori in urban planning

Three primary references for this chapter are Ngāti Whanaunga documents authored by me on behalf of the iwi authority. *Mātauranga Māori in Urban Planning - A Tamaki Makaurau Case Study* (Kennedy, 2012) presents a Ngāti Whanaunga perspective on mātauranga Māori in urban planning, taking an Auckland regional focus. Commissioned by Manaaki Whenua - Land Care Research NZ, as part of the FRST-funded research programme called *Kaitiakitanga of Urban Settlements*, the report is aimed largely at educating Auckland Council staff, and those in other environmental agencies, toward improving consideration of Māori issues and perspectives in planning processes and decisions.

While PUCM Report 4 has some reference to Ngāti Whanaunga and Hauraki tikanga, it provides essentially a generalised view, taking the stance that local tikanga and understandings thereof should always prevail. In contrast, the Mātauranga report includes an in-depth discussion of Ngāti Whanaunga views, involvement, and aspirations for Tamaki Makaurau and its new council.

Whangamatā walkway Māori cultural impact assessment

The third source of information on tikanga is a Māori values assessment that was commissioned by TCDC in the late stages of planning a multi-stage, harbour-edge

walkway at Whangamatā. Given that it eventually intended a walkway continuing almost the whole length of the harbour, including through culturally sensitive locations, the iwi argued Council was obliged to commission the report.

The Māori values assessment describes the history of the area, and tikanga relevant to the proposed walkway. It includes an assessment of the proposed walkway against statutory provisions, and recommendations for how Council might proceed with a walkway so as to minimise impacts on Ngāti Whanaunga interests and values. The assessment is not publicly available.

Ngāti Whanaunga submission on Whangamatā mangrove removal

The last of the documents explaining Ngāti Whanaunga tikanga also relates to Whangamatā, being my evidence to the Environment Court in relation to an appeal taken by Ngāti Whanaunga against consents granted by WRC for the removal of mangroves at Whangamatā. The evidence includes discussion of a range of matters relevant to this study, including Ngāti Whanaunga mana whenua, the significance of Whangamatā and surrounding lands, Ngāti Whanaunga tikanga relating to manawa, and other tikanga deemed relevant to the proposed activity. I now draw on these reports to explain various environment-related tikanga.

Tikanga Māori – Māori practices and beliefs

While translations vary, Tikanga is generally understood to include Māori beliefs, values, and correct practices, as well as behaviour or conduct (Durie, 1998; Hohepa & Williams, 1996; McCully & Mutu, 2003; Mead, 2000; Metge, 1976). Māori world views (mātauranga) and tikanga are premised on the belief that all parts of the natural world are related by whakapapa (genealogical connections). This is an important factor underlying tikanga, including kaitiakitanga, in that people are considered to have familial rights and responsibilities to all elements of the natural world, both physical and metaphysical.

But tikanga may vary from iwi to iwi and place to place (Kennedy & Jefferies, 2009). While there is often agreement on the basic principles underlying tikanga, it should not be assumed that there is universal agreement. This is explained by McCully and Mutu (2003 p.13):

In Te Whanau Moana and Te Rorohuri's case, this [tikanga] is a vast body of knowledge, wisdom and custom. It derives from the very detailed

knowledge gained from residing in a particular geographic area for many hundreds of years, of developing relationships with other neighbouring communities as well as those further afield, and learning from practical experience what works and what does not.

In this explanation, tikanga, the correct way of doing things, is explained as being a product of centuries of observation and adaptation to a local environment. In the sections below, however, knowledge is referred to as a component of mātauranga Māori, a concept that includes tribal perspectives, world views, and knowledge systems, including tikanga. I consider wider Māori understandings, and identify Ngāti Whanaunga and Hauraki-specific perspectives. In each instance I consider associated tikanga, and discuss their relevance to environmental management.

Mana

Mana is widely described as authority, power, and prestige (Kennedy & Jefferies, 2009 p. 27). It is a good place to start for a discussion of tikanga relating to the environment, because, along with tapu, mana is the primary ordering principle in Māori society (Shirres, 1997 p. 33). Derived from whakapapa (genealogical relationships), mana originated in the first instance from the ātua (the various Māori gods). Mana and Tapu are related concepts relating to the power, respect, and metaphysical forces that support and generate life, which all began with the ātua. In short, mana brings with it the authority to make decisions in relation to the particular sphere over which one has mana, including geographic locations.

Mana whenua

A form of mana of particular interest for environmental management is mana whenua, chiefly authority over ancestral lands. Mana whenua and tangata whenua are similar concepts, the tangata whenua holding mana whenua within their rohe.

The essential link between Māori and their lands is reflected in the use of the word, whenua, to describe both land and the human afterbirth. This relationship with Papatūānuku (the Earth mother) is reinforced by the traditional practice of burying the placenta on ancestral lands to reinforce and maintain the whakapapa connection, and by bringing tribal members home to be buried on ancestral land, as explained by Mutu and McCully (2003 p. 157):

One means of ensuring that mana whenua is upheld and enhanced is to

return the pito or whenua (afterbirth) of a child to his/her ancestral lands at points specifically designated for the purpose. But the most powerful means, once the spiritual element has departed from a person (i.e. the person has died), is to return the human body to the ukaipo, the place from which his or her true sustenance and being came, that is, his or her ancestral lands. This is perhaps one of the main reasons why tribes will fight to have a body returned to his or her own ancestral lands for burial. Furthermore, the greater the person's mana, the bigger the fight, especially if the person has ancestral rights in more than one tribal area.

The Waitangi Tribunal has opined that use of the term 'mana whenua' to mean authority over land is a modern usage, observing that it was not used in evidence before the Native Land Court in the 19th century (Waitangi Tribunal, 2001a). Despite this, today the term is widely accepted in the context of RMA hearings, particularly when tribal ancestral ownership of land is disputed between multiple iwi. Importantly, as well as rights (to use the resources) there are inherited reciprocal responsibilities of protection relating to mana whenua.

Whanaungatanga

Whanaungatanga, familial links and responsibilities, includes whakapapa, but is a wider concept in that it brings in also non-whakapapa relationships, like marriages, adoptions, and friendships. I have previously referred to whakapapa, as coming from the ātua (gods), and carrying with it mana and tapu. While we may talk about mana whenua (and often link this to iwi or hapū), it is whānau (extended family) that reside on the ground, the hau kainga. They inherit ancestral kaitiaki obligations, but are also most sustained by local resources.

Described in Chapter 3 in relation to Hauraki tribal relationships, Whanaungatanga is what brings Ngāti Hako and Ngāti Whanaunga, Tamaterā, and Ngāti Pū together when local environmental issues threaten shared interests. This important tikanga continues to underpin Māori society today, and has regularly been the basis for cooperation in Whangamatā in the last decade, and elsewhere in Hauraki. Whanaungatanga is both the motivation for, and product of, the many marriages between the Marutūahu and neighbouring iwi. Sometimes these followed friendly encounters, but often they were efforts at re-establishing

relationships following conflict. The account of Ngāti Whanaunga coming to Whangamatā, told in Chapter 4, is a good example of such whanaungatanga.

Kaitiakitanga

Kaitiakitanga, sometimes translated as guardianship or stewardship, is the overarching Māori environmental principle. Traditionally, tiaki or kaitiaki were spiritual agents, as described by Māori Marsden (1977 p. 120):

In the latter case, the gods placed guardian spirits over places or things to watch over the property dedicated to them. These guardian spirits (kaitiaki) manifested themselves by appearing in the form (aria) of animals, birds or other natural objects as a warning against transgression, or to effect punishment for breach of tapu. The Pakeha idea of haunting is similar to the idea of this role played by guardians.

While spiritual kaitiaki remain, the term kaitiakitanga has increasingly become used to refer to the responsibilities of people. Mana whenua, tribal authority over ancestral lands, brings with it responsibilities including a duty of care to protect and preserve ancestral lands and waters, and to hand them on to succeeding generations healthy. This duty to future generations is the essence of kaitiakitanga, as explained by Ngāti Whanaunga rangatira Toko Renata with reference to Tikapa Moana, the tribal waters of Marutūahu iwi (Waitangi Tribunal, 2001b p. 33):

The key is that our relationship with Tikapa Moana is about a balance between rights and obligations. We consider that our obligations as kaitiaki extend, perhaps most importantly, to future generations. This is about passing down our traditions and tikanga about Tikapa, in particular how Tikapa Moana should be treated, and how we can ensure that the generous gifts of Tikapa Moana will continue to be available for those future generations.

Like mana whenua, kaitiakitanga derives from whakapapa. The genealogy of all things is ordered by whakapapa, and, according to tikanga Māori all elements of the natural world are genealogically connected. This belief represents a fundamental difference between Māori and Western world views (Patterson, 1992), in that Māori believe they have a relationship with all parts of the natural world, which brings with it kinship responsibilities. In contrast, the predominant

Western view, which underpins both Judaeo-Christian religions and Aotearoa law, is that mankind has dominion over the rest of the world and can do with it as he pleases (Klein, 2000; Tomas, 2006; White, 1967).

Joe Williams, takes a more down-to-earth view of kaitiakitanga, emphasising that it is not only about high-level management decisions, but also the simple means by which Māori interact with the world around them. From Manaia, and of Marutūahu and Ngāti Pukenga descent, Williams observed that all Māori have kaitiaki responsibilities. Previously a chairperson of the Waitangi Tribunal and chief Judge of the Māori Land Court, Williams describes tikanga in a paper called *Māori Custom And Values In New Zealand Law* (New Zealand Law Commission, 2001 p. 40), not in terms of legal principles, but of the day-to-day tikanga relating to kaitiakitanga:

Kaitiakitanga also requires the observance of conduct respectful of the resources in question. Thus each hapū or iwi had and has clear prescriptions as to the manner in which fishing activity may be undertaken.

It is common for example that the first fish is returned. It is also common that no gutting of fish or shelling of shell fish is allowed to occur below high water mark. The reason is that the dumping of fish or shell fish remains into the sea would provide both a spiritual and physical pollution of the sea and hence a detraction from its tapu.

As is discussed in Part III, kaitiakitanga has become a key matter for consideration in modern planning. However, the simple messages that Williams speaks about remain the essence of underlying teachings of kaitiakitanga.

Living kaitiakitanga

In addition to the individual ways in which members conduct themselves in relation to Te Taiao - the natural environment, Ngāti Whanaunga, like iwi elsewhere, spend considerable energy on on-the-ground work. This is a critical element of kaitiakitanga without which all the theory in the world is just theory. They engage with DoC and other agencies about any translocation of reptiles, frogs, or birds, attending where they can. They attend whale strandings, whether whales are alive or dead, taking a lead role to ensure tikanga is observed as shown in Figures 5.1 and 5.2 (next page).



Figure 5.1. Iwi, DoC staff, and Project Jonah attend to 50 beached pilot whales at Opoutere, just north of Whangamatā in 2005.



Figure 5.2. Ngāti Hako wahine karanga a large sperm whale to her final resting place within the wāhi tapu called Te Titoke at Whangamatā in 2012.

Ngāti Hako has a particularly strong relationship with tohorā (whales) because, according to their traditions, their tupuna (ancestor) travelled to Aotearoa on a whale. These are just a few ways in which iwi seek to fulfil kaitiaki obligations outside participation in statutory processes. Kaitiakitanga is very much about the everyday aspects of respecting and caring for the surrounding environment.

Education, both within the iwi and sharing with the wider community, is important for fostering greater understanding and common, or at least not conflicting, aspirations. Knowledge holders have a responsibility to transmit or

pass on mātauranga, or it is lost. Young people are taught not only where kaimoana beds are and how and why these move, but also tikanga like not using metal objects to collect kaimoana, as this leaves residue and kills shellfish. Such education starts at home for those that are lucky, but traditional institutions, such as tribal whare wananga (houses of learning), are now being restored and thriving after having been sabotaged by the colonial education system and legislation, such as the Tohunga Suppression Act (1907). Regardless, Māori have made substantial progress in the revitalisation of their education based on 'Te Reo me ōna Tikanga' (Māori language and tikanga).

Iwi have invested in creating kaitiakitanga resources. One example is the estuarine toolkit called *Ngā Waihotanga Iho* (NIWA, Ngāti Hikairo, & Ngāti Whanaunga Incorporated Society, 2010). This is an estuarine monitoring tool, employing a mix of scientific and Māori monitoring methods, including environmental indicators. Created jointly by Ngāti Whanaunga, Ngāti Hikairo of Kawhia, and the National Institute of Water and Atmospheric Research (NIWA), *Ngā Waihotanga Iho* is an educational resource developed for primary and secondary schools, where students undertake estuarine and shellfish monitoring. The programme is NCEA (National Certificate of Educational Achievement) accredited by the New Zealand Qualifications Authority. The Hauraki Gulf Forum reported (2011a p. 3) a programme in which Ngāti Whanaunga, the Ministry of Education, and WRC delivered the tool kit, as part of an educational strategy of NWIS to promote kaitiaki practices, and the application of *Ngā Waihotanga Iho* as a Māori language teaching and learning resource for teachers and students that is aligned with the Māori language, science, and maths curriculum.

In its kaitiaki role, Ngāti Whanaunga recently investigated the health of Whangamatā kaimoana beds in partnership with the Ministry of Fisheries, when the agencies responsible refused to do so. Ngāti Whanaunga representatives negotiated a wetland restoration with WRC at Papamaire within Whangamatā.

Utu – the maintenance of balance

Utu functions within Te Ao Māori (the Māori world) to maintain balance. It is included here because utu is the means by which an environmental balance is maintained, and therefore a major component of kaitiakitanga (stewardship).

Definitions provided for utu in the Williams Dictionary are: 1) Return for anything, satisfaction, ransom, reward, price, reply; and 2) Make response, by way

of payment, blow, or answer (Williams, 1997). Utu, like its Buddhist equivalent Karma, includes responses to both positive and negative pressures, to good and bad. Examples of the translations of utu in the literature are: compensation, revenge, and reciprocity, the principle of equivalence, balance, recompense and payment. While utu has popularly become identified amongst Europeans as revenge, Māori reject this definition, because there are words in Māori for revenge, these being 'uto' meaning revenge or the object of revenge, and 'ngaki' meaning 'to avenge' (Ballara, 2003).

The maintenance of balance is the critical element in utu and there is now general agreement that the maintenance of balance was a primary function of utu (Mead, 2003; Metge, 2001; Patterson, 1992; Waitangi Tribunal, 1999). In the Muriwhenua Land Report The Waitangi Tribunal (1997) explained that 'Utu concerned the maintenance of harmony and balance, and of mana. For everything given or taken a return of some kind was required, whether that given or taken was love, an act of kindness, property, or a life'. Williams (1998) identified that at a human level utu denoted reciprocity between individuals and descent groups, but also between the living and the departed. Similarly, utu carries obligations for future generations, as explained in previously cited evidence of Ngāti Whanaunga chief Toko Renata. I later show this to be important in the RMA context.

Mead considers utu to be a component in a three stage process, which he describes as *take*, utu, ea, writing (2003 p. 27): 'Utu is a response to a take and once the take is admitted the aim is to reach a state of ea, which might be translated as restoring balance and thereby maintaining whanaungatanga'. For environmental management purposes utu includes the planning response required to rectify an environmental imbalance (*take*).

But utu is also a factor in interpersonal dynamics. For example, Ngāti Whanaunga considers that numerous bad planning decisions have impacted the iwi, and continue to do so. Traditionally, utu would demand that these matters be addressed. But tribal capacity to seek redress through legal channels is constrained and as a consequence matters that substantial concern unresolved. On the next occasion when a previously offending party, for example local or regional council staff, is required to consult they sometimes express surprise that iwi first raise the previous matters of concern before being willing to turn to new business. On some occasions the outstanding grievance is so significant that Ngāti Whanaunga has refused to discuss any other matters until the offending issue has been dealt with.

Manākitanga – a duty of hospitality

Manākitanga translates as hospitality or kindness. It is the tikanga requiring that appropriate care is taken of group members, but particularly of guests or outsiders. Manākitanga is not mentioned at all in the RMA or other legislation, but it is included here because it remains an important tikanga that guides Māori actions.

Manākitanga is relevant to the current investigation in that an important component of mana, in terms of environmental management, is the ethic that mana is derived not from the accumulation of material goods for personal gain, but from ones contribution. James Ritchie is cited by the Waitangi Tribunal (1999), speaking about this aspect of mana:

Mana huanga, is that mana which rises from riches, the possession of resource-rich territories or waters, the fruits of the bush, its birds, the eels, gardens and waters, inland or oceanic. These not only sustained the iwi but with these good things they could make their mana material through the hospitality they could offer and the koha which they could carry when they travelled or joined others in celebration, or to mourn.

Manākitanga is an important tikanga, tribal mana is elevated by generous hospitality, or diminished when there are insufficient resources, such as kaimoana, with which to sustain guests. In this manner manākitanga remains a strong motivation for effective environmental stewardship. Hauraki iwi are renowned for their kaimoana, and the above description reflects the emphasis placed by iwi on maintaining the health of shellfish stocks at Whangamatā and elsewhere.

Mauri

Mauri is considered to be the life force of all things. Marsden refers to mauri as the life force, essence, or life principle, and suggests that it was originally regarded as elemental energy derived from the realm of Te Korekore, out of which the stuff of the universe was created. He observes that all created order partook of mauri, but makes a distinction with humankind, referring to this life force as mauri ora (Marsden, 1977).

As per the third definition in the Williams dictionary (1997 p. 197), *'Talisman, a material symbol of the hidden principle protecting vitality'*, there are descriptions of mauri being vested in inanimate objects. Mead described rituals for protecting human mauri (2003 p. 53):

Tuta Nihoniho of Ngāti Porou said that a stone or piece of wood was used to represent the mauri of a person. The stone or piece of wood (presumably carved) became a talisman and a tohunga was called to fortify it with karakia and to call spirits to protect it from witchcraft. This notion of abstracting the mauri and representing it in a talisman was a device to protect the real mauri from harm.

The preservation of mauri has been described as the main obligation underlying kaitiakitanga. This is explained by Mutu and McCully (2003 p. 4):

Te Whānau Moana must try to restore the hau kainga that has been unnecessarily interfered with and prevent it from being further altered. A taonga whose life force becomes severely depleted, as is the case, for example, with the Manukau Harbour, presents a major task for the kaitiaki. In order to uphold their mana, the tangata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength.

The Waitangi Tribunal (1999 p. 39) similarly described the responsibility (in terms of mauri) placed upon mankind as kaitiaki of the natural world:

Conversely, if the mauri of a river or a forest, for example, were not respected, or if people assumed to assert some dominance over it, it would lose its vitality and force, and its kindred people, those who depend on it, would ultimately suffer. Again, it was to be respected as though it were ones close kin.

In both cases the authors cited make a direct link between the health of the mauri of the feature concerned and the wellbeing of its kaitiaki. This belief that as kaitiaki they are directly impacted by the degradation of the environment under their care is widespread amongst Māori, and shared by Ngāti Whanaunga.

Kaimoana – shellfish and other seafood

As observed in the Waitangi Tribunal's *Muriwhenua Fishing* (1988) and *Whanganui River* (1999) reports, all tribal resources were taonga, something of value. Kaimoana, tribal fisheries, are a particularly prized taonga. While the term kaimoana is sometimes used to refer to shellfish as distinct from finfish, an

inclusive interpretation is used here. The following extract from the early Waitangi Tribunal's *Muriwhenua Fisheries Report* (at 10.3.2, report not paginated) provides an excellent description of the importance of kaimoana to Māori:

This taonga requires particular resource, health and fishing practices and a sense of inherited guardianship of resources. When areas of ancestral land and adjacent fisheries are abused through over-exploitation or pollution the tangata whenua and their values are offended. The affront is felt by present-day kaitiaki (guardians) not just for themselves but for their tipuna in the past. The Māori 'taonga' in terms of fisheries has a depth and breadth which goes beyond quantitative and material questions of catch volumes and cash incomes. It encompasses a deep sense of conservation and responsibility to the future which colours their thinking, attitude and behaviour towards their fisheries. The fisheries taonga includes connections between the individual and tribe, and fish and fishing grounds in the sense not just of tenure, or 'belonging', but also of personal or tribal identity, blood and genealogy, and of spirit.

The Tribunal (1988 at 10.3.2) goes on to explain the Māori belief in which environmental damage has an immediate and physical impact on tangata whenua:

This means that a 'hurt' to the environment or to the fisheries may be felt personally by a Māori person or tribe, and may hurt not only the physical being, but also the prestige, the emotions and the mana. The fisheries taonga, like other taonga, is a manifestation of a complex Māori psycho-spiritual conception of life and life's forces. It contains economic benefits, but it is also a giver of personal identity, a symbol of social stability, and a source of emotional and spiritual strength. This vision provided the mauri (life-force) which ensured the continued survival of the iwi Māori.

As illustrated here, tribal kaimoana resources are highly prized. Traditional kaitiaki practices ensured that local stocks were not depleted by imposing rāhui when beds were under pressure, and by the practice of moving seasonally between tribal lands to gather certain foods at certain times of the year.

Today, kaimoana resources are exposed to far greater pressures. In Hauraki significant demands from recreational and commercial fishers from nearby Auckland has resulted in severe depletions of local kaimoana stocks. In

response rāhui have been imposed in recent years, covering whole stretches of coastline (Macredie, 2001). Furthermore, impacts on kaimoana beds from adjacent land uses remain a common cause for grievance for coastal Māori, including Ngāti Whanaunga. A simultaneous increasing frequency of contamination of kaimoana communities by biological invasions, including paralytic algae, has been observed in recent decades (Bay of Plenty DHB, 2011; Hauraki Gulf Forum, 2011b).

Manawa - mangroves

Tribal elder Toko Renata (2006 p. 3) gave the following explanation of the significance of manawa (mangroves) to Ngāti Whanaunga:

Manawa is the name we have for mangroves. Manawa is also the Māori word for heart. This is no accident, and my old people often told me that manawa are the heart of the harbour. They also spoke of manawa being a kōhanga, as it is from the mangroves that the life of the harbour comes, and within them that the young fish are nurtured.

For Māori manawa are a taonga, something treasured, they have always been here in Aotearoa. Manawa like all living things have mauri of their own, but they also protect the mauri of the moana in which they live by protecting the water from impacts from the land.

Mangroves are expanding due to sedimentation and increased nutrient loading, and also extending their traditional range in response to a warming climate. While manawa have lived Hauraki for many thousands of years, they are now extending into the rohe of iwi who have no traditional relationship with them. Tribal differences in tikanga around mangroves presents a challenge to councils.

But Ngāti Whanaunga sees the expansion of mangroves as a natural phenomenon, part of a long running cosmic order. In evidence presented to the Environment Court in 2006, kaumātua Toko Renata (2006) explained the function of mangroves and their place within the natural order. He said that he had been taught that the encroachment of mangroves into harbours was a natural part of the living relationship between different ātua (gods). Mangroves are part of the ongoing struggle between Papatūānuku and her children, in this case Tangaroa (god of the sea) and Tane (god of the forests including mangroves). He said that the exacerbating factor in the Whangamatā case was dirt being washed into the

harbour, and then liberally fertilised by the nearby leaking waste water treatment plant. He referred to the loss of environmental balance, described previously under the heading *utu*, and gave evidence that man had upset the natural balance between the different parts of the environment.

Wāhi tapu

Wāhi tapu (tapu places) are places that have been set aside from general use because of their tapu. According to Hirini Mead, associations with important persons, religious ceremonies, death, sickness, burial, learning, birth or baptism ceremonies may all lead to places being classified as wāhi tapu (Mead, 2003). Four definitions are provided for tapu in the *Dictionary of the Māori Language* (Williams, 1997): 1) under religious or superstitious restriction; 2) beyond ones power, inaccessible; 3) sacred; and 4) ceremonial restriction, quality or condition of being subject to such restriction.

The laws of Tapu are considered by some to play the most influential role in regulating Māori society. As the definitions provided above indicate, tapu is considered to be a divine element. However, it also operates as a more general social prohibition in relation to personal hygiene and cleanliness.

In this regard, tapu continues to be taken very seriously today, with many Māori households maintaining the separation of tapu and noa (profane) activities in daily life. For example, it is common for Māori to separate personal effects from materials used in the preparation of food, and it is unacceptable to place a hair brush or hat on a dining table, as the head is considered one of the most tapu parts of the body. Similarly, tea towels may not be washed together with clothes. Regarding tapu as a code for social conduct, Durie (2000) cites Te Rangi Hiroa (Peter Buck) a Māori member of parliament between 1909 and 1914:

He drew a connection between the use of tapu and the prevention of accidents or calamities, implying that a dangerous activity or location would be declared tapu in order to prevent misfortune. More than a divine message from the gods, or the recognition of status, the conferment of tapu was linked to healthy practices.

Tapu is a significant tikanga for environmental management in a number of ways. A place will be rendered tapu by the death of a person, potentially requiring that a rāhui (ceremonial closure) be imposed until formalities have been completed and

the tapu from the death removed through appropriate karakia (prayer). The level of tapu of a place depends upon the nature of the event that took place there, and also with the rank or status of people from whom the tapu initially emanated. This might also determine the physical extent of the resulting tapu, so that some wāhi tapu, such as urupā (burial grounds), are relatively discrete areas, while others, such as important battle grounds, may cover several hectares.

As an example, the Ngāti Whanaunga rangatira Te Ika a Waraki was one of the military leaders responsible for Ngāti Whanaunga settling at Whangamatā. His pa (fortified village) was at Tautahanga, across Whangamatā from the modern township. When he died the resulting tapu is said to have rendered the whole Tautahanga Peninsula wāhi tapu for 10 years, before the tapu was lifted and people were allowed there again. Several death-related rāhui have been imposed in Hauraki in recent years (“Seafood ban after drownings”, 2002).

There is also tapu associated with human waste, so treatment plants are highly tapu, and even treated waste products. According to tikanga, human waste cannot be allowed to enter waterways or the ocean until the tapu has been neutralised by passing material through Papatūānuku (the Earth). As a result it is increasingly common for human waste treatment facilities to include a method of passing treated material through the ground before allowing it to enter waterways.

Tapu is exercised as a conservation method in prohibition rāhui. Marutūahu elder Betty Whaitiri Williams (1998 p. 4) provided the following explanation of the Hauraki practice of closing resources in her evidence regarding proposed RMA reform, likening this to the European practice of fallow:

In other situations where a value has been exploited or exhausted, the Tapu may be imposed for a finite period depending upon the time it takes for the mauri and mana to revitalise, e.g. a pipi bed may require months, or even years. In Pakeha terms, leaving a piece of earth to lie fallow would be an equivalent.

The preservation of wāhi tapu remains of primary concern to Māori, and is a particular focus of their modern environmental management effort.

Mātauranga Māori – Māori knowledge and world views

Mātauranga Māori encompasses Māori world views, knowledge, and knowledge systems or 'ways of knowing'. As explained by Mead (2003 p.305), Mātauranga

Māori includes all aspects of Māori knowledge from philosophy to cosmology. It is a dynamic and evolving knowledge system.

It has often been reported that Māori have an holistic perspective on their world (Marsden, 1992; Morgan, 2007; Solomon, 2000). This is consistent with many of the concepts previously discussed, such as whakapapa, which emphasise the interconnectedness of all things. It has also been argued that this perspective distinguishes a Māori from a Pakeha world view (Kingi & Durie, 2000; Marsden, 1992; Solomon, 2000). Marsden (1992) describes holism as involving seeing the three realms of the Māori world as an integrated whole. He says that these are:

- Tua-Uri: the real world behind the world of sense perception, or the natural world. This is where the cosmic processes originated and continue to operate.
- Te Āro-Nui: that before us, the physical world.
- Te Ao Tua-Atea: the world beyond space and time. The realm of Io.

This holistic perspective is based on the underlying understanding of the previously discussed links of the natural world by whakapapa. But there are more immediately obvious differences between Māori and Pakeha world views. Pakeha brought with them a Eurocentric world view, orienting Aotearoa with north at the top. In contrast, a Māori world view considers Aotearoa to be Te Ika a Maui (the great fish of Maui), fished up by the famous ancestor Maui. In this perspective the head of the fish is near Wellington and the tail northland. Accordingly, Māori speak of travelling up to Wellington from elsewhere in the North Island and down to Kaitaia, whereas, Pakeha speak of travelling down to Wellington.

This world view is reflected in Figure 5.3 (next page), where Coromandel is to the left of the map (east) and Auckland to the right (west), while a distinctly Marutūahu view of Auckland is illustrated in Figure 5.4 (next page).

Figures 5.3 and 5.4 show a Ngāti Whanaunga/Marutūahu perspective of Tamaki Makaurau distinct from Auckland iwi whose lands are predominantly there. The island in the middle ground of the photograph in Figure 5.4 is Ponui, over which is viewed the entrance to the Tamaki River, St Heliers, and downtown Auckland. The ocean is called Tikapa Moana (the Hauraki Gulf).



Figure 5.3. South-North map showing the traditional Marutūahu route to and perspective of Tamaki Makaurau. *Source of aerial photography Bing.*

The landscape in Figure 5.3 shows that Marutūahu were a maritime people, this being an important aspect of tribal identity. The yellow line in Figure 5.3 spans the traditional route of Marutūahu tupuna (ancestors) between their lands in Hauraki and those in Tamaki Makaurau. This is straight-line distance of 60km.



Figure 5.4. A distinctly Marutūahu view of Tamaki Makaurau tribal lands from the Kereta, the view indicated by the yellow line in Figure 5.3 above. *Source. N Kennedy*

In addition to world views, Mātauranga Māori incorporates tribal knowledge. Collected over centuries, this body of knowledge can't be replicated by recent scientific monitoring and modelling. In this regard, the whakatauaikī *Ka titiro*

whakarunga, Ka ahu whakamua, translates as 'with our eyes fixed on the past we walk into the future', or 'walking backwards into the future'. It is a reminder that we risk being unprepared for events of the future if we fail to learn from lessons of the past (Roberts, 2005 p. 8).

The value of accessing this type of First Nations' knowledge is acknowledged in Principle 22 of the Rio Declaration (United Nations Conference on Environment and Development, 1992a), to which Aotearoa is a signatory:

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

Yet, despite the significant body of knowledge that was built up by local iwi over centuries, and recognition of the value of such knowledge as is reflected in the above principle, Māori struggle to be heard in efforts to influence planning decisions. In particular, Māori continue to struggle to have traditional knowledge accepted as being valid expert evidence (Ruru & Stephenson, 2004 p. 58).

Ngā tohu - indicators

One field that has gained increased prominence in terms of environmental management in recent decades is that of environmental indicators. These are not new to Māori, and have traditionally been referred to as tohu.

The PUCM research reviewed international First Nations' environmental indicators, including those of Māori. The research revealed that indicators are often a product of hard-learned lessons. Many indicators relate to things like weather, environmental hazards, or crop predictors. Explaining Māori traditional knowledge of and responses to climate change, King and Skipper (2006 p. 22) wrote about what they call Māori Environmental Knowledge:

Climate has always been important for Māori. It influences which plants, trees, and birds are found in various parts of the country; it affects the winds, waves, and ocean currents, and, in turn, influences decisions about when to plant, harvest, and fish, and about navigation. Over the centuries Māori have built up extensive knowledge about local weather and climate.

This has been vital to survival, and the lessons learnt have been incorporated into traditional and modern practices of agriculture, fishing, medicine, education, and conservation.

There have been recent moves by the Crown and some councils to capture and acknowledge such mātauranga, to use this in environmental management. The PUCM research compiled a large number of indicators of First Nations, including Māori, many from Hauraki.

Ngāti Whanaunga and neighbouring Hauraki iwi have their own mātauranga, being knowledge specific to their rohe. It includes tohu used to predict environmental events. Examples are provided in Table 5.1 below, where tohu are listed according to the environmental element (subject) with which they are associated, and the resulting environmental outcome.

Subject	Tohu	Anticipated outcome
Moehau - Hauraki tribal mountain	The shapes and colours of clouds above and below Moehau	Rainfall, winds (calm periods, squalls) and snow (King & Skipper, 2006)
Kāka	Kāka begin acting up, twisting and squawking above the forest	A storm is on its way (King & Skipper, 2006)
Kouka - cabbage tree	Early flowering	Long warm summer
	Late flowering	Short unfavourable summer
Harakeke	Harakeke flowering	Suggests that the kina roe are of poor quality
Pohutukawa	Pohutukawa flowering	An indication that the roes are of good quality
Willow trees	Green leaf buds appear	Signals the imminent arrival of whitebait

Taunahanahatanga – the naming of places

Taunahanahatanga, equivalent to the English nomenclature, is the practice of naming places, thereby imbuing the landscape with significance. The names and their meanings are recorded in traditions: waiata (songs), mōteatea (laments), and whakatauākī (sayings / proverbs) and have been handed down for generations.

For Ngāti Whanaunga, much of the landscape was already named by the time of the ascendance of the Marutūahu confederation in the late 16th century, and the landscape today is a mix of pre and post Marutūahu names. But each of these is celebrated as a living record linking tribal members with their places,

often through recollections of the deeds of tupuna that occurred there (Kennedy & Jefferies, 2008).

For example, a marae just out of Paeroa was named after a skirmish between Ngāti Whanaunga and their Ngāti Tamaterā cousins. 'Ngahutoitoi' refers to the sound of the feet of the Ngāti Whanaunga war party when it tried to surprise a group of Ngāti Tamaterā residing there by creeping up an adjacent creek under cover of darkness. The sound alerted Ngāti Tamaterā, and Ngāti Whanaunga were overwhelmed and driven away. These events are recalled when the two iwi meet, and are a living part of the ancestral relationship of both with this place.

Place names also encapsulated that which was important to those naming – reflecting the values and priorities of the time. In addition to recording important events, names include descriptions of physical characteristics of a place, and serve to locate sought-after environmental resources, such as plant and animal resources, or to warn of environmental hazards. For example, at Whangamatā the Waikeikei Stream is named for the delicacy of that name traditionally known to grow there. Whangamatā itself refers to the valued matā found there.

The meaning of other landscapes feature names reflecting local environmental conditions. Hauraki – translating as 'warm wind', is a reference to the predominant warm north wind of the area, while Waikino (literally 'bad water' near Waihi) warns of a place where Ohinemuri River periodically rises swiftly and breaks its banks. Early settlers ignored the warning inherent in the place name, and those of local Māori. Over the following century residents often watched the Ohinemuri River rise to approach and surround their homes. But it took almost 100 years before the river eventually rose sufficiently to carry away all the buildings on the river bank.

Taunahanahatanga is an example of the value of long tangata whenua observation, which cannot be replaced by scientific analysis and modelling. It reinforces the previously-cited principle 22 of the Rio Declaration, requiring governments to include First Nations in environmental management because of their knowledge and traditional practices (United Nations Conference on Environment and Development, 1992b).

Part II

Rules about Māori and Environmental Management

In Part II I explore the means by which Māori interests and tikanga are recognised and provided for within environmental resource management law in Aotearoa, and in associated statutory plans. To do so I draw on the explanations provided in Part I, to consider whether statutory interpretations are consistent with Māori tikanga and perspectives.

In Chapter 6 I describe the advent of the recognition and inclusion of First Nations and Māori values or interests in legislation. I discuss the basis of Aotearoa law, including the place of the Treaty of Waitangi, customary practices, and native title. I review recent and contemporary legislative developments, consider Māori provisions within the RMA, and compare equivalent provisions within related legislation. In particular, I highlight variations between statutes, and explain legislative interplay and implications for Māori.

In Chapter 7 I discuss the way legislative intentions for Māori are reflected in statutory plans, focusing particularly on plans in operation within the case study area, and make regional and national comparisons. I subsequently discuss the implementation of this legislative mandate, oversight by the courts, and outcomes for Māori in Part III.

Accordingly, Chapters 6 and 7 are concerned with the first of my two research questions, exploring whether legislative and plan provisions empower Māori in their aspirations for participation in environmental management.

Chapter 6 - Māori Provisions in Law

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

US Supreme Court Judge Oliver Wendell Holmes from *Treatise on the Common Law* (1881)

In this Chapter I consider Māori provisions within environmental legislation. I first provide a brief review of international and local developments that contributed to the recognition of Māori values and interests in legislation, and consider international conventions that have been instrumental in promoting First Nations' environmental management approaches.

I briefly discuss case law that has upheld First Nations' environmental management rights, including early native title cases, and those concerning 'off-reservation' rights in resource management. I focus on a few comparable post-colonial jurisdictions, and highlight some important cases, but do not provide a comprehensive analysis of relevant case law. Next, I investigate Māori provisions within the RMA, and in related legislation. I compare statutory interpretations of Māori values with the iwi understandings previously described in Part I, in an effort to determine whether statutory provisions reflect the interests, world views, and customary practices they are intended to protect.

I then assess the likely effectiveness of Māori statutory provisions individually and in combination. I consider the bundle of Māori rights and interests that the law attempts to combine in the RMA. This legislation has clauses aimed at addressing native title interests, prior customary practices and common

law rights, Treaty rights, rights stemming from international obligations, and even human rights.

Chapter 6 reflects the second of five research objectives, being: 'To determine how contemporary Aotearoa environmental management legislation provides for Māori rights, interests, and values'. This overview of the legal treatment of Māori values and interests helps to identify best practice, and provides a background against which to evaluate local and regional planning instruments (Chapter 7), implementation (Chapters 8 and 10), and treatment by the courts (Chapter 9). Chapter 6 frames the subsequent evaluation and assists in identifying a disjunct between statutory promises, and outcomes for Māori.

Establishing legal rights of First Nations

The courts have been instrumental in establishing Māori (and other First Nations') rights at law. Law professor Paul McHugh (2008 p. 40) wrote about his conversations with Sir Robin Cooke, who presided over some of the most ground breaking Appeal Court cases of the 19th century:

Essentially, it was an argument for correction of what was a surviving historical feature of the Anglo-settler jurisdictions of Canada and Australasia, namely the omission of tribal peoples from the juridical compass of common-law constitutionalism. The admission of tribal peoples into that legitimating rights-place was a process, the scholarship argued, where the initial onus was on the courts.

A number of First Nations' cases have been fundamental to establishing legal recognition and protection of indigenous rights, values, and interests. The courts have been instrumental in establishing the principles of native title property rights, and the legal status of customary practices, recognising the legitimacy of First Nations' approaches to, and the value of, their environmental knowledge.

Native title cases

Native title, the customary ownership of traditional lands, is a long established legal principle. That native title (also referred to as aboriginal title) exists, or existed, for First Nations is no longer in doubt. However, this was not always the case, and in some places recognition has been slow coming. For example, it has only been in recent decades that the Australian government has recognised

aboriginal land rights, and then only after being forced to do so by the courts. This change of stance and subsequent apology to the kuri and other Australian First Nations follows nearly 200 years of staunch Crown adherence to the position that the country was terra nullius - uninhabited.

Ground breaking decisions from the second half of the 20th century include Canada's *Calder v. Attorney General of British Columbia* (1973) and *Guerin v. The Queen* (1984). These judgements established that the government has a fiduciary duty towards Canadian First Nations, and confirmed aboriginal title. Similarly in Australia's *Eddie Mabo and Ors v. State of Queensland* (1992) the High Court rejected the Crown's assertion of the doctrine of terra nullius, in favour of the common law doctrine of aboriginal title.

In *Mabo*, the Court found that proof of native title is based on traditional laws and customs. Ten years later in *Western Australia v. Ward on Behalf of Miriuwung Gajerrong* (2002) the High Court construed that native title rights and interests are derived from traditional custom, not from occupation as had previously been the position of Australian courts (Strelein, 2002 p. 2). This matter is critical to the Aotearoa case studies described in Chapter 10.

Several earlier USA court decisions set precedents in terms of native title, in particular, three decisions of the Supreme Court: *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), 17-20, and *Worcester v. Georgia* (1832).

In Aotearoa, native title was also confirmed early. In *R. v. Symonds* (1847) the Privy Council found that whatever the strength of native title, it is entitled to be respected by the courts. This position was upheld by the Court of Appeal in *Re Landon and Whitaker Claims Act 1871* (1872):

The Crown is bound, both by the common law of England and its own solemn engagements, to a full recognition of the Native proprietary right. Whatever the extent of that right by established Native custom appears to be, the Crown is bound to respect it.

These cases confirmed aboriginal title of Māori and other First Nations, but they also had implications in terms of such peoples' rights to self-government in 1871, and to natural resource management, that were not a feature of *Calder*, *Guerin*, and *Mabo* a hundred years later (Meyers, 1998 p. 5). In this regard, the histories outlined in Chapter 3 and tikanga explained in Chapter 5 introduce the customs

and interests of Ngāti Whanaunga, and it is these that are relied on in evidence in contemporary statutory processes, such as those discussed in Chapters 8 and 9.

Customary law

Native title is an aspect of common law, stemming from indigenous customary law. Customary laws, tikanga in the case of Māori, governed tribal life, and informed approaches to environmental management and use.

In the Aotearoa legal system there have been conflicting rulings on Māori customary rights. For example, the previously mentioned case *R v. Symonds* (1847) brought the concept of Aboriginal title into New Zealand law, and upheld the Crown's pre-emptive right to purchase Māori land. The case has been described as representing the foundational principles of the common law relating to Māori (Ruru, 2012 p. 80). However, in the subsequent *Wi Parata v. the Bishop of Wellington* (1877) Justice Prendergast denied that Māori had 'any kind of civil government' or any 'settled system of law' (Boast, Erueti, McPhail, & Smith, 2004 p. 33). This ruling is considered further under the heading Treaty Jurisprudence.

An important consideration for First Nations is the continued legitimacy of customary law where native title has been largely extinguished. This was dealt with in *R v. Adams* (1996), where the Canadian Supreme Court found:

Aboriginal rights do not exist solely where a claim to aboriginal title has been made out. Where an aboriginal group has shown that a particular practice, custom or tradition taking place on the land was integral to the distinctive culture of that group then, even if they have not shown that their occupation and use of the land was sufficient to support a claim of title to the land, they will have demonstrated that they have an aboriginal right to engage in that practice, custom or tradition (para 39).

In *R. v. Van der Peet* (1996) (at para 74) the Chief Justice stated similarly:

Aboriginal rights arise from the prior occupation of land, but also from the prior social organisation and distinctive cultures of aboriginal peoples on that land. In considering whether a claim to an aboriginal right has been made out, courts must look at both the relationship of an aboriginal claimant to the land and at the practices, customs and traditions arising from the claimants' distinctive culture and society. Courts must not focus

so entirely on the relationship of aboriginal peoples with the land that they lose sight of the other factors to the identification and definition of aboriginal rights.

Most recently, in *Attorney-General v. Ngāti Apa* (2003) the Court of Appeal affirmed that the Crown's radical title acquired on cession of sovereignty (imperium) was subject to pre-existing rights of Māori. It found that sovereignty should not be conflated with absolute ownership (dominium), and that the Crown's radical title was qualified by Māori property interests, even if they did not accord with traditional notions of property law (Joseph, 2007 p. 495). The Court found that customary title was legally defensible until lawfully extinguished by legislation (Ruru, 2009 p. 1). This might lawfully occur where there was a clear greater need, with appropriate compensation. Following this lead, Aotearoa courts have recognised Māori customary law to varying degrees.

This ongoing legal recognition that the customs of First Nations form part of common law is consistent with decisions of the Privy Council, and confirmed by the Supreme Courts of the United States and Canada, the Constitutional Court of South Africa, and the High Court of Australia (Baragwanath, 2007 p. 4). These cases have established that Māori customary law, even where not incorporated by legislation, forms part of the corpus of Aotearoa law, and may be taken account of and enforced by the Courts (Boast et al., 2004 p. 32).

Treaty jurisprudence

In Aotearoa, as with other colonised countries where Treaties were signed, First Nations hold Treaty-based rights distinct from customary ones, including native title. The first decision of the United States Supreme Court on Indian treaty rights, *Cherokee Nation v. Georgia* (1831), found that the relationship of the tribes to the United States resembles that of a 'ward to its guardian'.

Anaya (1994) observed that the three cases *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832) saw the US Supreme Court invoke international law to uphold rights of treaty signatory peoples, and to signal the conditions in which those rights might be limited or abrogated. All three cases were authored by Chief Justice John Marshall.

The Privy Council ignored established principles in *Wi Parata v. Bishop of Wellington* (1877, supra note 1, at 78), calling the Treaty of Waitangi a 'simple nullity' because Māori never held sovereignty and therefore could not cede it:

The existence of the pact known as the 'Treaty of Waitangi', entered into by Captain Hobson on the part of Her Majesty with certain natives at the Bay of Islands, and adhered to by some other natives of the Northern Island, is perfectly consistent with what has been stated. So far indeed as that instrument purported to cede the sovereignty – a matter with which we are not here directly concerned – it must be regarded as a simple nullity. No body politic existed capable of making cession of sovereignty, nor could the thing itself exist. So far as the proprietary rights of the natives are concerned, the so-called treaty merely affirms the rights and obligations which, jure gentium, vested in and devolved upon the Crown under the circumstances of the case.

This was a reversal of *R v. Symonds* (1847) mentioned above. Legal scholars have called the Prendergast judgement 'notorious' (McHugh, 1991 p. 113). It had ongoing impacts on Māori for decades, both in terms of asserting sovereignty, and establishing native title (Tate, 2004 p. 102). The precedent was overturned more than two decades later by the judgement *Nireaha Tamaki v. Baker* (1901).

However, New Zealand Courts clung to the *Wi Parata* position. The Court of Appeal, at the time the Country's highest resident court, took the rare step of issuing a formal protest against the Privy Council in response to *Wallis v. Solicitor-General* (1903), which, in the opinion of the judges, endangered the stability and security of land settlement in New Zealand (Tate, 2004). Their protest was of little effect, the legal position on Māori sovereignty and native title having been irreversibly brought into line with international law.

The courts have set the bar high for post-colonial governments' obligations to First Nations' peoples. In *New Zealand Māori Council v. Attorney-General* (1987) the Court of Appeal stated that the Treaty of Waitangi principles in legislation require 'the Pakeha and Māori Treaty partners to act towards each other reasonably and with the utmost good faith'.

Natural resources cases

Other indigenous legal recognition has stemmed from the cases discussed previously, particularly relating to resource management, and use rights. Most noteworthy in recent times was the *Boldt Decision* (*United States v. Washington*, 1974). A case about First Nations' fishing rights, the *Boldt Decision* established that Washington tribes had pre-existing and enduring treaty rights to river salmon, and that such rights were of little meaning if they could not participate in decision-making relating to the environment in which the fish live. The *Boldt Decision* interpreted the language of 1850s US treaties as providing a guarantee that the tribes could manage their own fisheries, subject to certain conservation restrictions, and to joint planning with state managers (Cohen, 1986).

US treaty-related case law influences other 'post-colonial' jurisdictions including Aotearoa. In its *Muriwhenua Fisheries Report*, the Waitangi Tribunal (1988 section 9.1.2) observed the similarity of the Muriwhenua tribes' circumstances with those of the Washington Indians. Relevant aspects of the *Boldt Decision* noted by the Tribunal include the recognition of First Nations' right to actively participate in habitat protection and management, and that the State is bound to protect fishery habitats from human despoliation.

The US Supreme Court decision in *Washington v. Washington State Commercial Passenger Fishing Vessel Association* (1979) confirmed First Nations' aboriginal and treaty rights to traditionally used natural resources (in this case fisheries) for both customary and commercial purposes. Similarly *Regina v. Sparrow* (1990) became the cornerstone in the interpretation of aboriginal rights in Canada (Harris, 2008 p. 134). The Supreme Court held that the Musqueam community had an aboriginal right to fish for food, social and ceremonial purposes at the mouth of the Fraser River. It found that if a reduction in catch was required for conservation reasons, such that the number equalled the number required for food by the Indians, then all the fish remaining available would go to the Indians, according to the constitutional nature of their fishing right.

Australian courts were slow to follow decisions elsewhere. For example it was 1996 before the High Court case *Wik Peoples v. Queensland; The Thayorre People v. Queensland* (1996) dramatically broadened the scope for recognition of Australian native title, but it also placed a strong emphasis on coexistence and compromise between Aboriginal and non-Aboriginal interests. As observed by Lokan (1999), the case can be seen as marking the beginning of the development

of a distinctly Australian approach to balancing Aboriginal rights with countervailing values.

It is worth noting that decisions in favour of aboriginal rights do not guarantee environmental improvements or equitable benefit for the subject people. In the Canadian examples given above environmental degradation and overfishing resulted alongside the establishment of a small group of tribal commercial fishermen that capitalised on the resource, accompanied by a widespread fishery decline. The subsistence type market for local fishers anticipated by the Supreme Court in *Passenger Fishing Vessel*, which it described as the amount of fish required to provide 'a moderate living', dried up.

External factors, and opportunism made possible by weakened traditional tribal institution, have significantly undermined First Nations' rights, values, and interests, to the extent that (it has been argued) the Washington tribes acknowledged in *Boldt* fare worse today than they did prior to the decision. Knutson (1987 p. 2) explained this unintended outcome:

Rather than returning fish to traditional Indian river and inshore fisheries, the Boldt Decision appears to be encouraging the creation of a wealthy class of offshore, capital-intensive, treaty-tribe fishermen who are intercepting much of the resource before it reaches the traditional estuary and river fisheries of the tribes. In essence, the results of the federal intervention have accelerated the transformation of traditional tribal fisheries.

In contrast to the competitive entrepreneurship associated with the common-property salmon fisheries, traditional tribal fishing has been characterized by strong collective, redistributive and ecological commitments. However, as treaty members adopt privately owned, capital-intensive fishing technologies such as purse-seining and marine gillnetting, new commitments are made that do not necessarily harmonize with traditional values.

I see parallels with the experience of Māori. The fisheries settlement that established Māori as large scale commercial fishers, and the subsequent allocation of 20% of new aquaculture space, has created a situation in which commercial and cultural interests and aspirations may come into conflict.

Despite acknowledgement of First Nations' treaty or customary rights to resources, such interests are easily extinguished by legislation. However, case law has established that extinguishment must be for good and explicit purpose, with a threshold more specific than simply 'for the greater public good'. This standard was set in Canada, when 'public interest' was assessed by the Canadian Supreme Court in *Regina v. Sparrow* (cited above) as being too vague in its own right, and too uncertain an objective to justify limiting a constitutional right. Furthermore, there is a presumption toward compensation for resources or rights lost.

The case *Ngāti Apa v. Attorney-General* (2003) is important in terms of recognition of Māori property rights and practices, because it led to the knee-jerk public reaction to the possibility that Māori might prevent non-Māori use of the foreshore and seabed, which triggered the Foreshore and Seabed Act (2004) (FSSBA). The Court of Appeal faced a single question, did the Māori Land Court have jurisdiction to investigate title to the foreshore and seabed? The unanimous decision that it did materially adjusted the precedent laid down by *Wi Parata*, which previously acted as a barrier to the recognition of tangata whenua property rights (Tomas & Johnston, 2003 p. 462).

Ngāti Apa provided no guarantee that the courts would recognise Māori customary ownership, and even if they did, difficulty remained in working out the nature of that ownership. I return to resource related law and legislation later in this Chapter in relation to the Foreshore and Seabed Act (2004), and to treaty rights in the context of Aotearoa.

Two more Canadian cases are particularly relevant here. The first, *Ahousht Indian Band and Nation v. Canada* (2009) was described as 'a conclusive win for aboriginal peoples in Canada equivalent to the 1974 Boldt Decision'. The British Columbia Supreme Court upheld its own earlier decision, saying that Nuu-chah-nulth people have the aboriginal right to fish within their traditional territories, and the right to sell their catch.

A second notable relevant case is *Manitoba Métis Federation (Inc) v. Attorney-General* (2013), where the Canadian Supreme Court further developed the doctrine of the 'honour of the Crown', in the context of the treatment of First Nations. This theme is critical to my investigation, and I reveal ongoing behaviour by the Crown, including councils, that ranges from dismissive of Māori rights and values, to injurious. This decision further entrenches obligations for 'post-colonial' governmental standards of behaviour toward First Nations.

The cases build on recognition of modern interests arising from customary practices and resources, this includes what the Waitangi Tribunal (1988 p. 116) called a 'right to development'.

International conventions and agreements

There are various international agreements that bind or influence governments, including in matters of First Nations' rights to resources and their management. Those most relevant to Aotearoa are discussed now.

Some of the most important agreements are the 1948 Universal Declaration of Human Rights, the 1976 International Covenant on Civil and Political Rights (ICCPR), 1992 Rio Declaration and Agenda 21, and the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Each of these included provisions for First Nations' participation in environmental management. Aotearoa was slow to adopt the Declaration on the Rights of Indigenous Peoples, the Labour-led government at the time refusing to sign, and an incoming National-led one eventually doing so in April 2010.

The Crown's Board of Enquiry into the New Zealand Coastal Policy Statement listed 20 international conventions of particular relevance to sustainable management (Proposed New Zealand Coastal Policy Statement Board of Inquiry, 2009 p. 49). Some are pertinent to Māori and environmental management, including: the Convention on Wetlands of International Importance (United Nations Educational Scientific and Cultural Organization, 1971); International Charter for the Conservation and Restoration of Monuments and Sites (2nd International Congress of Architects and Technicians of Historic Monuments, 1964); and the Convention on Biological Diversity (United Nations, 1992).

Iwi are familiar with these, but their part in the management of subject lands and waters is often not formalised. For example there is a RAMSAR wetland scheduled under the Convention on Wetlands of International Importance within the rohe of Ngati Paoa and Ngāti Whanaunga between Kaiua and Thames. With the exception of the last-named convention, they do not explicitly refer to First Nations' participation in environmental management, but have implications for Māori, stemming from the management-related obligations they impose on decision-makers.

Domestic Developments

The Crown and territorial authorities in Aotearoa have historically refused to recognise Māori values and interests in environmental management legislation. However, the 1991 RMA was seen as internationally ground-breaking in terms of sustainability-driven resource and environmental management law, and First Nations' legal provisions (Ericksen et al., 2003). The preceding decades had seen important developments that influenced this inclusion of Māori interests and values in legislation, these are considered now.

Māori renaissance

The above-noted developments in terms of recognising First Nations' knowledge and their place in environmental management were important factors in the advent of Māori values and concepts in planning legislation. But the significance of the part played by Māori and others in Aotearoa should not be overlooked. There has been much written on this subject (See for example Love, 2003; Ruru, 1997; Tipa, 2002). I discuss this material briefly here because the current legal recognition of Māori interests and values would not have eventuated without this sustained Māori pressure.

Perhaps the most significant driver for legislative provision for the recognition of Māori rights and values was the several decades of Māori activism that have become known as the 'Māori renaissance' (King, 1988). In the late 1960s and 1970s Māori were exposed to the ideas of racial and social equality espoused by black US civil rights campaigners and other minority groups. Māori witnessed and participated in appeals to the international community. Within these First Nations' groups and supportive international non-governmental organizations (NGOs), Māori linked their concerns with general human rights principles such as self-determination and non-discrimination (Anaya, 1995).

This period saw the birth of the so called 'Māori radicals', often educated and articulate young Māori determined to address the inequities suffered by Māori who were marginalised in their own country. Of particular note was Ngā Tama Toa (the young warriors), which grew out of Auckland University, largely in response to their own negative treatment and observations about the wider situation of Māori within an increasingly urbanised Aotearoa. These emerging young leaders pushed for fair treatment for Māori by the Crown, and in particular for a revival of Māori language and cultural institutions. They were also

disaffected with conservative Māori political structures that left able young people struggling to find work and with little influence in tribal decisions. Yet as Walker (1990 p. 243) observes:

Basically both radicals and conservatives pursued the same objectives of justice, resolution of Māori grievances under the Treaty of Waitangi, recognition of rangatiratanga and mana whenua, and an equal say with the Pakeha in the future of the country. The only difference between the radicals and the conservatives is the methods used by the radical.

This political consciousness, or ethnic mobilisation (Webster, 1998), was a catalyst for protest movements, such as the Māori land march of 1975, and the occupations of Raglan golf course in 1977 and of Bastion Point in 1978. These occupations were responses to Māori land being taken by the government in the 1940s and 1970s. However, both had significance beyond the land immediately involved, and drew widespread public attention, and support from Māori and many non-Māori from across the country. As such they can be characterised as more than simply land protests, but rather part of a wider cultural struggle for Māori rights. Māori, encouraged by movements such as Ngā Tama Toa and the Waitangi Action Committee, brought their grievances to public attention through annual protests at Waitangi Day commemorations (national holiday commemorating the signing of the Treaty of Waitangi). This intrusion on national ceremonial proceedings gained significant media coverage and helped elevate Māori issues in the public consciousness.

The influence of civil rights movements internationally, in particular the struggles for equality by First Nations and Black American groups, were of considerable influence in the events described above. These have relevance also in terms of First Nations' gains in environmental management participation. For example, the *Boldt Decision* previously discussed has been considered by First Nations' peoples who were involved in taking the legal actions, as coming from opportunities that evolved from US civil rights campaigns, and the set of social and political circumstances these created. Similarly, the significance of Māori advances for other First Nations should not be overlooked.

Māori education initiatives

The establishment of dedicated Māori education institutions received resistance from the community and from the Crown. The University of Auckland first established a Māori studies programme within its Anthropology Department in the late 1960's. When the University of Waikato sought to establish a Māori Research Centre aimed at addressing modern Māori issues and 'action research' it met with resistance from the Muldoon National government. Gould (Alcorn, 2014 p. 64) wrote of the Crown's concern about the centre's intention to undertake 'action research': 'Cabinet appears to have been afraid that the centre could develop a stance toward current Māori issues which would embarrass the government, and make the Māori problem worse rather than better'. When the Crown refused to help, the University put up seeding money, and a local trust, academics from around the country, and national and local Māori organisations funded the centre's establishment. Within several years similar centres opened at the Universities of Victoria and Canterbury.

Despite such resistance, by the mid-1980s Māori had pushed for funded full-immersion education. The first kōhanga reo (pre-school) opened in 1982, and 100 more in the following year (Calman, 2015). These were initiated locally, and followed by kura kaupapa (primary schools), whare kura (secondary schools) and whare wānanga (Māori universities). They located Māori knowledge, world views, and educational approaches as central and normal, resulting in generations of young Māori that grew up culturally strong, and clear about the legitimacy of Māori values and views. As observed by Mead (1996 p. 204), the revitalisation of Māori language brought with it the revitalisation of Māori forms of knowledge and the debates which accompany them.

These advances elevated expectations by Māori in terms of recognition of the validity and relevance of their values in wider contemporary Aotearoa, including in resource management. Māori aspirations for greater control over their lives were given expression in Māori terms, with calls for recognition of rangatiratanga (chiefly authority or sovereignty), and mana motuhake (self-determination) seen as being sanctioned by the Treaty of Waitangi (1840). The Māori renaissance reflected, and resulted in, Māori determination to have more control over the institutions directly affecting them.

Treaty of Waitangi rights

I previously discussed the treatment of customary rights under law, observing that international jurisprudence is of relevance to Māori in Aotearoa. Treaty rights internationally were discussed, along with the operation of both customary and treaty-derived rights, and the way the courts have treated these.

Te Tiriti o Waitangi was signed by some iwi in 1840 (Stokes, 1992 p. 176). In comparison, few Māori signed the English language version - the Treaty of Waitangi. Despite not all tribes signing, the Crown claimed the Treaty extinguished Māori sovereignty. Māori have consistently disputed any such intention, saying that the Māori language version did not cede sovereignty (translated as rangatiratanga), but a lesser form of governorship (kawanatanga).

After 135 years of colonisation in New Zealand, the legal treatment of the Treaty changed significantly with the establishment of the Waitangi Tribunal. The Waitangi Tribunal gave the ability to Māori to scrutinise Crown actions, and determine whether statutes breach Crown Treaty obligations.

In recent decades Treaty obligations have been expressed as ‘Treaty principles’. The High Court extracted the following principles relating to the RMA from findings of the Waitangi Tribunal and courts (Majurey et al., 2010):

- Partnership
- Mutual obligations to act reasonably and in good faith.
- Active protection of Māori interests
- Mutual benefit
- Development – The Treaty is to be adapted to modern, changing circumstances
- Rangatiratanga – Recognising iwi and hapū rights to manage resources or kaitiakitanga over their ancestral lands and waters

Over the last 30 years a Māori right to development has emerged in from the New Zealand courts and the Waitangi Tribunal, as a right under the Treaty (Gibbs, 2002). For example, *Ngāi Tahu Māori Trust Board v. Director-General of Conservation* (1995) Lord Cooke held that a ‘right of development of indigenous rights is indeed coming to be recognized in international jurisprudence’ although ‘not necessarily exclusive of other persons or other interests’.

Waitangi Tribunal reports have been pivotal for establishing a position from which iwi might oppose Crown actions, and negotiate claims settlements.

The Tribunal has investigated a range of contemporary environmental legislation, including the RMA. Its *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* (1989) wrestled with issues of Māori interests in natural resources prior to the RMA, finding that the retention of Māori ancestral lands, waters, and taonga was protected under Article Two of the Treaty.

While the Waitangi Tribunal is not a court, and its findings not precedent setting, in *New Zealand Māori Council v. Attorney-General* (1992) the Court of Appeal found that the Crown, as a Treaty partner, could not act in conformity with the Treaty or its principles without taking into account relevant recommendations by the Waitangi Tribunal. In later chapters I refer to Waitangi Tribunal reports with a bearing on resource management and the protection of Māori interests.

The Waitangi Tribunal compared Māori and other First Nations, including ex British colonies, in terms of relationships with post-colonial governments. It found that New Zealand is unique among post-colonial countries with which we are most often compared, in that our Parliament, courts, and the Waitangi Tribunal conceptualise the relationship between the Crown (as proxy for the state) and Māori as a partnership. This partnership should place Māori on a strong footing in terms of participation in environmental resource management. However, the preceding investigation of jurisprudence shows that Māori receive substantially varying treatment by the courts. Treaty rights in legislation have consistently been used as a 'political football', to garner popular support.

For example, in a similar manner to a bill proposed by the Act Party in 2005, one from the New Zealand First Party in 2006 sought to 'eliminate all references to the expressions 'the principles of the Treaty', 'the principles of the Treaty of Waitangi', and the 'Treaty of Waitangi and its principles' from all statutes. Amongst the claims made in the notes of the bill was that it 'surreptitiously created unrealistic expectations among Māori in relation to their entitlements from society'. This assertion reflects a lingering attitude in New Zealand that customary practices and interests are privileges rather than rights. National Party MP Nick Smith (2002) wrote of 'the nonsense of wahi tapu', pushing for the removal of all Māori values-related statutory provisions. Former National Party and Act leader Don Brash stirred up 'middle New Zealand' with his 'We Are All New Zealanders' speeches at Orewa (2005) and Whangarei (2004). Talk back radio and editorial columns exploded with racist Pakeha views.

The United Nations Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples found that ‘the Treaty’s principles are vulnerable to political discretion, resulting in their perpetual insecurity and instability’ (Anaya, 2010). Māori are acutely aware of the fragility of hard-won Treaty rights. The following discussion shows how these and Māori values and interests have been treated within legislation over the last 150 years or more.

Legislation Affecting Māori

The RMA cannot be considered in isolation; the Act operates within a myriad of other statutes and regulations. Apart from the RMA, I identified 29 statutes relevant to a study of Māori and environmental management, these are listed in Appendix D. Some, including fisheries legislation, the Conservation Act (1987), Reserves Act (1977) and 2002 LGA provide for the participation of kaitiaki in the management of ancestral lands and resources, and the ability to utilise Māori management methods, such as rāhui. I next discuss early Māori-specific legislation, the evolution of the RMA, and its linkages to related legislation.

Early Māori legislation

Since the Treaty of Waitangi, colonial and settler governments have enacted a raft of legislation concerning Māori and Māori resources. Amongst these several stand out for their effect of alienating Māori land and marginalising Māori. These are the Wasteland Act (1856), Native Land Act (1862), New Zealand Settlements Act (1863), and Public Works Act (1876). Each of these succeeded regional equivalents, for example the Land Claims Settlement Act (1856) and the Auckland Waste Lands Act (1867). There were a range of statutes limiting Māori access to or interests in natural resources, such as the Gold Fields Act (1858), Oyster Fisheries Act (1866), the Harbour Boards Act (1870), Fish Protection Act (1877), and the Auckland Gold Fields Proclamations Validation Act (1869).

Other legislation was aimed at quelling Māori resistance to colonial incursions into tribal areas, such as the Outlying Districts Police Act (1865), Confiscated Lands Act (1867), and Waikato Confiscated Lands Act (1880). Still further legislation was enacted to civilise the natives, undermine Māori social and legal institutions, and force Māori acceptance of colonial law and institutions. These included the Native Districts Regulation Act (1858), Native Circuit Courts Act (1858), Native Rights Act (1865), Native Commission Act (1865), Māori

Prisoners Trials Act (1879), Native Committees Act (1883), and the Tohunga Suppression Act (1907) (Ruru, 2012 p. 91; Waitangi Tribunal, 2011 p. 217).

The net effect of these various legislative instruments was to alienate or otherwise diminish Māori control over their lands and resources, and to undermine Māori institutions. While each of the examples provided above relates to the 19th century, similar legislative efforts continued in the 1900s. However, by this time Māori land tenure had been largely converted into European title, Māori land alienated, and traditional institutions substantially undermined. This was particularly the case in Hauraki, as was discussed in Chapter 3.

Resource management reform

The intervening second half of the 20th century was described earlier in this chapter. While there was a stream of planning-related statutes affecting Māori, Māori participation and values-related provisions in environmental management legislation first appeared in the Town and Country Planning Act (TCPA) of 1977. TCPA was ground-breaking, in that it recognised, as a matter of national importance, 'the relationship of the Māori people and their culture and traditions with their ancestral land' (section 3g). However the effect of the provision was narrow, in that ancestral land was limited to land remaining in Māori ownership.

Another major development occurred several years later; the international emergence of sustainability as an environmental management paradigm in the 1980s. The RMA was internationally ground-breaking legislation for entrenching sustainability in resource management law, and introducing 'effects-based' planning, which, rather than prescribe where activities could be located, sought to focus on managing environmental effects (Memon, 2007). The RMA delegated environmental decision-making to local authorities, so that decisions about the environment could be made by and for local communities, and the Act provided for public participation in decision-making (Peart, 2007 p. 1).

While sustainability was emerging in the 1980s internationally, Aotearoa was a world leader in introducing comprehensive resource management with sustainable management as its core purpose, preceding Agenda 21 (1992a) by a year. Agenda 21 and the Rio Declaration (United Nations Conference on Environment and Development, 1992b) enshrine sustainable development and recognise the role of First Nations to participation in environmental management.

There was significant Māori legal action in the decades preceding the RMA reforms, and since, including important Privy Council decisions. I discuss these in Chapter 9. Those drafting the RMA Bill were mindful of this, and in the process of developing the RMA, Māori groups with legal and planning capacity lobbied for recognition of Māori in the legislation. They made representations to the Working Party on Environmental Administration and subsequently lobbied parliament as the Act and new administrative procedures were being fashioned. Issues included unresolved Treaty claims to the ownership of resources. While Māori were not provided with representation on the Working Party, they were given the opportunity to engage via a series of hui, or by written submissions to the Bill. The Waitangi Tribunal (which seldom has positive things to say about the RMA) referred to an 'extensive dialogue with Māori' (2011 p. 109).

The Resource Management Act (1991)

The RMA has a single purpose, to promote the sustainable management of natural and physical resources. The Act replaced the previous planning tribunal with a new Environment Court, and allocated various responsibilities under the Act between the Minister for the Environment, DoC (relating to the coastal marine area), regional councils, and local councils (including unitary authorities that combine regional and local functions). A new Environmental Protection Agency was established in 2009, to hear cases considered to be of national significance.

RMA Māori provisions

The Māori provisions in the RMA that have received the most attention are within Part 2 of the Act, entitled 'Purpose and Principles', being sections 6e, 7a and 8.

Section 6e requires decision-makers, as a matter of national importance, to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. Section 6 also includes two other Māori-relevant requirements. Section 6f, added in 2003, requires decision-makers to recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development, while 6g, added in 2005, requires the protection of recognised customary activities. Section 7 includes eleven 'other matters' to which decision-makers must have 'particular regard', including 7a, kaitiakitanga, and section 8 requires decision-makers to take into account the principles of the Treaty of Waitangi.

In its *Ngawha Report* the Waitangi Tribunal (1993 p. 143) considered the RMA in detail, and criticised the weight given to Māori matters:

...s6 imposes a mandatory obligation on decision-makers to 'recognise and provide for' matters of 'national importance'. Section 7 has less injunctive force; decision-makers need only have 'particular regard' to 'other' matters (which in turn are presumably of less than national importance). Section 8 in turn merely requires decision-makers to 'take into account' Treaty principles. All of these matters are subordinate to the over-riding importance of achieving the central purpose of sustainable management of resources (s5).

Apart from sections 6e and 7a, and 8 there are 28 other non-Māori-specific matters that decision-makers have to balance in reaching decisions. It is not surprising therefore that Māori values and interests seldom prevail in the RMA decision-making balancing exercise. This legal necessity to treat Māori rights within the context of the entire RMA must, logically, serve to dilute Māori rights over time (Campbell, 2009). It was criticised by the Waitangi Tribunal in its Wai 262 report (2011 p. 195) and its report on the shipwrecked *Rena* (2014 p. 7).

Interpretation

The quality of interpretation of Māori terms in legislation is an important factor in the experience of Māori under the RMA. In addition to a few Māori concepts that are explained in text, the RMA includes the following interpretations:

- ‘Kaitiakitanga’ means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship;
- ‘Maataitai’ means food resources from the sea and ‘mahinga maataitai’ means the areas from which these resources are gathered;
- ‘Mana whenua’ means customary authority exercised by an iwi or hapū in an identified area;
- ‘Tangata whenua’, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area;
- ‘Taonga raranga’ means plants which produce material highly prized for use in weaving;
- ‘Tauranga waka’ means canoe landing sites:

- ‘Tikanga Māori’ means Māori customary values and practices: and
- ‘Treaty of Waitangi’ has the same meaning as the word Treaty as defined in section 2 of the Treaty of Waitangi Act 1975.

Several Māori law authors have noted that explaining Māori concepts to non-Māori audiences is no easy task (Durie, 1994 p. 456; Tohe, 1998 p. 886). While statutory interpretations are necessarily concise, the adequacy of those in the RMA (and in other contemporary legislation) has been challenged (see for example Latimer, 2011; Wevers, 2011). The Waitangi Tribunal has criticised the Māori interpretations in the RMA as being too narrow in its *Rekohu Report* (2001a), and again in its *Wai 262 Report* (Waitangi Tribunal, 2011).

Sections facilitating iwi involvement in management

Some of the most powerful joint management tools available for councils and iwi are RMA section 33 transfers of powers and functions, and section 34 delegations. Section 33 was developed in conjunction with the Runanga Iwi Act (1990), which outlined the essential characteristics of an iwi authority. Together, these legislative changes sought to accord formal status of iwi authorities and iwi management plans, and increase the role of Māori in resource management.

However, as pointed out by Clark (2003 p. 44), the Resource Management Bill Review Group recommended the clause be modified, and the government followed that recommendation. But the incoming Labour government axed the Runanga Iwi Act in 1991 and removed the context in which section 33 had been created. Iwi authorities were one of many public authorities to whom councils were able to transfer powers. Section 34 allows councils to delegate council functions and authorities to committees of councils, including Māori committees or joint committees, or to individuals. Section 36 was introduced in 2005 providing for joint management agreements in relation to natural or physical resources (new sections 36b to e) (Ministry for the Environment, 2005).

The RMA provides other resource or place-specific management mechanisms, the ability to be Heritage Authorities under section 188, and to employ heritage orders through district plans under section 189 of the Act to protect the heritage qualities of a particular place or structure.

The various management arrangements available under the RMA have, with a few exceptions, never been tested as Māori or Māori/Council management arrangements because councils have refused to give away authority. Explaining

this, Rennie et.al. (2000 p. 34) observed that for local authorities, section 33 is generally viewed passively as permissive legislation, transfers are permitted, but entirely at their behest. But for iwi and the law-makers, section 33 is active enabling legislation, potentially enabling councils and iwi to give effect to iwi rangatiratanga and kaitiakitanga roles.

Enabling it was not; the process was poorly set up and there was no prescribed application process so councils could dictate the terms of applications, and turn them down summarily. This was widely criticised by the courts (Clark, 2003; Rennie, 2007). The Waitangi Tribunal (2011 p. 113) wrote that in the 20 years since the enactment of the RMA sections 33 and 108 had never been invoked in favour of iwi, despite multiple attempts to do so. It noted that there appeared to be nothing that iwi could do to achieve their use, and that given the thorough infusion of Māori values into Part 2 of the Act, this must be seen as major gap in the Act's credibility.

Instead of these RMA instruments councils have preferred lesser arrangements like heads of agreements, or memoranda of understanding. But these are informal and unenforceable statements of shared understandings or intent, designed as non-binding preliminary agreements. Each is widely used in commerce, but increasingly becoming defacto iwi-council relationship vehicles.

Engagement and participation

There are numerous provisions in the RMA requiring council engagement with iwi. Some are process-specific, such as plan drafting, zoning, and structure plans, and councils must engage with Māori when their proposed activities give rise to sections 6e, 7a and 8 matters.

Māori committees, sometimes called mana whenua forums, are an increasingly popular form of Māori engagement. These sometimes receive devolutions of powers or functions (section 34 described above), and are a convenient means for councils to engage tangata whenua collectively. Some councils have established operational level 'kaitiaki' forums, engaging iwi environmental representatives. With the exception of kaitiaki forums, many mana whenua committees are constituted primarily under the LGA rather than the RMA, however they clearly serve a number of purposes across multiple statutes.

Resource consents

Resource consents are a requirement for any activity that is not classified as a permitted activity under applicable RMA plans. The resource consent process is required to ensure that effects from an activity will not have more than minor effects. They are the area of the RMA that has caused greatest concern to Māori.

Councils have discretion on whether to consult with Māori about resource consents. Since amendments to the RMA in 2009 section 36a stipulates that there is no duty to consult with any party about resource consent applications or notices of requirement. Despite 36a councils are required to consult with any affected parties, and this often includes tangata whenua. Compelling arguments can be made that Māori are widely affected by resource consents in their rohe, and that consultation should be mandatory. However, as discussed in Chapter 8, there is substantial variation for the extent that iwi are engaged.

Although successive governments have refused to require iwi consultation under the RMA, some councils have pushed back. For example, Auckland Council's Proposed Unitary Plan included ground-breaking provisions for Māori engagement when effects from resource consents are likely to arise. Where councils are willing, they can stop proceedings under section 92 and require applicants to demonstrate that they have engaged with iwi or other parties deemed affected by a proposal. This power was routinely exercised by Franklin District Council before it was replaced by the Auckland Council in 2011.

Under section 92(2) councils can insist on reports being furnished about any matter for which further information is deemed necessary, including for effects on Māori. Where an applicant fails to respond councils are able to commission a report themselves. This is one means that councils have used for compelling reluctant consent applicants to engage with affected iwi (Kennedy, 2009b). Under section 95e consent authorities decide if a party is affected, and if adverse effects are likely to be more than minor (95d). However, this responsibility is often placed on junior planning staff, and consents signed off on the basis of their advice. Under sections 95f and 95g councils are required to take into account effects on any protected customary rights group, and the status of any marine customary title holding group.

The RMA also deals with resource allocation, for example that in the coastal marine area (part 7a, Occupation of common marine and coastal area, sections 165g and h on allocation methods), with geothermal resources, and water

(section 14). These sections and others also include recognition of various cultural rights, including in geothermal resources. Most councils, however, do not employ the above options. These provisions are considered further in Chapters 7 and 8.

Legislative change

Following the 2011-2016 National Government's agenda to 'simplify' the RMA, many consenting authorities undertake minimal engagement with iwi, or the public. Applicants generally consult only to the extent necessary to placate councils and streamline the granting of consent. Prior to the proposed reforms, amendments aimed at 'streamlining' and 'improving' the RMA took place in 1993, 94, 96, 97, 2002, 03, 04, 05, 07, 09, and 2013. One of the most commonly claimed motivations for amendment was the need to reduce administrative delays, purportedly resulting from public notification. Publically notified consents require a hearing unless they receive no opposing submissions, thereby incurring costs and delays for applicants. However, nationally notified consents represent only 5 per cent of all consents, dropping to 3.7 per cent in the 2010/11 reporting period, the lowest level since reporting on this measure began in 1997. There has been a corresponding small rise in limited notification (which only involves immediately affected parties) from 0.7% in 2003/04 (when they were introduced) to 2.3% in 2010/11 (Ministry for the Environment, 2011 p. 15).

In its submission on the 2009 proposed amendments, Te Hunga Roia Māori o Aotearoa (2009 p. 3) (the Māori Law Society) observed that of the 52,000 resource consents processed by councils each year, 73% are processed within statutory timeframes. Rather than delays resulting from notification or public participation, as claimed by the National led Government, Te Hunga Roia Māori stated that delays are more often due to inadequate resourcing of councils, pointing out that proposed amendments did nothing to address this. Despite this the Crown proceeded with the amendments in 2009, removing the RMA's (almost universally ignored) presumption that consents be notified, and allowing councils even greater discretion to deny public and Māori participation under the Resource Management (Simplifying and Streamlining) Amendment Act (2009).

Streamlining efforts have sought to reduce the incidence of Environment Court appeals, the declared rationale has been to manage frivolous and vexatious appeals (Smith, 2009 p. 3), although there was no evidence that these were common and the RMA provided the ability for the courts to strike out such

appeals. As proof that such procedural issues don't act as an impediment to development (as argued by the Crown), in 2010/2011 only 0.6% of resource consents were declined, dropping to 0.3% by 2012/2013 (Ministry for the Environment, 2014). Just 1% of consents granted are appealed, generally those for large projects (Te Hunga Roia Māori o Aotearoa, 2009).

Little evidence or analysis was provided to support a need for the various reforms, as stated by former Prime Minister and experienced environmental lawyer Geoffrey Palmer (2013 p. 29):

These growing restrictions reflect an attitude towards public participation and the judicial process as being impediments to development, rather than means to ensure that development decisions are sustainable. Senior lawyers have argued that the weight given to environmental considerations under the Act will reduce while the weight given to development considerations will increase.

The public exclusion path pursued by the Crown led to a loss of opportunities for compromise to proposals that would avoid or minimise effects from developments on neighbours, Māori, the wider community, and the environment. Notably in 2015 and 2016 the Crown consulted over proposed changes to Te Ture Whenua Māori Act (1993) and in 2016 began consultation over a streamlining bill for the Conservation Act (1987), stated to be in part intended to bring it in line with the previously streamlined RMA.

Other legislation relevant to Māori environmental management

There are at least 29 contemporary statutes relevant to Māori participation in environmental management (listed in Appendix D, p. 361). Many feature strong Māori provisions, including some relating to participation in management and co-management. Yet, as explained in Chapters 8 and 10, and widely reported (Hauraki Gulf Forum, 2010; Independent Māori Statutory Board, 2011; Tahana, 2012), few of the available instruments are used. The acts interrelate with the RMA in a complex tapestry, overlapping functionally and geographically. I briefly describe pertinent aspects of a few of these statutes, to illustrate their relevance to Māori environmental management.

The Conservation Act (1987) has considerable overlap with the RMA, for decisions relating to waterways and the coastal marine area, even outside the

Conservation estate. Section 4 of the Conservation Act states: 'This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi'. This is the strongest Treaty provision in legislation. While DoC is the primary agency responsible for the Act, it has wider effect. Reserve administering authorities are required to interpret and administer the Reserves Act (1977) in accordance with Section 4, because it is listed in Schedule 1 of the Conservation Act. Conversely, DoC has important Māori-relevant functions under the RMA (for example the publication of the New Zealand Coastal Policy Statement) and DoC has the primary statutory responsibility to advocate for environmental and heritage conservation on behalf of the Crown.

Fisheries legislation has gone further than the RMA in incorporating Māori customary management approaches, as a result of Treaty of Waitangi claims taken by Māori in the 1980s and 90s. For example, the Treaty of Waitangi (Fisheries Claims) Settlement Act (1992) and Fisheries Act (1996) enable customary fisheries officers to issue permits for cultural harvesting. They allow for the establishment of taiapure (local fisheries management areas established over estuarine or coastal waters and managed by committees nominated by tāngata whenua under authority from the Minister of Fisheries) and mātaihai (Government formalised traditional fishing grounds, intended to recognise use and management practices of Māori in the exercise of non-commercial fishing rights), and empower Māori to declare rāhui (traditional closures of depleted fisheries) backed by the Ministry of Fisheries.

The Foreshore and Seabed Act (FSSBA, 2004) and its successor, the Marine and Coastal Area (Takutai Moana) Act (MACA, 2010), both include Māori customary rights instruments. The 2004 Act was passed hastily following the Court of Appeal finding (*Ngāti Apa v. Attorney-General*, 2003) that the Māori Land Court has the jurisdiction to determine whether the foreshore and seabed are Māori customary land under Te Ture Whenua Māori. That decision caused a public backlash, stirred up by false claims that Māori would have the power to exclude Pakeha New Zealanders from long stretches of the coastline (Williams, 2004). The FSSBA was seen by some as the Labour Party pandering to public demands. For example Pakeha Auckland University Professor of Law Jane Kelsey (2006) said at the national Waitangi Day celebrations 'This assertion of sovereignty allows political parties to turn the clock back on advances of the past 20 years overnight, as they compete with each other for the redneck vote'.

Hauraki and other iwi strenuously fought the FSSBA, saying that it was discriminatory and extinguished customary rights (Greensill, 2005; McMeeking, 2005; Te Aho, 2005). In particular the Act prevented them from going to the Māori Land Court for determination of ancestral interests, leaving decisions at the Crown's discretion. The Waitangi Tribunal (2004) and the UN Special Rapporteur on the human rights and fundamental freedoms of Indigenous People (Rishworth, 2012) were highly critical of that legislation, seeing it as extinguishing Māori customary rights. But the Crown refused to repeal or amend the legislation.

One result of the FSSBA was section 6 of the RMA being amended to add 'the protection of recognised customary activities' as a matter of national importance, to be recognised and provided for when exercising RMA functions and powers. The 2010 Act further amended RMA sections 104(3)c and 119, requiring that a resource consent or coastal permit must not be granted for activities that will, or are likely to, have a significant adverse effect on a recognised customary activity, unless the customary rights order holder grants approval. This has been seen as the closest thing to a Māori power of veto under the RMA (Wells, Somerville, & Scott, 2010). However, customary rights orders are difficult to obtain, requiring proof of near uninterrupted occupation and use of an area, where (in the case of Hauraki) almost all Māori land has been alienated.

The Historic Places Act (1993) (HPA) was responsible for Māori historic heritage protection, operating in tandem with the RMA until replaced by the Heritage New Zealand Pouhere Taonga Act (2014). Under both Acts authority is required to modify or destroy heritage sites, the effects of which are often argued in resource consent applications. Appeals are heard by the Environment Court. The HPA established the Historic Places Trust (HPT, rebranded Heritage New Zealand in 2014), where three of 11 members must be Māori. It also created the Māori Heritage Council, whose functions including ensuring the Trust meets the needs of Māori in a culturally sensitive manner and developing Māori programmes for the identification and conservation of Māori historic heritage.

The 2002 LGA is also of particular interest, in that it is the primary guiding legislation for councils also charged with administering the RMA. The LGA provides avenues for Māori participation in decision-making (sections 76 to 81), and promotes resourcing participation and building Māori capacity to participate (section 81(1)b). In this regard the LGA surpasses the RMA, which intends building Māori capacity but offers no direction for this. There are other

provisions in the LGA of relevance to Māori engagement. For example, section 77, 'Requirements in relation to decisions', stipulates councils must do in the course of decision-making. Section 77(1)c reflects RMA section 6e, directing that:

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

The RMA and LGA share common jurisdictional boundaries. However, boundaries for other environmental management-related legislation do not necessarily align with RMA ones, reducing the likelihood of a coordinated management effort. Furthermore, iwi rohe boundaries have never factored in the Crown's determinations of statutory boundaries.

As an example, the Marutūahu rohe extends across many jurisdictions, including council districts and regions, DoC conservancies, and the HGMP, as illustrated in Figure 6.1 (next page). However, Figure 6.1 shows a partial picture, as various other environmental management-related administrative boundaries overlap those shown. Jurisdictional boundaries include Electoral Act electorates and local boundaries, Fish and Game council regions, Waitangi Tribunal claims investigation and settlement areas, Civil defence areas, Health board districts, HPT regions and areas, Fishery Management Areas, Aquaculture Management Areas, and Ecological districts.

These boundaries criss-cross the landscape, resulting in a myriad of intersecting and overlapping jurisdictions, as seen in Figure 6.1. Yet few are cognisant of Māori interests despite cutting across iwi rohe. Some boundary lines are offensive. For example, until recently the line between the Waikato and Auckland regions followed a series of redoubts that mark colonial forces advances against Waikato Māori, including Ngāti Whanaunga, in the 1870s.

The above analysis of legislation related to the RMA reveals the statutory complexity of environmental management in Aotearoa. Territorial authorities, DoC, and other authorities have various and overlapping management roles.

Within this statutory environment iwi, often with minimal capacity, assert their right to participate, and try to navigate their way through a myriad of inter-related statutory provisions and processes. If this is the legislative intent for Māori

environmental rights, how well is it implemented in practice? That is the aim of the next chapter – assessing plan effectiveness for Māori.

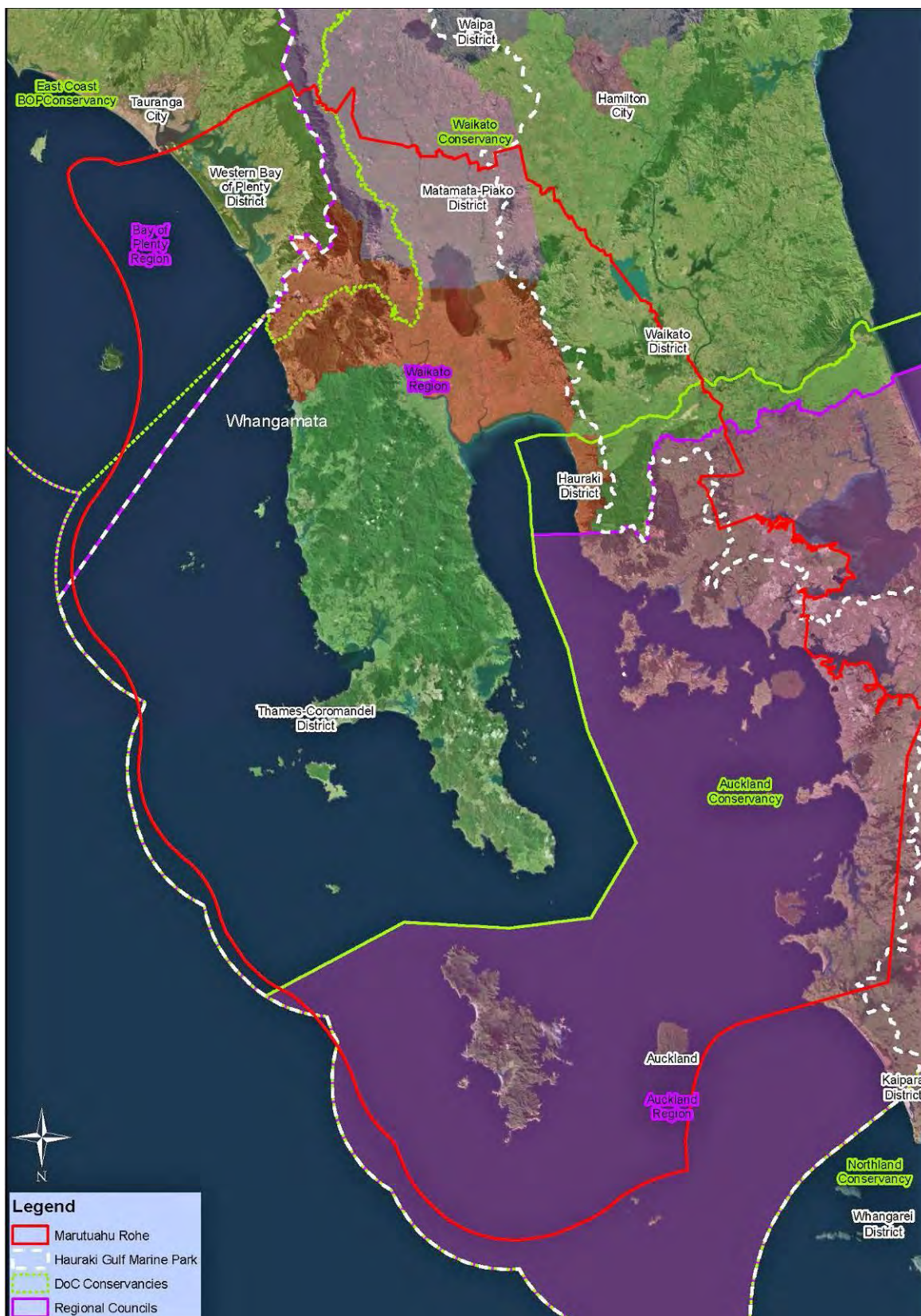


Figure 6.1. The Marutūahu rohe in relation to the Hauraki Gulf Marine Park, DoC conservancies, and regional and district council boundaries.

Chapter 7 - Assessing plan effectiveness for Māori

Ka pū te ruha, ka hao te rangatahi

As the old net becomes tattered and torn it is time to cast out the new one in its place.⁵

In Chapter 7, I focus on policy statements and plans produced under the RMA and related environmental legislation, and consider their relevance for Māori. I provide a summary of the various plan types, examine their operation in spatial terms, and explain the hierarchy in which they operate. I then evaluate Māori provisions within five plans operating in the case-study area, to determine their combined effectiveness for empowering Māori efforts at participation in environmental management, and for enabling positive outcomes.

Using the PUCM plan evaluation methods described in Chapter 2, I assess the quality and extent of Māori provisions in my five case study plans for three tikanga: manu whenua, mauri, and wāhi tapu. I compare the results with those from the PUCM nation-wide assessment of plans. Finally, I briefly consider second generation plans, highlighting innovative provisions for Māori. This chapter presents findings from Research Objective 3, being: ‘to evaluate how legislative Māori provisions are given effect in environmental resource management statutory policy statements and plans’.

RMA Statutory Plans

RMA statutory instruments include (in descending hierarchical order): national policy statements (including the NZCPS), national environmental standards, regional policy statements, regional plans, regional coastal plans, and district plans. Unitary plans (produced by unitary authorities) combine regional and district-level policy statements and plans.

⁵ A whakatuaki (proverb) symbolic of the periodic need for new leadership. I liken fishing nets to plans, referring to the current phase of New Zealand councils 'casting out' 2nd generation plans.

In brief, national policy statements state objectives and policies for matters of national significance. National environmental standards prescribe technical standards, methods or other requirements to secure consistent minimum environmental standards nationally. Regional policy statements provide an overview of the resource management issues of a region, and set the policy framework for achieving integrated management of the region's natural and physical resources. Regional plans contain guidance and rules for the use, development and protection of regional natural and physical resources, including discharges to the environment and the use of the CMA. Councils can produce integrated or separate plans for specific resource management issues, including coastal plans. Finally, district plans contain objectives, policies and rules to address resource management issues within the district. All regional and district instruments are intended to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

There is a range of additional statutory and non-statutory plan types under the RMA and related legislation relevant to Māori and environmental management. Administrative agencies include local and regional councils, DoC, MfE, the Ministry of Fisheries, and the Department of Internal Affairs. As an example of plan interplay, land managed under the Conservation Act (1987) is exempt from rules in district and regional plans if activities are consistent with a DoC conservation management strategy, or conservation management plan.

Notwithstanding this legislative cross over, I focus here on the RMA statutory plans described above, with the exception of national environmental standards, as these contain no Māori-specific provisions.

Relationships between statutory instruments

As noted by the Supreme Court in *Environmental Defence Society v. New Zealand King Salmon* (2014), statutory plans ‘form an integral part of the legislative framework of the RMA and give substance to its purpose by identifying objectives, policies, methods and rules with increasing particularity both as to substantive content and locality’. The RMA directs that council plans not be inconsistent with those of neighbouring councils. For example, section 61.2b requires that when preparing or changing a regional policy statement, a regional council shall have regard to the extent to which the regional policy

statement needs to be consistent with the policy statements and plans of adjacent regional councils. Councils, in drafting plans, must take into account relevant planning instruments from other jurisdictions, and cross-boundary issues, to the extent that their content has a bearing on resource management issues of the district/region (sections 61.2.a.i, 66.2.c.i and 74.2.b.i).

RMA plans must recognise issues for Māori, objectives and policies for responding to these, and provisions giving effect to sections 6e, 7a and 8 of the Act. Additionally, regional instruments must include recognition of iwi environment plans, customary rights arrangements, and statutory acknowledgements in Treaty deeds of settlement.

Lower order plans must 'give effect to' objectives and policies specified in higher order instruments (sections 55.2.b, 65.6, and 75.3), but (prior to 2011 RMA amendments) they were required to be 'not inconsistent with' higher plans. A district plan may not be inconsistent with a water conservation order or a regional plan (section 75.4); a rule or resource consent can be more stringent than a national environmental standard (section 43.b.1), but may not be more lenient (section 43.b.3); and a water conservation order prevails over a less stringent national environmental (section 43.c.1). A rule is more stringent than a standard if it prohibits or restricts an activity that the standard permits or authorises, while a resource consent is more stringent than a standard if it imposes conditions on an activity that the standard does not impose or authorise.

In general terms, plan provisions can lend weight to legislative ones, but cannot elevate them beyond levels determined in legislation (P. Majurey, personal communication, 18 July, 2013). For example section 8 requires decision-makers to 'take into account' the principles of the Treaty, therefore a plan may not require that decision-makers instead 'recognise and provide for' Treaty principles.

Spatial relationships of plans

Most of the statutes described in Chapter 6 as relating to Māori and environmental management have their own plans. Therefore, in addition to understanding the RMA plan hierarchy, it is necessary to understand the way plans operate spatially. The geographic operation of RMA and fisheries plans across a single region is shown in Figure 7.1 on the following page.

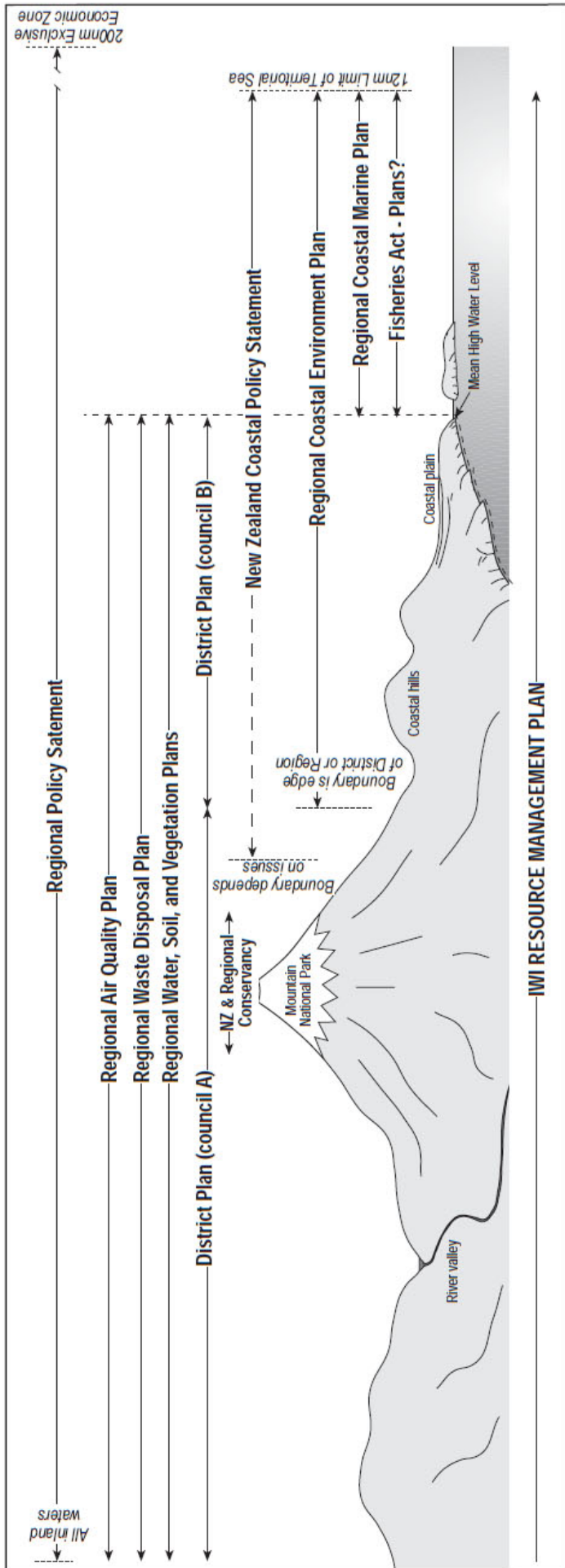


Figure 7.1 Representation of the spatial operation of RMA plans. From *Resource Management, Plan Quality, and Governance* (Ericksen, Crawford, Berke, & Dixon, 2001) Copyright (2001) by Ericksen et.al. Reprinted with permission.

However, in practice the landscape is overlaid by numerous boundaries from other environmental legislation. Figure 7.1 is complicated further by the existence of non-statutory plans, including harbour, catchment management, community, land transport, and spatial plans.

This statutory complexity presents a substantial barrier to Māori participation in the management of their ancestral lands, despite the RMA being intended to simplify planning in New Zealand by consolidating 54 prior resource management-related Acts (Gleeson & Grundy, 1997).

Evaluating the effectiveness of the case–study plans

For the purposes of this study, RMA statutory plans operating in Whangamatā are the 1994 NZCPS, Waikato Regional Policy Statement (WRPS, notified 1993, operative October 2000), Waikato Regional Plan (WRP, notified September 1998, operative September 2007), Waikato Regional Coastal Plan (WRCP, notified 1994, operative October 2005), and Thames-Coromandel District Plan (TCDP, notified December 1999, operative November 2010). Plans become effective on the date of notification, except those provisions that are subject to challenge, which become operative once all challenges are resolved.

In Chapter 2, I explained that I adapted the PUCM plan assessment method for the purpose of Māori-specific evaluation. Unlike the PUCM approach, I categorised criteria for evaluating plan effectiveness for Māori according to plan quality and extent.

I assessed quality of plans against six criteria (presented in Table 7.1, next page), and I assessed extent (the degree to which provisions extend across and between plans) against five criteria (presented in Table 7.2, next page). For both sets of criteria the score weightings shown reflect my own understanding of the influence each factor has on plan effectiveness for Māori.

In the plan analysis I first present quality-related findings for each of three tikanga. I then do the same for extent-related findings. I briefly explain how I arrived at scores, highlighting notable plan provisions. The length of explanation for each of the evaluations varies, to reduce repetition. Thus, plan scores for mana whenua are presented in Figure 7.2 (p. 146), for mauri in Figure 7.3 (p. 162), and wāhi tapu in Figure 7.4 (p. 175), overall plan effectiveness scores are shown in Figure 7.5 (p. 186), and combined scores by tikanga in Figure 7.6 (p. 187).

Table 7.1 - Evaluation criteria - quality of plan provisions for Māori		
Criteria	Explanation	Score
1. Strength of wording	Do provisions provide strong direction? Are provisions unreasonably qualified? Can provisions be applied to varying situations, and is the purpose of provisions clear?	20
2. Interpretation and explanation provided	Is an adequate explanation provided? This should include local Māori explanations of the significance of the tikanga.	5
3. Identification of issues	Are all relevant issues relating to the tikanga identified, including region or district-specific ones?	5
4. Fact base	Is adequate supporting information provided? E.g. maps, tables, information references, citation of methods, cost-benefit.	5
5. Related plan provisions	Do other plan provisions, including non-Māori ones, contribute toward outcomes in relation to each tikanga?	10
6. Identification of potential effects	Are effects on tikanga, that may arise from activities the plan governs, identified and explained?	5
	Maximum total score	50

Table 7.2 - Evaluation criteria - extent of plan provisions for Māori		
Criteria	Explanation	Score
1. Plan cascade	Are tikanga-specific high-level issues adequately supported by policies, methods, monitoring requirements, and statements of anticipated results	15
2. Pan logic mapping (N/A for NZCPS)	Are clear links provided between related plan provisions, both in terms of the cascade, and between relevant sections? Is the plan easy to navigate?	10
3. Internal consistency	Clarity of relationships between related plan parts (issues, to policies, policies to methods, etc.).	10
4. Links made with equivalent provisions in higher order instruments	Are planning instruments properly compliant with RMA requirements to either give effect to or be consistent with higher order instruments? Do they strongly direct lower plans?	10
5. Integration with neighbouring plans (N/A for NZCPS)	Are provisions consistent with those of neighbouring plans? Are there explicit references to equivalent provisions?	5
	Maximum total score	50

Assessing plan effectiveness - mana whenua results

Mana whenua provisions I expected to find in plans included Treaty of Waitangi references, introductions to the iwi of the area, an explanation of mana whenua and their tikanga, provisions dealing with relationships and engagement, iwi capacity building, and Māori participation in management. Most of these elements were found in each plan, but strength of wording, level of detail, and accuracy varied. As the Waitangi Tribunal (2011 p. 110) asked regarding the operation of the RMA, can the voice of mātauranga Māori be heard?

Mana whenua scores varied little across the five plans, each scoring over 25/50 for plan quality, with overall effectiveness suffering from low extent scores. Consequently only three plans scored above 50% overall, as shown in Figure 7.2.

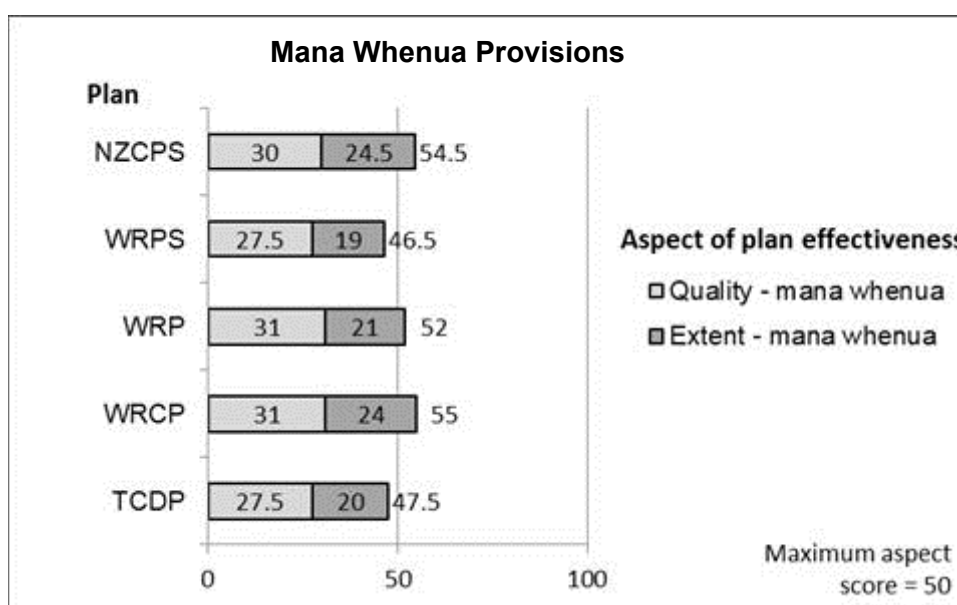


Figure 7.2 Effectiveness of mana whenua provisions in case-study RMA plans.

Mana whenua effectiveness - New Zealand Coastal Policy Statement

The NZCPS scored 54.5/100 for the quality of its mana whenua provisions, second highest of the five plans. The scores for each criteria are presented in Table 7.3 (next page), alongside the maximum possible score. This is followed by my quality and extent evaluation. This format for presenting results is used for each plan and each tikanga.

NZCPS quality evaluation

The NZCPS scored 30/50 for the six mana whenua quality-related criteria, with a mix of high and low criterion scores, shown in Table 7.3.

Table 7.3 – NZCPS Plan Effectiveness - Mana Whenua			
	Criteria	Max	NZCPS
Quality	Strength of wording	20	15
	Interpretation and explanation provided	5	2
	Identification of issues	5	2
	Fact base	5	1
	Related plan provisions	10	7
	Identification of potential effects	5	3
	Quality subtotal	50	30
Extent	Plan cascade	15	8
	Plan logic mapping	10	N/A
	Internal consistency	10	4
	Links made with equivalent provisions in higher and lower order instruments	10	5
	Integration with neighbouring plans	5	N/A
	Extent subtotal (factored by 50/35 to adjust for NZCPS N/A criteria)	50	24.5
	Plan Effectiveness – Mana Whenua	100	54.5

It scored only 2/5 for a minimal interpretation and explanation of Māori values and perspectives. Instead, the NZCPS cited the Māori provisions in RMA sections 6 and 7, listing eight principles to which regard shall be had. It scored 2/5 for identification of mana whenua-related issues, and only 1/5 for its fact-base. The NZCPS was a short document, and it may have been intended that factual supporting information would be provided by lower order plans. However, recent national policy statements have included substantially more factual data. The NZCPS was the first attempt at a national policy statement, having being released soon after the enactment of the RMA, and its flaws were apparent when compared with national policy statements produced 17 years later.

For the remaining three quality-related criteria the NZCPS scored highly. Chapter 2 (of seven) was the single Māori-specific chapter, containing three policies. Policy 2.1.1 encouraged identification of characteristics of the coastal environment of special value to tangata whenua, and policy 2.1.2 directed that characteristics of the coastal environment of special value to the tangata whenua should be protected in a manner determined by tangata whenua. Both stated that implementation should be undertaken ‘in accordance with tikanga Māori’, an important recognition of the legal status of native title and customary practices. Policy 2.1.3 said that where characteristics of special value to tangata whenua have been identified, councils should consider transfers or delegations of

functions and powers. In combination these were wide-scope and potentially empowering policies, but were qualified by the use of ‘should’ rather than ‘will’.

The second half of Chapter 4 (the Crown’s interest in the CMA), was called ‘Taking into Account the Principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in Land of the Crown in the Coastal Marine Area’. It had two Māori-specific policies, Policy 4.2.1 read ‘All persons exercising functions and powers under the Act in relation to land of the Crown in the coastal marine area shall recognise and facilitate the special relationship between the Crown and the tangata whenua as established by the Treaty of Waitangi’. This imposed an active duty, additional to that in the RMA, and as discussed in (my) Chapter 6, the relationship of Māori and the Crown is a partnership. Policy 4.2.2 laid down wide-ranging guidelines that those exercising functions and powers under the Act ‘should’ follow. Four of the six non-Māori-specific chapters included mana whenua-relevant provisions, scoring 7/10 for this criterion. Policy 1.1.3 stated that it is a national priority to protect features that are essential or important elements of the natural character of the coastal environment, including ‘characteristics of special spiritual, historical or cultural significance to Māori identified in accordance with tikanga Māori’. The NZCPS therefore scored 15/20 for strength of wording and 3/5 for its identification of effects.

NZCPS extent evaluation

Only three of the five extent criteria applied to the NZCPS (7, 9 and 10). This is because the plan was so short that it required no navigation aids beyond the table of contents (#8), and it had no neighbouring equivalents (#11). The three remaining criteria gave a maximum of 35 points, while the five criteria totalled 50. To provide a score comparable with the other four plans, the NZCPS total was multiplied by 50/35. This provided an assessment of each plan in terms of its form and purpose. Rounding to the nearest half resulted in a comparable score of 24 out of 50 as shown in Table 7.3 (previous page) and in Figure 7.2 on page 146.

Plan methods and monitoring provisions are evaluated as aspects of extent, because methods are the means by which councils put plans into action. The NZCPS did not include methods, consistent with its role, but directed councils to incorporate methods in plans to give effect to its policies. Its Chapter 7 included three policies stipulating procedures and methods to review the NZCPS and

monitor its effectiveness. The first two required an independent review of the effectiveness of the NZCPS (policy 7.1.1), the Minister of Conservation to monitor its effectiveness in achieving the purpose of the RMA by assessing the effect of the NZCPS on subordinate regulatory instruments, and cooperation with regional councils and ‘other interested bodies’ to establish a national state of the coastal environment monitoring programme (policy 7.1.2). The third, policy 7.1.3, was less directive. It said that council policy statements and plans ‘should’ identify the procedures and methods they intended to gather information and monitor the state of their coastal environment. This added no weight, as the RMA requires that councils monitor environmental outcomes, although it does not identify procedures and methods.

The NZCPS scored 4/10 for internal consistency and 8/15 for plan cascade, because methods stipulated were narrow in scope. It scored 5/10 for links to higher and lower order instruments (the RMA being higher).

Mana whenua effectiveness – Waikato Regional Policy Statement

The WRPS scored 46.5/100 for overall effectiveness composed of 27.5/50 for quality-related criteria, and 19/50 for extent-related criteria. Overall scores are shown in Figure 7.2 (p. 146), and for each criteria in Table 7.4.

Table 7.4 – WRPS Plan Effectiveness - Mana Whenua			
	Criteria	Max	WRPS
Quality	Strength of wording	20	12
	Interpretation and explanation provided	5	2
	Identification of issues	5	2
	Fact base	5	2.5
	Related plan provisions	10	6
	Identification of potential effects	5	3
	Quality subtotal	50	27.5
Extent	Plan cascade	15	5
	Plan logic mapping	10	5
	Internal consistency	10	4
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
	Extent subtotal	50	19
	Plan Effectiveness - Mana Whenua	100	46.5

WRPS quality evaluation

The WRPS included a short introduction and explanation of the tangata whenua of the Waikato region, and of the concept of mana whenua. It noted that tangata whenua included four tribal confederations, and described these in three short paragraphs. There are actually five confederations. By comparison the WRP and WRCP included substantial introductions. The WRPS included fragmented descriptions of mana whenua throughout the document, but these were not coherent to a plan user seeking an explanation of mana whenua of the region, and so it scored 2/5 for its interpretation and explanation. This deficiency was also reflected in a fact-base score of 2.5.

The plan attempted to address complexities associated with mana whenua. For example, the 'Explanation and Principal Reasons for Adopting' for objective 2.1.5 (discussed below) read: 'Local authorities need to understand tribal structures, the concept of mana whenua, and who has authority to speak on resource management issues'.

However, RMA section 35A imposes a duty on councils to keep records on iwi and hapū within its region or district, and the areas of the region or district over which one or more iwi or hapū exercise kaitiakitanga. Furthermore, in conflict with its own objective, the WRPS referred to the four regional tribal trust boards, rather than to individual mana whenua iwi and hapū.

The WRPS scored 2/5 for identification of mana whenua-related issues. Its 'Summary of Significant Resource Management Issues' identified only two, in contrast to the numerous mana whenua-related issues articulated in the iwi-specific statements in the WRP and WRCP. This despite regional policy statements being required to identify issues of significance to Māori. It included several mana whenua-related provisions, such as objective 2.1.5: 'The relationship which tangata whenua have with the natural and physical resources recognised'. 2.1.5 had two associated policies, policy 1: 'Ensure that the relationship tangata whenua have with their ancestral lands, water, sites, waahi tapu and other taonga is recognised and provided for in resource making decision making'; and policy 2: 'Have particular regard to the role tangata whenua have as kaitiaki and provide for the practical expression of kaitiakitanga'.

While not including qualifying phrasing, the policies were essentially restatements of RMA 6e, and 7a. They added little weight other than the latter's

direction to provide for the practical expression of kaitiakitanga, no guidance on how that might be achieved, or methods that might likely achieve it. The WRPS included additional policies relating to the Treaty, consultation, and participation, but none for transfers or delegations to Māori. While the RMA is neutral on these (section 33 saying only that a council may transfer or delegate), the NZCPS stated that the local authority should consider transfers where characteristics have been identified as being of special value to tangata whenua. Overall, however, there were numerous references to either mana whenua or tangata whenua throughout the WRPS (138 for tangata whenua). This recurrence gave an impression that Māori issues were given weight, and despite the use of qualifying language in some provisions the WRPS scored 12/20 for strength of wording.

There were also relevant provisions in non-Māori parts of the WRPS, such as section 3.5.6 'Integrated Management', policy 2, which read: 'Recognise the particular relationship tangata whenua have with the coastal environment and ensure those relationships are taken into account when decisions relating to the use, development and protection of the coastal environment are made'. Again, these were lower-level obligations than the RMA requirement that relationships be recognised and provided for, however, the Māori provisions throughout the plan, in addition to those in Māori-specific chapters emphasised that Māori issues arise in all aspects of resource management. Accordingly, the WRPS scored 6/10 for its related (e.g. non-Māori-specific) provisions. Despite having not identified mana whenua-related issues, the WRPS identified a range of potential effects arising from lack of recognition of and protection for mana whenua, scoring 3/5. It also scored 3/5 for the quality of its fact-base, due to its repeated discussions of mana whenua/tangata whenua and tribal rohe.

WRPS extent evaluation

Each of the four Māori policies in the WRPS had three methods. This appeared to provide sufficient means for implementing policy promises, but the same methods were repeated for multiple policies. Furthermore, these amounted only to a direction to consult with tangata whenua in certain circumstances, and to include relevant provisions in regional plans. Accordingly, the high-level objectives and policy direction did not survive down the plan cascade, reducing in scope substantially such that methods included imposed little greater obligation than the

RMA does. The WRPS included a section on monitoring plan effectiveness and environmental outcomes, but no mana whenua-specific monitoring intentions.

Organization and presentation of the plan's mana whenua-relevant provisions were reasonable, scoring 5/10. This included entries in the table of contents, relevant headings within the topic links table in the readers' guide, and in the glossary. However links were only provided to sections, rather than to specific policies or methods, and the plan lacked detailed plan logic mapping.

Policies in the WRPS (like the two regional plans) failed to give effect to the NZCPS, scoring 4/10 for links to higher and lower order instruments. It also showed minimal integration with neighbouring plans, scoring 1/5. This failure to align plans of adjacent jurisdictions, and to assess and provide for cross-boundary issues was observed for all the plans assessed across the three tikanga. Exceptions in the WRPS were a brief reference to the Waikato River crossing the rohe of multiple iwi, the importance of considering effects arising in neighbouring jurisdictions on the river, including on Māori values, and undertaking to liaise with neighbouring councils regarding geothermal resources (which are elsewhere acknowledged as being of particular importance to mana whenua). Several policies (for example 2.2.2 policy 2, 'Inter-Agency Integration and Cross Boundary Processes') promoted integrated management across regional boundaries, requiring alignment with other regional councils and their plans.

Mana whenua effectiveness – Waikato Regional Plan

The WRP scored a total of 52/100 for overall effectiveness of its mana whenua provisions, achieving 31/50 for quality-related criteria and 21 for extent-related criteria, as shown in Figure 7.2 on page 146 and in Table 7.5 (next page).

WRP quality evaluation

The WRP included an impressive introductory section, providing the views of the tribal confederation trust boards of the region (Hauraki, Waikato, Maniapoto, Raukawa and Tuwharetoa), and a fair high-level identification of mana whenua-related issues. However, it followed this with a mix of strong and weak provisions. As an example of a weak provision, section 2.3, entitled 'Tangata Whenua Relationship with Natural and Physical Resources', identified a single issue (2.3.1):

There is no clear process to define the relationship between tangata whenua and the natural and physical resources for which they are Kaitiaki. This can: a) create uncertainty and unnecessary costs for resource consent applicants, Council, tangata whenua and the community; b) hinder the ability of tangata whenua to give effect to kaitiakitanga.

	Criteria	Max	WRP
Quality	Strength of wording	20	13
	Interpretation and explanation provided	5	4
	Identification of issues	5	3
	Fact base	5	3
	Related plan provisions	10	5
	Identification of potential effects	5	3
	Quality subtotal	50	31
Extent	Plan cascade	15	7
	Plan logic mapping	10	5
	Internal consistency	10	4
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
	Extent subtotal	50	21
	Plan Effectiveness - Mana Whenua	100	52

The two associated policies set out to define the processes to determine the ancestral relationship and promote methods to increase community awareness of the kaitiaki relationship. However, tangata whenua require no assistance defining their relationship with ancestral lands and resources, and the text is as much about avoiding cost and effort for applicants and non-Māori, as it is about mana whenua. Community awareness is desirable, but the Treaty relationship is with the Crown not the public. The WRP scored 13/20 for strength of wording, 5/10 for some fair mana-whenua-related recognition across the plan, and 3/5 for its recognition of a range of effects on mana whenua that might arise under the RMA in the Waikato Region, giving a quality criteria subtotal of 31/50 (Table 7.5 previous page).

WRP extent evaluation

The WRP score for extent suffered from an incomplete policy cascade (7/15), and poor internal consistency (4/10). The WRP includes 25 Māori-specific methods,

most of which were relevant to mana whenua. However, many of these simply restated obligations under the RMA, including method 2.3.4.1 ‘Identification of Iwi Authorities’, 2.3.4.7 ‘Collect Information on Tangata Whenua Issues’, 2.3.4.13 ‘Tangata Whenua Contacts Database’, and method 2.3.4.22 ‘Process to be followed where waahi tapu sites are identified during exercise of permitted activities’. Other methods expanded on RMA Māori provisions, but their language and applicability were limited. Four methods related to providing information, and others aimed at establishing processes.

The WRP included six relevant methods: 2.3.4.2 ‘Establishing a Working Relationship’, 2.3.4.6 ‘Identification of Areas/Characteristics of Special Value’, 2.3.4.12 ‘Facilitating Tangata Whenua Involvement’, 2.3.4.25 ‘Tangata Whenua Participation in Resource Monitoring’, 2.3.4.15 ‘Consultation with Tangata Whenua’. The 6th, 2.3.4.24 ‘Transfer of Powers to Tangata Whenua’, read:

Environment Waikato will where appropriate and able to be justified under the tests of s33 of the RMA, transfer RMA functions, powers or duties, in relation to the management of resources which are identified as being of special value to the tangata whenua.

However, no process is specified in the RMA for iwi to apply for transfers and delegations, and no criteria identified against which applications would be assessed, leaving approval at the discretion of the WRC. Without policies that impose an obligation or intention to use the methods, and state procedures and condition under which the methods might be employed, councils have demonstrated that they will not use methods available to them.

The cascade score reflected a lack of mana whenua-related monitoring provisions. Those included were weak, optional, and unlikely to provide a meaningful picture of plan effectiveness or environmental outcomes relating to mana whenua. For example, the monitoring intended for tangata whenua relationships with natural and physical resources consisted of surveying community awareness of issues and sites of significance to tangata whenua. The intended source of this information was described as ‘Community monitoring, investigations and surveys’. Even where monitoring undertakings were made, qualifications in the wording of provisions rendered these unlikely to be used. For example, method 2.3.4.25: ‘Environment Waikato will seek, to facilitate

opportunities for participation of tangata whenua in the monitoring of the use of resources and subsequent effects through: a) resource consents processes where this is mutually agreeable to tangata whenua and consent applicants; and/or b) regional trend monitoring processes'. In relation to resource consent monitoring, this appears to give consent applicants the ability to veto Māori participation.

The WRP scored better than the WRPS for organisation and presentation, assisted by a more comprehensive topic links table. This linked WRP policies to methods across planning topics, scoring 5/10 for plan logic and 4 for internal consistency. The WRP scored 4/10 for mana whenua-related links to higher and lower order instruments, and 1/5 for its lack of integration with neighbouring plans, for similar reasons to the RPS. This gave a subtotal of 21/50 for extent criteria (see Table 7.5 on page 153).

Mana whenua effectiveness – Waikato Regional Coastal Plan

The WRCP contained the most effective mana whenua provisions of the five plans assessed. Its total of 55 consisted of a quality score of 31/50, and an extent score of 24. The scores for the WRCP are shown in Table 7.6.

Table 7.6 – WRCP Plan Effectiveness - Mana Whenua			
	Criteria	Max	WRCP
Quality	Strength of wording	20	12
	Interpretation and explanation provided	5	4
	Identification of issues	5	3
	Fact base	5	3
	Related plan provisions	10	6
	Identification of potential effects	5	3
	Quality subtotal	50	31
Extent	Plan cascade	15	7
	Plan logic mapping	10	5
	Internal consistency	10	5
	Links made with equivalent provisions in higher and lower order instruments	10	6
	Integration with neighbouring plans	5	1
	Extent subtotal	50	24
Plan Effectiveness - Mana Whenua		100	55

WRCP quality evaluation

The WRCP provided a good high-level regional overview of mana whenua, stating that the tangata whenua of the region are Hauraki, Maniapoto, Raukawa, and Waikato-Tainui. However, tribal coastal perspectives were provided only for Waikato and Hauraki, presumably as their rohe covers most of the region's coastline. Fairly comprehensive accounts of the views and values of these two tribal confederations were given.

The WRCP included four Māori-specific policies, which suffered from weak wording. For example, policy 34. 2.3.1 'Tangata Whenua Values' read: 'Recognise and take into account historical, spiritual, cultural and traditional values of tangata whenua in relation to activities in the CMA'. This is weaker than the RMA 6e requirement that Māori ancestral relationships with lands and taonga be recognised and provided for and therefore scored 12/20 for strength of wording. Some non-Māori-specific sections of the WRCP provided recognition of Māori values and interests.

For example, policy 3.1.4A, 'Use of and Occupation of Coastal Space', recognised that some use and development in the CMA is acceptable provided that adverse environmental effects are avoided, and that a number of other policies are taken into account, including kaitiakitanga (policy 2.4.1) and tangata Whenua values (Policy 2.3.1). Similarly, reasons for restrictions on access to the coast (policy 9.1.1) include protecting Māori cultural values. Policy 12.1.1 (Key Principles) stated key principles for the management of the CMA, including: 'Recognising and providing for tangata whenua interests is a matter of national importance and will be a significant consideration in any decisions made'.

However, many sections for which Māori issues are common knowledge (such as biodiversity and the use of vehicles on the foreshore), included no Māori reference. Furthermore, while policies were followed by methods, passive policies rendered the methods optional. The WRCP scored 6/10 for related provisions, and like the other two regional instruments, 3/5 for identification of potential effects (see Table 7.6 previous page).

It also scored 3/5 for its fact-base. Information was included in the iwi passages, in references to relevant tikanga and to issues arising, particularly in the introductory paragraphs for each topic, and in the 'Explanation and Principal Reasons for Adopting'. However important information was missing. For

example, section 14 includes policies relating to the taking of financial contributions to remedy or mitigate effects on Māori. A table was provided for assessing financial contributions, including categories for historic and cultural values and characteristics of special value to tangata whenua. These include two parts, first the contribution may be the full actual costs of protecting, maintaining or restoring the values or characteristics of special value to tangata whenua, and second, should that not be possible, contributions may be payable for ‘the full actual costs of compensating for any permanent loss’. No conversation took place with Māori on whether such things could be financially compensated, or how such compensation might be calculated, and the plan offers no guidance on this. In total the WRCP scored 31/50 against the quality-related criteria.

WRCP extent evaluation

The WRCP scored 24/50 for the extent of its mana whenua-related provisions, the highest of all the council plans (the NZCPS scored 24.5). Unlike the other plans, it presented rules and methods in a separate methods chapter. Its 84 rules related largely to specific activities, and only five included reference to Māori interests or values (three of which were to wāhi tapu), while many did so to recreational, landscape and other environmental values. The WRCP included 101 ‘Other Methods’, of which 10 were Māori-specific. Some of the methods were worded more strongly than associated policies, for example method 17.1.2 ‘Transfer/Delegation of Functions’ states:

Environment Waikato will consider the transfer and/or delegation of RMA functions, powers or duties, in relation to the management of those characteristics which have been identified in the CMA as being of special value to the tangata whenua.

While several of the Māori-related policies have this as an implementation method, there was no related transfer or delegation policy. To assist with plan navigation a rules summary table was provided linking rules to policies, although this only included rule names, making it difficult to navigate between provisions that included mana-whenua-relevant text. There was no corresponding table linking methods to objectives or policies, but intended implementation rules and

other methods were listed after each set of policies, and the WRCP scored 6/10 for organisation and presentation.

Finally, the WRCP scored only 1/5 for integration of its mana whenua provisions with neighbouring plans. It included a section called ‘Cross-Boundary Management’, which sought consistent management of coastal resources by organisations with different functions in the coastal environment. This included implementation method 17.11.1 entitled ‘Plan Integration’, which said that WRC will advocate the resource management directions of the WRCP when: i) other regional plans are being developed by both this and other Councils, ii) district plans are being developed and/or reviewed, iii) activities outside the jurisdiction of the Plan including land use and resource consents have the potential to impact on the CMA, and iv) iwi authorities are developing iwi planning documents and environmental policies. WRC advocates for other councils to align with its plans, but no corresponding effort is included or reference made to pre-existing neighbouring plans.

Mana whenua effectiveness – Thames-Coromandel District Plan

As shown in Figure 7.2 (p. 146), the TCDP scored second lowest of the five plans for mana whenua. Its overall score out of 100 was 47.5 made up of 27.5/50 for quality and 20/50 for extent, as shown in Table 7.7.

Table 7.7 – TCDP Plan Effectiveness - Mana Whenua			
	Criteria	Max	TCDC
Quality	Strength of wording	20	10
	Interpretation and explanation provided	5	3
	Identification of issues	5	3
	Fact base	5	2
	Related plan provisions	10	6.5
	Identification of potential effects	5	3
	Quality subtotal	50	27.5
Extent	Plan cascade	15	5
	Plan logic mapping	10	5
	Internal consistency	10	5
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
	Extent subtotal	50	20
Plan Effectiveness – Mana Whenua		100	47.5

TCDP quality evaluation

The TCDP's only explicit reference to mana whenua was in a note in section 202, 'Sustainable Resource Management Principles'. Elsewhere it referred to tangata whenua. Section 204, entitled 'Tangata Whenua', articulated the 'principles' upon which a relationship with local Māori might be based.

It stated that Māori culture and traditions provide a significant living contribution to the quality of the district and coastal environment, and that the relationship of Māori and their culture and traditions with ancestral lands, water, sites, waahi tapu and other taonga must be strengthened, it went on:

The identification of ancestral land is encouraged, especially where culturally appropriate ways of accomplishing sustainable management of resources can be achieved. Council and Tangata Whenua entities must build effective relationships before establishing appropriate resource management frameworks and procedures. Until appropriate regulatory, consultation and participation processes are in place, Council and applicants must recognise Tangata Whenua values in all aspects of the resource management process.

The final sentence provided a strong platform for Māori participation, but there was little support in the plan's policies or methods. Its Treaty references were substantially qualified. For example, section 8 limited compliance with well-established Treaty principles, objective 215.3 read: 'To take into account those principles of the Treaty of Waitangi that are applicable in this District'. No explanation is provided for why established Treaty principles might not apply within Thames-Coromandel District. The TCDP includes at section 215, 'Tangata Whenua Issues', listing underlying principles for Māori-council relations, one of which is 'to actively protect taonga' (section 3.4). Stated objectives include:

To provide for the social, economic and cultural wellbeing of Tangata Whenua, and their health and safety, by protecting their existing resources and taonga and enabling appropriate access to them.

This objective limits protection to resources still held by mana whenua, yet (as explained in my Chapter 3) they are almost landless. The TCDP ran contrary to legal developments, in that the Town and Country Planning Act (1977) restricted

recognition of Māori ancestral relationships to lands they still own, while the RMA provides for their relationship with all ancestral lands. Similarly, policy 215.4.4 of the plan reads: ‘To provide for the practical expression of kaitiakitanga by considering the transfer of powers under the RMA in appropriate circumstances to Tangata Whenua, their participation in the development of Council management policies and plans’. Both provisions were qualified by the word appropriate, it being left to TCDC to decide appropriateness. The TCDP was the only one of the plans that had a policy on transfer or delegation to Māori, rather than only methods. However, its mana-whenua provisions undesirably bundled issues together, such as tangata whenua participation in plan development and section 33 transfers.

The TCDP’s 14 Māori-related methods were narrow in scope, reducing the likelihood of implementation. They related mainly to public awareness of Māori issues, enabling the exchange of information, and establishing processes. None of the methods bound the TCDC, and almost all used qualified language. The TCDP scored 6/10 for provision for mana whenua in non-Māori sections (Table 7.7, p. 158). Māori Policy Areas (337.3) and Māori Activity rules (section 590) are examples of enabling methods, although the Māori purposes zone only applied to Māori-owned land. Māori Policy Areas were explained:

The policy area provides for activities additional to those provided for in the zone, including marae buildings, papakainga housing, land-based aquaculture and marine farming infrastructure, meeting place, recreational ground, sports ground, kokiri centres, kohanga reo, cultural festivals, bathing place, church site, burial ground, landing place, spring, well, catchment area, timber reserve, or places of cultural, historical or scenic significance.

The Māori Activity rules were intended to assist mana whenua by making the status of activities permitted, discretionary or non-complying, and more permissive than for the underlying zone. The rules allow for management plans, within which agreed activities are permitted. However, Māori policy areas can only apply to Māori Land (as defined under the Te Turu Whenua Māori Act 1993) or land currently not Māori land, but intended to become Māori land by way of Treaty settlement or other means. As explained in Chapter 3, there is little Māori

land remaining in Hauraki. The last of the quality-related criteria was identification of effects, for which the TCDP scored 2.5/5.

TCDP extent evaluation

The TCDP scored second lowest of the five plans for extent, 20/50, despite containing some individually-impressive provisions. It scored 6/15 for the plan provision cascade as it lacked credible methods for giving effect to the mana whenua-related objectives and policies (see Table 7.7 p. 158). For example, it included the following monitoring provision (314.13, Techniques – Monitoring Strategy), which stood out amongst the plans:

Through consultation with local hapū and iwi develop concepts and indicators which are useful and meaningful to tangata whenua to: Ensure concepts and indicators are relevant to the spiritual and philosophical goals of Māori; Enable hapū and iwi to track the health of the environment in their areas, and; Ensure hapū and iwi environmental interests are protected in accordance with Council obligations under the Treaty of Waitangi.

The indicators never eventuated, reflecting the passive wording in the plan and lack of intended timeframes. The Māori policy areas and activities described above were intended to give effect to the intention in the WRPS that district plans make appropriate provision for development of marae and papakāinga. It included few linkages between the mana whenua-related provisions and other parts of the plan, scoring 4/10 for organisation and presentation. Similarly, there were few identifiable efforts to give effect to the mana whenua provisions in higher order plans, also scoring 4/10 for this criterion. Notably, the TCDP included some mana whenua-related consideration of cross-boundary issues, and the need for alignment of neighbouring plans, for example within the section called Cross Boundary Issues, where it stated (at 224.1.3):

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

Associated objectives and policies were aimed at integrated management and addressing cross boundary issues, and two of the five methods stated an intention to work with Hauraki iwi. The above provisions were not indicative of wider treatment across the TCDP, and it scored just 2/5 for its integration with neighbouring plans. It is noteworthy that this was the highest score for that criterion for any plan across all three tikanga. The likely combined effectiveness of mana whenua across the five plans will be considered later in the chapter, after having presented findings for mauri and wāhi tapu provisions.

Assessing plan effectiveness - mauri results

The second plan evaluation related to mauri, particularly mauri of waterways. As discussed in Part Two, the protection of mauri is an obligation on kaitiaki of the utmost importance, but since 1840 regional and district wetlands have been significantly reduced, so that their protection has become a national priority, and is an expectation of mana whenua. Many regional waterways are seriously degraded (Department of Conservation & Ministry for the Environment, 2007). There is therefore a need for strong water quality provisions, including mauri-specific ones. I found few mauri-specific provisions within two of the plans, resulting in plan scores for mauri being, overall, the lowest for the three tikanga. As with mana whenua, levels of achievement for plan quality varied, but scores were impacted by the limited extent of plan provisions. The five plan scores for the effectiveness of provisions for mauri are shown in Figure 7.3.

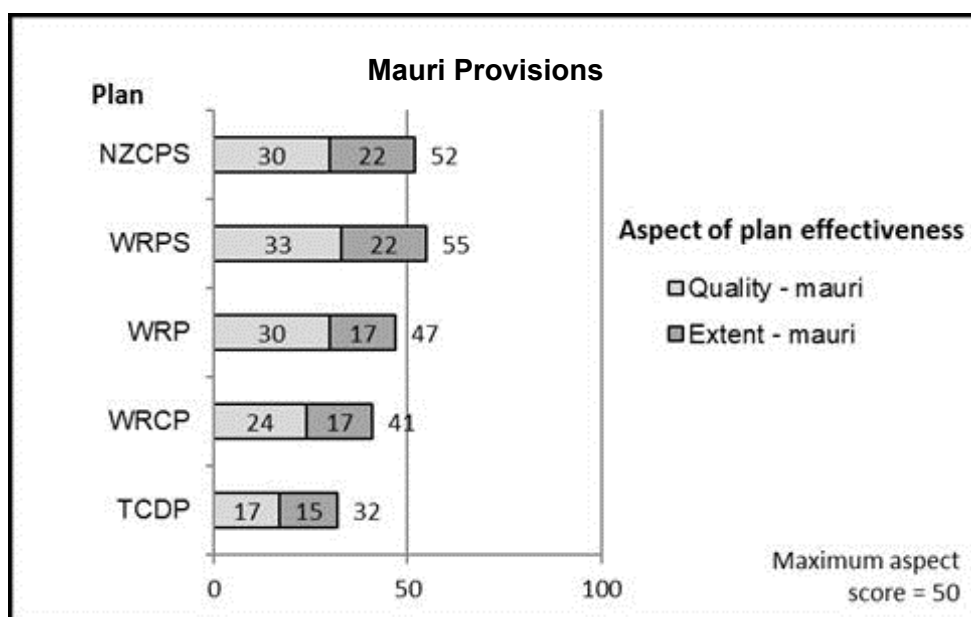


Figure 7.3 Effectiveness of mauri provisions in case-study RMA plans.

Mauri effectiveness - New Zealand Coastal Policy Statement

As Figure 7.3 shows, the overall score for mauri was 52/100 composed of 30/50 for the quality-related criteria and 22/50 for the extent-related criteria. Criteria-specific scores are shown in Table 7.8, followed by my quality and extent evaluations.

	Criteria	Max	NZCPS
Quality	Strength of wording	20	15
	Interpretation and explanation provided	5	2
	Identification of issues	5	2
	Fact base	5	1
	Related plan provisions	10	8
	Identification of potential effects	5	2
	Quality subtotal	50	30
Extent	Plan cascade	15	5.5
	Plan logic mapping	10	N/A
	Internal consistency	10	5
	Links made with equivalent provisions in higher and lower order instruments	10	5
	Integration with neighbouring plans	5	N/A
	Extent subtotal (factored by 50/35 to adjust for NZCPS N/A criteria)	50	22
	Plan Effectiveness - Mauri	100	52

NZCPS quality evaluation

The 1994 NZCPS did not specifically refer to mauri, but acknowledged cultural values associated with water and waterways. This was a product of its early adoption at a time when little attention was paid to mauri. In contrast, the 2010 NZCPS refers to mauri (policy 21 Enhancement of water quality), but it has not been included in my evaluation given that it post-dated my case-study activities. The 1994 NZCPS acknowledged the purpose of the RMA as being to promote the sustainable management of natural and physical resources, and noted that this must be achieved while (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems. Accordingly, the NZCPS was in line with many RMA plans, which often equated mauri with the life supporting capacity of natural resources.

The NZCPS gave recognition to characteristics of the CMA that are significant to Māori, left it to Māori to articulate such significance, and included several policies that would contribute to protecting mauri. An example is policy 1.1.4, which stated that it is a national priority for the preservation of natural character of the coastal environment to protect the integrity, functioning, and resilience of the coastal environment in terms of six factors. These included three relating to mauri: (d) natural water and air quality; (e) natural bio diversity, productivity and biotic patterns; and (f) intrinsic values of ecosystems.

The NZCPS stated principles and policies that would benefit mauri, including: directives that regional coastal plans include rules for treated human waste discharge that are cognisant of tikanga Māori (policy 5.1.2); recognition that damage to cultural, historical, spiritual, amenity and intrinsic values is often irreversible (General Principles for the Sustainable Management of New Zealand's Coastal Environment, principle 8); and emphasis on the need for a precautionary approach to activities in the CMA (policy 3.3.1). As a result, despite not explicitly referring to mauri, the NZCPS scored 30/50 for the quality-related criteria.

NZCPS extent evaluation

In addition to those described above the NZCPS gave direction that regional coastal plans include methods for reviewing coastal permits (policy 5.1.4). The NZCPS included issues, objectives and policies, and its chapter 7 stipulated procedures and methods to be used to review its policies, and monitor their effectiveness. It required that council plans indicate procedures and methods which they intend to use to gather information and monitor the state of the coastal environment. As Table 7.8 (p. 163) shows, the NZCPS scored 5.5/15 for its plan cascade, this mainly due to provisions not specifically referring to mauri or its often-used Western equivalent, 'life supporting capacity'. The NZCPS scored 5/10 for internal consistency within those provisions deemed likely to protect mauri, being mainly those related to water. It received 5/10 for the extent to which it gave effect to the RMA. This gave it a total, for the three extent criteria that apply to it, of 15.5/35. As previously explained this score was factored by 50/35 to arrive at a plan-comparable extent score of 22/50.

Mauri effectiveness – Waikato Regional Policy Statement

The WRPS scored higher than the NZCPS for the quality of its provisions, gaining 33/50, but it was similarly let down by an extent score of 22/50. This gave the WRPS one of the highest effectiveness scores for all three tikanga, 55%. The criteria scores are shown in Table 7.9, and comparative plan scores earlier in Figure 7.3 (p. 162).

	Criteria	Max	WRPS
Quality	Strength of wording	20	13
	Interpretation and explanation provided	5	4
	Identification of issues	5	4
	Fact base	5	3
	Related plan provisions	10	6
	Identification of potential effects	5	3
	Quality subtotal	50	33
Extent	Plan cascade	15	9
	Plan logic mapping	10	4
	Internal consistency	10	3
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	2
	Extent subtotal	50	22
	Plan Effectiveness - Mauri	100	55

WRPS quality evaluation

Published 13 years after the NZCPS, the WRPS included comprehensive near identical introductions and explanations of mauri, and like the other two regional plans, scored 4/5. It ranked highest of all the plans for identification of issues, again scoring 4. Mauri was referred to 47 times in eight sections of the WRPS, within some fair (mainly water-related) provisions. Section 3.4.10, entitled ‘Mauri’, identified one mauri-related issue, being: ‘Māori consider that the disposal of contaminants to water has the potential to diminish the mauri of that water’. It also had one related objective and an associated policy. The policy was narrowly focused and not accompanied by others dealing more widely with mauri of waterways, or that of other natural resources, but importantly section 3.4.10 (Implementation methods) proposed the development of mechanisms for

measuring mauri health, and the establishment of water quality classes which recognise mauri. It scored 13/20 for the strength of its provisions.

The WRPS included some non-mauri-specific provisions that would contribute to protecting mauri, including references to protecting mauri in its 'Fresh Water' section, in addition to the 'Māori Issues' one, scoring 6/10 for related provisions, and 3/5 for its identification of potential mauri-related effects. Taken together the quality score for the WRCP is a fair 33/50, much better than its score for extent.

WRPS extent evaluation

The WRPS scored 22 of a possible 50 for the overall extent of its mauri-related provisions. While not great, it out-performed all the lower-order plans in this regard (WRP 17, WRCP 17, TCDP 15). The WRPS included a fair effort at maintaining the mauri-related intentions down the cascade (scoring 9/15) by including a mauri-related issue, objective and policy (Effects of Contaminants), and five associated methods, being:

- 1) Ensure, in conjunction with territorial authorities, and through consultation with tangata whenua, that resource use and development practices recognise and provide for the mauri of water.
- 2) Provide recognition in regional plans and resource consents, through appropriate rules, criteria, conditions, guidelines and information, of Māori interests in the potential adverse effects of the discharge of contaminants on the mauri of water.
- 3) Through regional plans, in consultation with interested parties, investigate the establishment of water quality classes for water bodies which recognise the mauri of water.
- 4) Liaise with tangata whenua of the Region to ascertain appropriate mechanisms, as part of the Regional Information Gathering Action Plan, to determine whether mauri is being affected by the effects of use, development and protection of water.
- 5) Provide information and practical guidance to resource users on the significance of the mauri of water to tangata whenua and encourage applicants to consult with the appropriate tangata whenua groups prior to submitting applications for resource consents.

The appropriate mechanisms for methods 3 to 5 are the indicators or measurement instruments I described for the TCDP in relation to mana whenua. In addition, the

plan's kaitiaki-related provisions included recognition of mauri in its explanations of anticipated environmental results.

As Table 7.9 (p. 165) shows, the plan scored 4/10 for plan logic mapping, as it referenced mauri in the table of contents, glossary, and table of key words, but it failed to cross-reference mauri across all the elements of the plan cascade. It also scored lower for internal consistency (3/10), because high level mauri provisions encompassed all natural and physical resources, but policies and methods were narrowly focused on the issue of contaminants to water. The WRPS scored 4/10 for links with higher and lower order plans, and 2/5 for integration with neighbouring plans, for its references to the interconnected nature of biophysical systems, including rivers and geothermal resources, and the need for management in cooperation with neighbouring regional councils. However, while acknowledging cross-boundary issues, and the need to align with neighbouring plans, no particular plan content was referenced. This rendered it unclear what cross-boundary alignment occurred. While a mediocre result, this was the highest score of the three tikanga assessments for integration with neighbouring plans (along with WRCP in relation to wāhi tapu).

Mauri effectiveness – Waikato Regional Plan

Overall the WRP included some credible provision for mauri, and for Māori values and interests in water. It scored 30/50 for quality, but only 17 for the extent of its provisions, limiting the plan's likely effectiveness for protecting mauri (Figure 7.3, p. 162). The scores for each quality and extent criteria are shown in Table 7.10 (next page).

WRP quality evaluation

The WRP provided a comprehensive explanation of mauri, referring to it 14 times. The iwi section included 'Matters of Concern', and articulated those of each iwi. Several of these concerned mauri, but did not feature in the plan's issues of significance for Māori. The WRP identified some issues of significance, but only partly encapsulated the range of issues articulated by tangata whenua in their introductions. This resulted in a score of 3/5 for identification of issues. The WRP scored 2/5 for its fact base, because without a sound information base it is difficult to apply policy well, or to assess the effectiveness of planning.

Table 7.10 – WRP Plan Effectiveness - Mauri			
Criteria		Max	WRP
Quality	Strength of wording	20	14
	Interpretation and explanation provided	5	5
	Identification of issues	5	3
	Fact base	5	2
	Related plan provisions	10	4
	Identification of potential effects	5	2
Quality subtotal		50	30
Extent	Plan cascade	15	5
	Plan logic mapping	10	4
	Internal consistency	10	3
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
Extent subtotal		50	17
Plan Effectiveness - Mauri		100	47

The WRP identified mauri in relation to natural and physical resources, but subsequently focused only on water. The policy ‘Tangata Whenua Uses and Values’ included specific protection for mauri and was used twice in the WRP, as policy 6 under ‘Discharges’ (subsection 3.5), and policy 3 ‘Damming and Diverting’ (3.6), they read:

Ensure that the relationship of tangata whenua as Kaitiaki with water is recognised and provided for, to avoid significant adverse effects and remedy or mitigate cumulative adverse effects on a) the mauri of water, b) waahi tapu sites, c) other identified taonga.

This mixed-issues policy employed RMA ‘avoidance’ language, and its intent was unclear. Was the underlying objective to recognise the relationship with Māori, or to protect mauri? Was it suggested that by recognising the relationship mauri was dealt with? Was the intention that the kaitiaki relationship be provided for by (rather than to) avoiding adverse effects? Related plan provisions, particularly those dealing with waterways, provided some assistance in terms of protecting mauri, scoring 4/10, but the WRP made a poor effort at identifying mauri related planning effects, scoring only 2/10.

As Figure 7.3 (p. 162) shows, the WRP scored lower overall for quality of mauri provisions (30/50) than the WRPS (33/50), and it scored second highest after the NZCPS for strength of wording (14/20) due mainly to minimal use of

qualifying text, and the inclusion of provisions that expanded on RMA requirements, like the methods listed above.

WRP extent evaluation

The WRP scored a low 17/50 for the extent of its provisions for mauri. It included a table of contents, a readers guide, table of topics linked to objectives, policies, methods and rules, and a glossary. However, these provide little guidance regarding mauri-relevant provisions. The table linked mauri to only two policies, no objectives, methods or rules. It failed to identify most references to mauri, which sat within statements of issues and explanatory text, scoring 4/10 for plan logic mapping.

It scored only 5/15 for plan cascade, and only 3/10 for internal consistency. Policies and methods were not supported by mauri-related evidence. Several of the Māori-related methods in the WRP provide a potential pathway to some action or intervention that would improve mauri, but none is mauri-specific. For example, method 2.3.4.7 Collect Information on Tangata Whenua Issues - Environment Waikato will collect, collate and have accessible, publicly available information on tangata whenua issues and perspectives of the natural and physical resources in the Region. Given the prominence of protecting mauri as a function of kaitiaki, method 2.3.4.7 could readily have been used to collect information on mauri, but was not. Likewise the previously discussed WRP methods for transfers or delegations of functions or powers (method 2.3.4.24) and method 2.3.4.25 Tangata Whenua Participation in Resource Monitoring. However, the policy framework of the WRP does not stipulate how and when these methods will be employed. As a result many of them have not.

Like the WRCP and TCDP the WRP scored 4/10 for giving effect to higher order plans, in relation to mauri, and it scored only 1/5 for integration with neighbouring plans. It included a section entitled 'Processes to Address Cross-Boundary Issues' and a table called 'References to Cross-Boundary Methods Addressed in this Plan', which linked issues to plan methods, and identified the groups with which cooperation would be needed, including iwi authorities. But no links were made with mauri provisions in neighbouring plans.

Mauri effectiveness – Waikato Regional Coastal Plan

As shown in Figure 7.3 (p. 162), the WRCP scored 41% for the effectiveness of its mauri-related provisions, 24/50 for quality-related criteria and 17/50 for extent criteria. This was a poor effort given the role of coastal plans for giving effect to the water quality intentions in the RMA and NZCPS. The criteria scores for quality and extent are shown in Table 7.11.

	Criteria	Max	WRCP
Quality	Strength of wording	20	8
	Interpretation and explanation provided	5	4
	Identification of issues	5	2
	Fact base	5	2
	Related plan provisions	10	6
	Identification of potential effects	5	2
	Quality subtotal	50	24
Extent	Plan cascade	15	5
	Plan logic mapping	10	4
	Internal consistency	10	3
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
	Extent subtotal	50	17
	Plan Effectiveness - Mauri	100	41

WRCP quality evaluation

Mauri was discussed in the WRCP at a high level in introductory section 2.1 'Tangata Whenua Relationship with Natural and Physical Resources', which listed views of Waikato and Hauraki Māori, articulated by pan-tribal trust boards. The WRCP scored 4/5 for interpretation and explanation, but only 2/5 for its identification of issues. Outside of the introductions, the WRCP had only one mauri-related reference, in method 17.3.11 (Land-Based Waste Treatment), reading: 'Environment Waikato will work with territorial authorities to encourage the use of land-based waste treatment systems by jointly undertaking or supporting research into sustainable land-based treatment systems'. Its Principal Reasons for Adopting stated 'Land-based treatment ensures the mauri of the water is sustained and also contributes to improved water quality which benefits all users of the CMA'.

The WRCP included provisions that recognise and provide for the Māori relationship with ancestral waters, kaitiakitanga, and significance of water to Māori, and it scored 6/10 for related provisions. Because of its minimal reference to mauri, and the way in which mauri-related issues were bundled together with all manner of Māori topics in plan provisions the WRCP scored only 8 of a possible 20 for strength of wording, 2/5 for its fact base. It scored higher for related plan provisions, however, because of some fair water quality and similar environmental measures that would benefit mauri. It scored 24/50 for the overall quality of its mauri provisions.

WRCP extent evaluation

The WRCP scored worse for the extent-related criteria than for those relating to quality. The few high-level references to mauri did not translate into methods (notwithstanding the above-noted reference to mauri in an explanation for a method), and the plan scored only 5/15 for the plan cascade, and 4/10 for organisation and presentation (plan logic mapping). A particular weakness was the reliance on methods listed after each policy, and a lack of a corresponding table linking methods to policies.

Many policies for which Māori values including mauri were obviously relevant did not include any Māori methods (for example the policies on Take and Use of Water (4.1.2), and Point Source Discharges (4.1.3)). It scored 3/10 for internal consistency, with provisions relevant to mauri appearing across the plan, but with little coherence. For example, rule 16.3.10 ‘Sewage Discharges’ says that the discharge of untreated sewage into the CMA, except from ships and offshore installations, is a prohibited activity for which no consent shall be granted. The stated Principal Reasons for Adopting is that discharges of untreated sewage would have unacceptable cultural and amenity effects in the CMA. The cultural effect would be on the mauri of the receiving environment.

The WRCP failed to give adequate effect to the policy direction provided by either the NZCPS or WRPS, scoring 4/10. It scored only 1/5 for integration with neighbouring plans, the 1 point reflecting some provisions aimed at cross boundary issues, such as method 17.3.10 ‘Regional and District Plans’. But no explicit links were identified with mauri-relevant provisions in any plan.

Mauri effectiveness – Thames-Coromandel District Plan

In general, district plans are concerned with the built environment and land use, while regional plans focus on the natural environment. However, district plans have an important role in ensuring that land uses do not impact the environment. In contrast to the WRPS, to which it must give effect, the TCDP made no explicit mention of mauri, but it was assessed for whether its provisions would protect mauri. Of the five plans evaluated, TCDP had the lowest score for mauri (Figure 7.3, p. 162). It scored only 17/50 for the combined quality-related criteria for mauri, the lowest of any such score across the three tikanga. Worse, it scored 15/50 for the extent-related criteria, again the lowest extent score across the three tikanga (equal with that of the TCDP for wāhi tapu). The overall TCDP score for mauri was, therefore, only 32%, as shown in Table 7.12.

	Criteria	Max	TCDC
Quality	Strength of wording	20	7
	Interpretation and explanation provided	5	2
	Identification of issues	5	1
	Fact base	5	1
	Related plan provisions	10	5
	Identification of potential effects	5	1
	Quality subtotal	50	17
Extent	Plan cascade	15	5
	Plan logic mapping	10	3
	Internal consistency	10	3
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	0
	Extent subtotal	50	15
	Plan Effectiveness – Mauri	100	32

TCDP quality evaluation

The TCDP provided little explanation of Māori values relating to water or mauri, scoring 2/5. It identified significant issues for tangata whenua, including for water, wāhi tapu, sacred areas and taonga (215.2), but scored only 1/5 for identification of issues because the associated objective simply restated RMA sections 6e, 7a and 8, and didn't mention mauri, although it referred to kaitiakitanga and ancestral taonga. Two policies might assist in protecting mauri:

policy 3 (at 215.4), to recognise the values of Tangata Whenua involved in all resource management issues, especially earthworks, District Waterbodies, Biodiversity, Cross Boundary Issues and Waste Management; and the previously mentioned policy four, dealing with transfers of powers and functions.

The TCDP scored 5/10 for related provisions because some non-Māori-specific provisions aimed at maintaining or improving water quality would improve mauri. The TCDP's biodiversity section (211) referred to purposes and principles within the RMA relating to biodiversity, including the life-supporting capacity of ecosystems, which is widely referred to by Māori as a western equivalent of mauri. The need to preserve the life-supporting capacity of ecosystems is included in the single biodiversity-related objective (211.3), and the need to protect the life-supporting capacity of soils is included in policy 213.4 in the section 'Settlements and amenity values', and in the plan's assessment criteria for discretionary activities (851.15). Additionally, subsection 219.1.6 (Background) recognised that district waterbodies have cultural significance to tangata whenua, and that certain activities may adversely affect cultural values. Policy 219.4.1 sought to avoid activities on water bodies that would adversely affect a wide range of values, including 'water areas significant to Hauraki Māori (e.g. mahinga mātaihai)' (food gathering areas). However, these provisions were weak to the extent that they related to mauri, and the plan scored only 7/20 for strength of wording. Unlike the neighbouring Hauraki District Plan (which included one reference to mauri), the TCDP does not include a schedule of areas of ecological significance, and it scored only 1/5 for its fact-base.

TCDP extent evaluation

The TCDP scored even lower for extent, totalling 15/50. Its cascade was weak, scoring 5/15, as it included methods that would contribute toward mauri protection and restoration, but few referred specifically to Māori cultural values. The TCDP scored only 3/10 for plan logic mapping for its mauri-relevant provisions, and the lack of mention of mauri made it difficult to read the plan for relevant provisions. The plan included no links to relevant Māori objectives, policies, or methods in 219.8 (Policy Linkages Table), and therefore scored 3/10 for internal consistency.

The TCDP failed to give effect to the strong policy direction of the WRPS and the NZCPS. For example, Policy 7.1.3 of the NZCPS stated that in order to assist in the establishing of a national state of the coastal environment monitoring programme, local authority policy statements and plans should identify the procedures and methods which the local authority intends to use to gather information and monitor the state of their coastal environment. The TCDP lacked any provision for monitoring and reporting on mauri. Although the WRPS was notified more than 10 years after the TCDP, the District Plan was never modified to give effect to the higher instrument's directives, scoring 4/10. Instead, 7 years later, a review of the TCDP was completed and the decision made to replace the district plan, but no evaluation was undertaken of plan effectiveness of outcomes for Māori. The plan scored 0/5 for integration with neighbouring plans, a score only matched by its own result in relation to wāhi tapu.

Assessing plan effectiveness - wāhi tapu results

Wāhi tapu was the third of the tikanga for which I assessed plans. Unlike mauri, wāhi tapu is explicitly referenced in the RMA, and councils had substantial prior experience in the management of Māori historic heritage. In 2004, the Historic Places Trust published comprehensive guidance on management of historic heritage under the RMA, including recommended content for regional policy statements. This was prior to the notification of the three regional instruments assessed here. I therefore expected the plans to score highly for wāhi tapu, compared to the other two tikanga. However, this was generally not the case, as shown by the plan evaluation scores for wāhi tapu in Figure 7.4 (next page).

Wāhi tapu effectiveness - New Zealand Coastal Policy Statement

The NZCPS scored 59.5% for the effectiveness of its wāhi tapu provisions, the highest combined score for any plan across the three tikanga. Its wāhi tapu score comprised of a credible 36/50 for the quality of provisions, but only 23.5/50 for extent, as shown in Table 7.13 (next page).

NZCPS quality-related criteria

The NZCPS scored 18/20 for the strength of wording of its wāhi-tapu provisions, failing to achieve maximum scores because wāhi tapu and Māori heritage were bundled alongside other Māori and non-Māori matters.

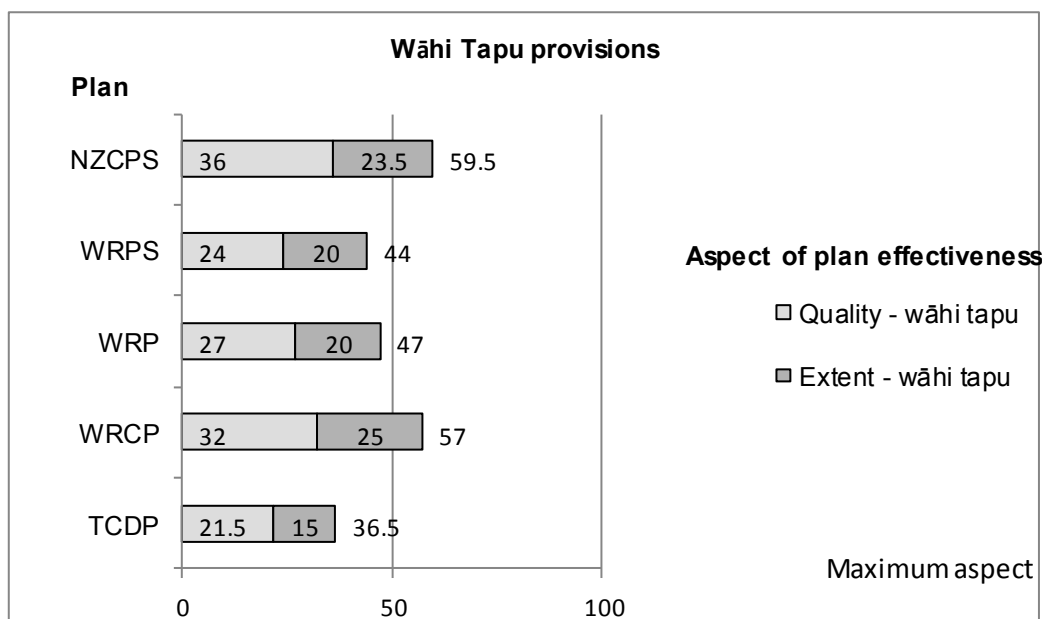


Figure 7.4 Effectiveness of wāhi tapu provisions in case-study RMA plans.

Māori issues around wāhi tapu were identified, scoring 4/5, and protection for wāhi tapu and Māori historic and cultural heritage provided in five of its seven chapters, and 10 of 57 policies. These were clear, directive, and not diminished by qualifying language.

Criteria		Max	NZCPS
Quality	Strength of wording	20	18
	Interpretation and explanation provided	5	4
	Identification of issues	5	4
	Fact base	5	1
	Related plan provisions	10	7
	Identification of potential effects	5	2
Quality subtotal		50	36
Extent	Plan cascade	15	8
	Plan logic mapping	10	N/A
	Internal consistency	10	5
	Links made with equivalent provisions in higher and lower order instruments	10	3.5
	Integration with neighbouring plans	5	N/A
Extent subtotal (factored by 50/35 to adjust for NZCPS N/A criteria)		50	23.5
Plan Effectiveness - Mauri		100	59.5

For example, the NZCPS stated that it is a national priority to protect characteristics of special spiritual, historical or cultural significance to Māori,

identified in accordance with tikanga Māori (policy 1.1.3b), and to protect significant places or areas of historic or cultural significance (1.1.3c). Chapter 2, was headed ‘The Protection of the Characteristics of the Coastal Environment of Special Value to the Tangata Whenua Including Waahi Tapu, Tauranga Waka, Mahinga Maataitai, and Taonga Raranga’, and the plan scored 4/5 for its explanation. It had three policies for protecting these characteristics. Policy 2.1.1 related to identifying characteristics of special value to the tangata whenua, policy 2.1.2 directed that protection of these should be carried out in accordance with tikanga, and policy 2.1.3 directed councils to consider transferring or delegating management responsibilities to Māori. Policy 3.1.2 directed council policy statements and plans to identify (amongst other matters) important historic areas and areas of spiritual or cultural significance, and give them appropriate protection.

The NZCPS got only two poor quality-related scores, 1/5 for its fact-base, because it contained little background or supporting information on Māori heritage, and 2/10 for minimal identification of wāhi tapu related effects.

NZCPS extent-related criteria

The overall extent score for the NZCPS for wāhi tapu was 23.5 (Table 7.13 above). Despite the quality of provisions identified above, implementation methods were limited in number and scope (being the range of circumstances in which they would likely be used). It scored 8/15 for plan cascade, and 5/10 for internal consistency. Implementation limitations were evident when comparing the 1994 and 2010 NZCPS, the later containing a ‘Treaty of Waitangi, tangata whenua and Māori heritage’ policy and historic heritage policy containing Māori-specific provisions directing wide-ranging implementation methods. It scored 3.5 for insufficiently clear linkages to higher and lower order instruments.

Wāhi tapu effectiveness – Waikato Regional Policy Statement

The WRPS achieved a mediocre 24/50 for the quality of its wahi tapu provisions, and 20/50 for their extent, producing an overall wāhi tapu effectiveness rating of 44% (Figure 7.4, p. 175). Criteria-specific results are shown in Table 7.14 (next page).

Table 7.14 – WRPS Plan Effectiveness – Wāhi Tapu			
	Criteria	Max	WRPS
Quality	Strength of wording	20	9
	Interpretation and explanation provided	5	4
	Identification of issues	5	3
	Fact base	5	2
	Related plan provisions	10	4
	Identification of potential effects	5	2
	Quality subtotal	50	24
Extent	Plan cascade	15	7
	Plan logic mapping	10	5
	Internal consistency	10	3
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
	Extent subtotal	50	20
Plan Effectiveness - Wāhi Tapu		100	44

WRPS quality-related criteria

The WRPS included a fair introduction to wāhi tapu, scoring 4/5, some consideration of issues (3 out 5), and a fair identification of potential effects (3/5). The latter included statements about difficulties faced by tangata whenua seeking to manage their taonga according to tribal customs and preferences, the widespread loss of cultural and natural heritage, and the reduction of access to remaining heritage (3.15.1 Overview). It scored 2/5 for its fact base.

Wāhi tapu was mentioned 33 times in six sections of the WRPS, but almost always bundled with other Māori matters as per the wording of RMA 6e (the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga). WRPS Sub-section 2.1.5, entitled ‘Tangata Whenua Relationship with Natural and Physical Resources’ emulated RMA section 6e, and imposed no greater obligation than does the RMA.

The WRPS included some provisions in which Māori heritage was not bundled with other Māori matters, but instead combined with natural cultural and historic heritage. Section 3.15, entitled ‘Heritage’, included a general heritage-related objective (3.15.2) which read: ‘The protection of regionally significant heritage resources, and allowing subdivision, use, and development of other heritage resources, while ensuring that there is no net loss in the Region’. As explained in a review of the effectiveness of the WRPS (Willis, 2007 p. 97), the

reference to no net loss in relation to historic heritage is nonsensical, as historic heritage is irreplaceable and finite. The objective has two policies distinguishing between significant and ‘other’ heritage. The first was: ‘Ensure the protection of significant natural and cultural heritage resources’, and the second: ‘Allow subdivision, use and development, while avoiding, remedying or mitigating any adverse effects on other natural and cultural heritage resources’. An objective, entitled ‘Māori Heritage’ (3.15.3), read: ‘The protection of heritage resources of significance to Māori’. This had a single policy: ‘Seek to avoid accidental or intentional damage or interference to heritage resources of significance to Māori’. Criteria for determining significance of natural, cultural and historic heritage were provided in their Appendix 4. The WRPS scored 10/20 for the strength of its Māori heritage provisions, because of the qualifications described, and 3/10 for the way non-Māori-specific provisions might protect wāhi tapu.

WRPS extent-related criteria

The WRPS scored 20/50 for the extent of its wāhi tapu provisions (Table 7.14, p. 177). Proposed implementation methods for its heritage policies included:

- ensuring, through district plans and resource consents, the protection of significant natural and cultural heritage resources
- the integrated management of the Region’s natural and cultural heritage resource by WRC, territorial authorities, NZHPT, tangata whenua and other interested parties
- heritage education programmes
- encouraging consent applicants to consult with tangata whenua prior to submitting applications
- restricting public access to wāhi tapu
- investigating delegation or transfer of functions, powers and duties to iwi for the administration of heritage resources.

However, intended methods were limited by repeated use of terms like ‘where appropriate’, without corresponding appropriateness criteria, and the plan scored 7/15 for its cascade. It suffered from inadequate entry of wāhi tapu-related provisions across the navigation aids, scoring 5/10 for plan logic mapping. Furthermore, the WRPS gave no direction for monitoring historic heritage, and regularly repeated obligations already present in the RMA and other legislation. For example the implementation method, ‘Encourage territorial authorities and

consent holders to notify relevant iwi authorities and cease work in areas where unidentified burial grounds or waahi tapu sites are disturbed or destroyed' is redundant, as notification is already required under the Historic Places Act (1993). This contrasts with the strong policy direction provided by the RMA and NZCPS in relation to Māori heritage and wāhi tapu, and the WRPS scored 3/10 for internal consistency and 4/10 for integration with higher and lower order instruments. It scored the near-universal 1/10 for integration with neighbouring plans, again because it talked about addressing cross-boundary issues, and integrated management of heritage resources, but provided no credible means for achieving these or links to neighbouring plans.

Wāhi tapu effectiveness – Waikato Regional Plan

The WRP referred to wāhi tapu a staggering 318 times, often in combination with other Māori matters. However, like the WRPS, the impact of numerous references was diluted because they restated RMA section 6e, and combined wāhi tapu with other issues. It scored 27/50 for quality, but only 20 for extent, as shown in Figure 7.4 (p. 175) and Table 7.15 (next page).

WRP quality-related criteria

Like the WRPS, the WRP provided a reasonable explanation of wāhi tapu and Māori heritage, identification of associated issues, and identification of potential effects, scoring 3/5 for each. It had no heritage-specific section and, despite its many references to wāhi tapu, included relatively weak provisions for Māori heritage.

It included no wāhi tapu or Māori heritage-specific objectives or policies, and only fleeting references to wāhi tapu in other objectives, such as that for the management of water bodies (objective 3.1.2). Wāhi tapu were mentioned in 45 rules, most included identical wording, being that activities shall not disturb archaeological sites or wāhi tapu except where Historic Places Trust approval has been obtained, or the requirement that in the event of wāhi tapu being discovered an activity shall cease insofar as it may affect the wāhi tapu, until clearance is obtained for modification or destruction. These are both prior legal obligations under the Historic Places Act (1993), and afford no additional protection.

Table 7.15 – WRP Plan Effectiveness – Wāhi Tapu			
	Criteria	Max	WRP
Quality	Strength of wording	20	12
	Interpretation and explanation provided	5	3
	Identification of issues	5	3
	Fact base	5	2
	Related plan provisions	10	4
	Identification of potential effects	5	3
	Quality subtotal	50	27
Extent	Plan cascade	15	6
	Plan logic mapping	10	4
	Internal consistency	10	5
	Links made with equivalent provisions in higher and lower order instruments	10	4
	Integration with neighbouring plans	5	1
	Extent subtotal	50	20
	Plan Effectiveness – Wāhi Tapu	100	47

The WRP scored 12/20 for the strength of wording, mainly reflecting the huge number of references to wāhi tapu. It scored 4/10 for the contribution of a range of non-Māori-specific provisions toward the protection of wāhi tapu. The WRP scored 2/5 for its wāhi-tapu-related fact base (as did all the plans except the NZCPS, which scored 1), as it provided an introductory explanation but no register or alternative database of Māori heritage information. Iwi sought the inclusion of greater information on wāhi tapu, as expressed in the Hauraki iwi section, which stated: ‘A key issue is that local authorities are managing the use and development of resources without good information about the nature and extent of waahi tapu in the Hauraki region’. This contrasted with neighbouring plans, such as the Auckland Regional plans, which referenced the Cultural Heritage Inventory and New Zealand Archaeological Association (NZAA) database of recorded sites.

WRP extent-related criteria

The overall wāhi tapu score for the WRP of 20/50 for extent criteria is poor. The WRP scored 6/15 for its provision for wāhi tapu down the policy cascade, recognising the large number of rules and methods referencing wāhi tapu (Table 7.15). This resulted from a lack of monitoring and reporting provisions, the reference to Māori heritage only managing the status of a comment in the

‘Monitoring Options’ table, where ‘Community awareness of sites of significance to tangata whenua’ is listed as an indicator. It scored 4/10 for organisation and presentation relating to wāhi tapu, because of a lack of wāhi tapu or Māori heritage references in the index, glossary, and the topics table. The table contained no entries for heritage, and those for wāhi tapu referred exclusively to the previously mentioned rules. The WRP also scored 4/10 for both internal consistency and its links to higher and lower order plans, and no neighbouring plans were mentioned in relation to wāhi tapu, scoring 1/5.

Wāhi tapu effectiveness – Waikato Regional Coastal Plan

The WRCP included more substantial wāhi tapu-related provisions than the other regional and district plans, scoring 32/50 for quality and 25 for extent. The resulting 57% effectiveness rating was the second highest of the plan scores across the three tikanga. Criteria scores are presented in Table 7.16.

	Criteria	Max	WRCP
Quality	Strength of wording	20	15
	Interpretation and explanation provided	5	3
	Identification of issues	5	3
	Fact base	5	2
	Related plan provisions	10	6
	Identification of potential effects	5	3
	Quality subtotal	50	32
Extent	Plan cascade	15	8
	Plan logic mapping	10	6
	Internal consistency	10	5
	Links made with equivalent provisions in higher and lower order instruments	10	5
	Integration with neighbouring plans	5	1
	Extent subtotal	50	25
	Plan Effectiveness – Wāhi Tapu	100	57

WRCP quality-related criteria

Testimony to the fact that quantity doesn’t always equate to quality, the WRCP referred to wāhi tapu 40 times, compared to 318 in the WRP, but scored 15/20 for strength or wording. It included some credible high level provisions, such as the policy 2.4.2 'Protection of Sites', which read: ‘Work with tangata whenua to

protect those sites in the CMA which have been identified as having cultural and spiritual significance, including ancestral lands, water, sites, waahi tapu and other taonga’, and policy 3.3.2 'Protection of Heritage Values', which read: ‘Ensure the protection of the Region’s heritage resources, including historic places, areas, sites and structures from any adverse effects of use and development’.

Like the other two regional instruments the WRCP scored a reasonable 3/5 each for interpretation and explanation, identification of issues, and identification of potential effects. It scored 6/10 for related plan provisions, with Māori heritage or wāhi tapu recognition across a range of subject areas, including: Use of and Occupation of Space for Marinas (policy 3.1.4B), Calculation of the Amount (of financial contributions - policy 14.1.4), Livestock in Sensitive Areas (rule 16.2.9), Minor Discharges of Water (rule 16.3.4).

Also like all the other instruments, the WRCP suffered from a poor fact-base, scoring only 2/5. This diluted the likely effectiveness of the plan’s provisions. For example, rule 16.4.3 provides that whitebait stands are a permitted activity, as long as they meet several conditions, including that the structure shall not be located in any area identified as wāhi tapu. However, the plan included no heritage inventory or similar database that would identify wāhi tapu, nor advice regarding the likelihood of wāhi tapu being present in areas such as river banks.

This reveals internal inconsistencies, in that elsewhere in the plan the method ‘Identification of Unrecorded Historic and Archaeological Sites’ (17.2.5), states that the council will advocate to territorial authorities, the New Zealand Historic Places Trust and other relevant agencies, the development and use of a predictive model to assist in identifying coastal areas where there is a high or medium probability of an archaeological site occurring. No such predictive model was ever advocated nor developed by WRC or any of the agencies mentioned. Overall the quality score for the WRCP was a credible 32/50.

WRCP extent-related criteria

The WRCP extent-related score was a modest 26/50 (Table 7.16 p. 181). It scored 8/15 for plan cascade, reflecting a large number of rules and methods containing wāhi tapu and Māori heritage recognition. These included: 'Identification of Unrecorded Historic and Archaeological Sites' (17.2.5), 'Environment Waikato: Works and Services' (17.2.6), 'Consultation with New Zealand Historic Places

Trust' (17.2.16), 'Heritage Resources' (17.2.20), and 'Heritage Criteria' (17.2.22). The WRCP also provided standards and terms for controlled or discretionary activity rules, which included prohibitions for certain activities within wāhi tapu. It also contained monitoring and reporting requirements for cultural heritage. However, little guidance was given in the plan on when methods might be used, particularly in response to effects stemming from proposed consent activities.

It scored 6/10 for each of organisation and presentation, 5/5 for both internal consistency and links to higher and lower order instruments, as the index and subject table provided relatively effective navigation of relevant provisions, and rules and methods were consistent with the policy direction. The plan was consistent in that wāhi tapu were often bundled with other matters at every level of the plan cascade. The WRCP was particularly well aligned with the NZCPS, but not with the WRPS in terms of wāhi tapu. Despite sections on integrated planning and cross-boundary management it included no wāhi-tapu or heritage-specific linkages with neighbouring plans, scoring 1/5.

Wāhi tapu effectiveness – Thames-Coromandel District Plan

Lowest ranking of all the plans for wāhi tapu was the TCDP, scoring just 21.5/50 for the quality and 15/50 for the extent of its wāhi tapu-related content. The only lower plan score was the TCDP for mauri, with 32%. Criteria-specific scores are provided in Table 7.17 (next page) and plan comparisons in Figure 7.4 (p. 175).

TCDP quality-related criteria

The TCDP included some credible wāhi tapu and Māori heritage provisions, but suffered from the bundling of multiple issues. For example objective 214.3 'Heritage Resources' read: 'To conserve, protect and enhance the buildings, items, streetscapes, trees, landscape features, archaeological sites and waahi tapu, which are of cultural, historic, architectural, aesthetic, scientific or special heritage significance in the District and to ensure that new works do not compromise their significance'. Similarly policy 221.4 read: 'To avoid, remedy or mitigate the adverse impact of land modification caused by land disturbance or earthworks in the following areas', followed by 10 types of area including wāhi tapu and other places of significance to tangata whenua (1.7), and areas of historic and archaeological significance (1.8). However, the policy imposed no other

requirement to that of the RMA, being that more than minor negative effects must be avoided, remedied, or mitigated. No other heritage objectives or policies dealt with wāhi tapu, and the plan scored 11/20 for strength of wording.

Table 7.17 – TCDP Plan Effectiveness - Wāhi Tapu			
	Criteria	Max	TCDC
Quality	Strength of wording	20	11
	Interpretation and explanation provided	5	2.5
	Identification of issues	5	2
	Fact base	5	2
	Related plan provisions	10	3
	Identification of potential effects	5	1
	Quality subtotal	50	21.5
Extent	Plan cascade	15	5
	Plan logic mapping	10	3
	Internal consistency	10	4
	Links made with equivalent provisions in higher and lower order instruments	10	3
	Integration with neighbouring plans	5	0
	Extent subtotal	50	15
Plan Effectiveness – Wāhi Tapu		100	36.5

The TCDP contained no introduction or explanation of wāhi tapu prior to the above-noted policies, and provided no definition, scoring 2.5/5 for interpretation and explanation. It scored 2/5 for its fact base, for being the only plan to include a heritage register, but the intention was undermined by the restriction of the register to two towns, the inclusion of few Māori sites (relative to Pakeha ones), and a lack of engagement with mana whenua regarding what sites should be included. Unlike the neighbouring Hauraki District Plan, the TCDP does not list those sites within the district that are in the NZAA recorded archaeological sites database. The plan scored 2/5 for its identification of Māori heritage issues. One of seven Māori-specific issues was: ‘Protection for water, waahi tapu, sacred areas and taonga’. Wāhi tapu and Māori heritage were also identified in the issues associated with the tangata whenua section, and for earthworks. Despite this, the plan scored only 3/10 for related provisions, because references to wāhi tapu were almost always restatements of RMA 6e, and offered little additional protection for Māori heritage. The TCDP showed minimal effort at identifying potential effects on wāhi tapu, scoring 2/5.

TCDP extent-related criteria

High-level intentions expressed within the plan did not survive the cascade into useful methods and monitoring and reporting requirements, and the TCDP scored only 5/15 for cascade. A range of methods for protecting wāhi tapu were included, relating mainly to information on wāhi tapu. These included: ‘Seek an exchange of information on waahi tapu, taonga, taonga raranga, mahinga mataitai and other places of significance (method 215.5.4), and ‘Establish a register or maps of publicly known waahi tapu to afford a level of protection and work with tangata whenua to identify more sites for protection in this way as well as using the silent file where appropriate’ (methods 215.5.7).

Methods were listed after policies, but no table provided to link objectives and policies to methods or explanations. The TCDP provided no guidance for when methods might be used. There were some weak monitoring and reporting provisions associated with Māori heritage and wāhi tapu. Indicators were proposed, to be derived from auditing resource consent processes, and the TCDP was to be reviewed (presumably internally) following the release of iwi environmental/ resource management plans (214.9 and 215.9, Monitoring). This contrasts with proactive methods prescribed for other aspects of the district’s heritage, which included multiple forms of surveys, taking photographic and video footage, and environmental health testing. The TCDP scored 3/10 for organisation and presentation, and 4/10 for internal consistency.

The TCDP also scored 3/10 for links to equivalent provisions in higher order instruments, as it failed to give effect to the strong Māori heritage policy direction of the RMA and the NZCPS. While it included a cross-boundary issues section (224), this included no wāhi tapu or heritage-specific provisions. The TCDP scored a respectable 2/5 for integration with neighbouring plans in relation to mana whenua (the best score for any plan for this criteria), because it recognised that Māori cultural issues spanning council boundaries and required liaison with a range of agencies for dealing with overlapping issues. But it had no equivalent cross plan or cross boundary Māori heritage provisions, and scored 0/5.

The TCDP scored poorly for the combined extent-related criteria, 15/50, the lowest number for any plan across the three tikanga, equalled only by its own score for the extent of its mauri-related provisions.

Assessing likely combined plan effectiveness across the three tikanga

I have described in this chapter both the quality of the individual plans, and the likelihood that statutory and plan policy intentions will translate into practice, because of the extent of provisions, and a lack of alignment between higher, lower and neighbouring plans and policy instruments. Figure 7.5 shows the effectiveness for Māori of the five plans across the three tikanga. In spite of guidance from plans higher in the plan hierarchy, it is disconcerting to find the district plan is so inadequate. It is at a district level that policy implementation most directly impacts on outcomes for Māori.

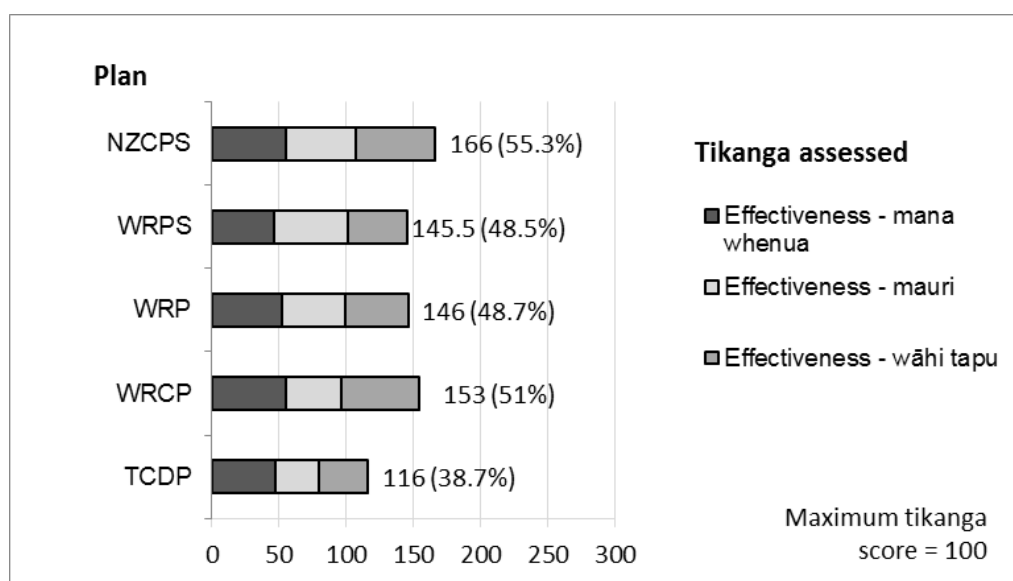


Figure 7.5 Overall individual plan effectiveness (combined quality and extent)

Likely combined effectiveness – mana whenua

The five plans achieved a mediocre combined mana whenua effectiveness rating of 255 of a possible 500, or 51%. This was the highest combined score for any of the three tikanga against which plans were assessed.

In combination, the five plans were disappointing, scoring at or below 51% for the three tikanga. Figure 7.6 (next page) shows the combined plan scores for their likely effectiveness at providing for each of the three tikanga, mana whenua, mauri, and wāhi tapu. It is followed by a more detailed assessment of the likely combined effectiveness of the plans for each of these tikanga.

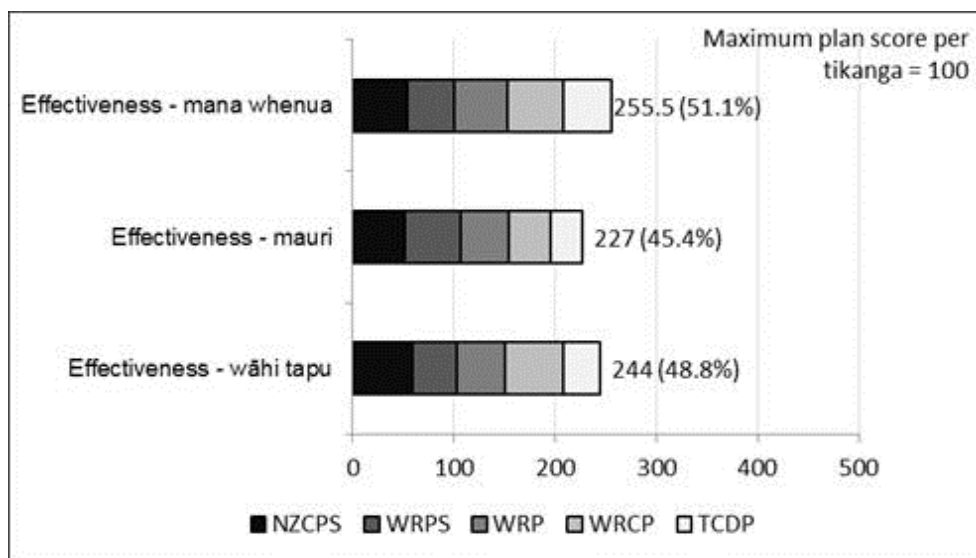


Figure 7.6. Combined plan effectiveness for each of the three tikanga

As the prior analysis showed, all five plans scored lower for the extent criteria than for quality-related ones, and diminishing provision for mana whenua down each plan's cascade limited overall effectiveness. In particular, plans suffered from insufficient or inappropriate mana whenua-related methods, inadequate monitoring requirements, and unclear or difficult to interpret linkages within and across plans. All three of the regional instruments listed methods for implementing policies, but gave little direction to planners for how and when to use these methods. Monitoring and reporting provisions existed, linked to the objectives and policies in the regional planning instruments, but the regional and district plans failed to guide how and when monitoring would take place.

An attempt to map high-level mana whenua policies in the 1994 NZCPS, through regional instruments, to the TCDP, made it clear that no such overview was taken to plan development. It is therefore not credible to claim that these satisfy the legislative requirement that lower order plans give effect to higher ones. All of the plans suffered from a lack of internal consistency, with identification of wide-ranging issues, but inadequate policies to address these. Methods often bore little relationship to plan policies, and promised monitoring tools never eventuated because methods intended to provide them were rendered optional by weak wording, and therefore were never actioned.

Some effort was apparent at giving effect to higher order instruments. The NZCPS scored highest (5/10) for the extent it gave effect to the RMA and direction to lower plans, and the WRP and WRCP scored 4/10 for the extent that

they were consistent with the WRPS. Each of the regional and local instruments suffered from inadequate linkages across the Māori-relevant sections, rendering them difficult to navigate. Despite good high level provisions, they were plagued by a poor path to implementation within and between plans.

Finally, all plans failed to address cross-boundary issues. There was minimal consideration of the mana whenua provisions in neighbouring plans in any of the regional instruments. This was a major weakness, not only in terms of implementing the RMA mandate, but also in environmental terms, with the district and region spanned by numerous tribal rohe and environmental systems such as river catchments, harbours, and coastlines.

Likely combined effectiveness – mauri

In combination, the plans achieved a mauri score of 227/500, or 45.4%, as shown in Figure 7.6. This score does not reflect the fair mauri-related policies of the NZCPS, WRPS and WRP (all scoring at least 30/50 for quality), but rather a failure to reflect strong policy direction across and between the plans.

Organization and presentation of the regional instruments was passable, each employing the same table structure for this purpose, meaning users navigating the mauri-related provisions would have some difficulty. The TCDP included no navigation aids that would assist plan users seeking to utilise the plan for the purpose of protecting mauri.

The WRP, WRCP, and TCDP scored poorly for all of the extent-related criteria, reflecting a failure to continue the mauri-related policy intent down the plan cascade, through to methods and monitoring and reporting provisions. These three plans made minimal reference to mauri-related provisions in higher order instruments, and were not internally consistent. All four of the regional and district plans scored 1/5 for integration with neighbouring plans. This was a significant limitation given the waterways and natural systems that span council boundaries, and the high-level promises of integrated management in all the plans.

Given that the maintenance of mauri is a core purpose of kaitiakitanga, the plans represent a poor effort at giving effect to RMA obligations to Māori. In combination they provide a fair policy platform for the protection of mauri, but this is compromised by a lack of implementation pathways.

Likely combined effectiveness – wāhi tapu

The five plans achieved a combined wāhi tapu-related effectiveness rating of 244 out of a possible 500, or 48.8% (Figure 7.6 p. 187). Some of the wāhi tapu provisions in the NZCPS and regional plans were impressive at an issues and policy level, and the NZCPS achieving the highest quality-related score across the three tikanga against which plans were assessed. However, the low score of the WRPS represents a significant planning gap, given that this document is intended to lay down the policy direction at a regional level.

Scores achieved for the extent of wāhi tapu-related provisions were lower than those for quality for all of the five plans. There were no exceptions to this across the three tikanga evaluations, with extent scores averaging 72.4% of those for quality. All of the plans were let down by a lack of, or narrowly focused, methods. As for both the mana whenua and mauri-related evaluations, I found minimal provision for monitoring and reporting relating to wāhi tapu, and reliance on the development of cultural indicators or similar measures which never eventuated. For these reasons, despite some strong policies, the combined plans were limited in terms of their likely effectiveness for protecting wāhi tapu.

Comparing Plan Quality Nationally

There are no national assessments of the quality of RMA plans other than for the 34 notified plans and 16 regional policy statements by PUCM published in 2003. The PUCM methodology was discussed in Chapter 2 and the criteria explained in Appendix B (p. 352). Relevant results are in Tables 7.18 and 7.19 in Appendix E (p. 362).

The PUCM evaluations found low scores for how well plans address the role of Māori in land use and resource management. Just over half of councils understood the RMA mandate with respect to the Treaty of Waitangi and Māori interests philosophically, but they failed to follow through due to lack of political commitment and capacity. PUCM concluded that poor mandate design had impeded progress in recognition of Māori values and resources in plans, and nearly 50% of plan-makers in district councils did not understand the strong Māori provisions in the RMA, paraphrasing some sections and ignoring others. Furthermore, plans were deficient in identifying issues relevant to Māori, typically limiting them to wāhi tapu. Consequently, the plans failed to translate

Māori concerns into relevant objectives, policies, methods, rules, and anticipated environmental results. Although these findings were made 13 years ago, they are consistent with my own more recent findings, as explained further below.

Comparing the PUCM evaluation with that of the case-study plans

To compare my case study plans with those of PUCM, I averaged the PUCM overall plan evaluation scores and those for Māori interests, so that the results included all of the criteria I used. This is not intended as a rigorous comparison or alignment of the two sets of results, but rather to indicate how the case-study plans stack up nationally.

Only the WRPS was included in the PUCM evaluation, coming 13th in the RPS overall study, scoring 41.1% (32.9/80) (Appendix E, p. 362). For Māori interests it scored 57.5% (23/40). I scored it 45.7% across the three tikanga (137/300), fairly close to the average of the two PUCM scores, being 49.3%. The five plans I assessed have similar scores to those evaluated within PUCM. My lowest scoring plan, TCDP, sits at the top of the lowest quartile, and my highest scoring plans at the lower end of the top quartile. They are, therefore, representative of the spread of average quality RMA plans nationally, for Māori interests.

Other plan developments

While not reflected in the overall evaluation scores, the case-study plans included some impressive provisions, considering that there had been little previous statutory recognition of indigenous values and interests internationally. This was new ground for planners, who engaged substantially with the Māori issues before them. It took the courts and several amendments to the RMA to determine exactly what could or should, or should not be included in plans. For example, plans provided for intangible and spiritual values, and court decisions vary about whether decision-makers are required (or even allowed) to take these into account.

New Zealand plans are internationally ground-breaking for their recognition and protection of First nations' values and interests. Therefore, while some of the plans achieved less than 50% for tikanga I assessed, this should be considered against a back-drop of minimal recognition internationally in 'post-colonial' jurisdictions.

Part III

Implementation and Outcomes for Māori

Part III includes three chapters describing implementation of the RMA mandate, as relates to Māori. My focus in Chapter 8 is implementation by both territorial authorities and the Crown. I take an in-depth look at council efforts at giving effect to their own plans and implementing RMA responsibilities to Māori, and locate district and regional implementation efforts within a national overview.

In Chapter 9, I consider significant jurisprudence relating to Māori and environmental management, particularly under the RMA. I discuss a range of important cases that have empowered Māori, defined Māori concepts, or set legal precedents for Māori and other First Nations peoples. I also highlight some important cases relating to the subject iwi and to Whangamatā.

In Chapter 10, I present the two case-studies – the Whangamatā marina and mangrove removal. These are presented as exemplars of disempowerment, and negative outcomes for Māori under the RMA. The case-studies are geographically focused, highlighting place-specific Māori environmental management outcomes, and the part played in outcomes by local, regional, and central government. In doing so, the case-studies allow a longitudinal examination of legislation, plans, plan implementation, treatment by the courts, and the actions of the Crown, in relation to two significant localised issues.

In combination, the three chapters in Part III provide a detailed picture of the influence of Crown and council RMA implementation efforts on environmental results for tangata whenua. Implementation is shown to be the critical element within the planning cycle in terms of both empowerment of kaitiaki (Question 1), and overall outcomes for Māori (Question 2).

Chapter 8 - RMA Implementation

Mahia te mahi

Translates as do the work, and means walk the talk

Following on from the evaluation of Māori provisions in the RMA in Chapter 6, and plans in Chapter 7, in this chapter I assess the extent to which councils and the Crown have delivered on statutory obligations to Māori. In doing so I present research findings relating to Objective 4, which was ‘to assess how tikanga Māori and Māori interests are recognised and provided for in the implementation of environmental resource management legislation’. Chapter 8 reflects four of the five tasks associated with Objective 4, to: evaluate statutory planning processes (2), assess council decision-making for Māori (3), investigate Māori participation in, and outcomes from, council monitoring, plan evaluation, and reporting (4), and, evaluate other developments that have a bearing on the treatment of Māori values and interests in council plans and their implementation (5).

I consider agency implementation in relation to the three selected tikanga mana whenua, mauri, and wāhi tapu. This is intended to provide a wide view of council implementation efforts for Māori. For mana whenua I consider participation in decision-making, involvement in plan writing, council-Māori relationships, and involvement in the management of ancestral lands and resources. For the mauri of waterways I describe agency interventions, waterways protection, and restoration. Lastly, I assess efforts at protecting historic heritage. For each tikanga I first consider the local DoC conservancy and case-study local and regional councils, followed by a national overview. For wāhi tapu I also consider HPT (Historic Places Trust).

Giving effect to Māori provisions in the RMA and plans

Despite high quality Māori provisions in plans, it has been shown that Māori interests suffer due to a failure by agencies to implement provisions in plans (Bachurst et al., 2002 p. 10; Day et al., 2003 p. 38; Kennedy, 2012 p. 6). This has

resulted in an 'implementation deficit' (Peart, 2007), where laudable sustainability objectives, expressed in high level planning and policy documents fail to be reflected in day-to-day practice.

The Waitangi Tribunal's (2011 p. 112) report *Ko Aotearoa Tēnei* provided a statement of the Tribunal's different expectations regarding Māori involvement in environmental management. The Tribunal described an environmental management regime that allows all legitimate interests including those of Māori and the environment itself to be considered against an agreed set of principles. Such a system, they observed, should be capable of delivering the following outcomes:

- control by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority;
- partnership models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making but other voices should also be heard; and
- effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others. It should be a system that is transparent and fully accountable to kaitiaki and the wider community for its delivery of these outcomes.

I studied implementation efforts of the case-study councils and the local DoC conservancy, to see whether RMA and plan promises translated into action, and ultimately into outcomes for Māori akin to those anticipated by the Waitangi Tribunal. I reviewed annual, environmental, and plan effectiveness reporting by the councils, Hauraki Gulf Forum, Crown departments, and third parties. Agency implementation was ranked using tikanga-specific evaluation worksheets.

Giving effect to mana whenua provisions

In my analysis of mana whenua-related implementation I first describe plan writing processes, then participation by Māori in council decision-making, and finally relationships and engagement with Māori. I consider TCDC and WRC, then DoC and other Crown agencies that act within the case-study area. Finally, I provide a national overview of implementation effort relating to mana whenua.

I show my agency implementation assessment scores in Figure 8.1 (next page), where scores for nine criteria are presented. These include three plan

effectiveness criteria from Chapter 7, presented here by agency rather than by plan. These are included because plan drafting is an aspect of implementation. The graph shows poor performance from the three agencies across almost all criteria, many scores at or below 25% achievement, and several failing to register. Figure 8.1 also shows better (but still mediocre) results for plan (as compared to action-oriented) criteria for the three agencies. Results for each criteria are explained below, and the scores for the combined tikanga are presented later in Figure 8.6 (p. 229).

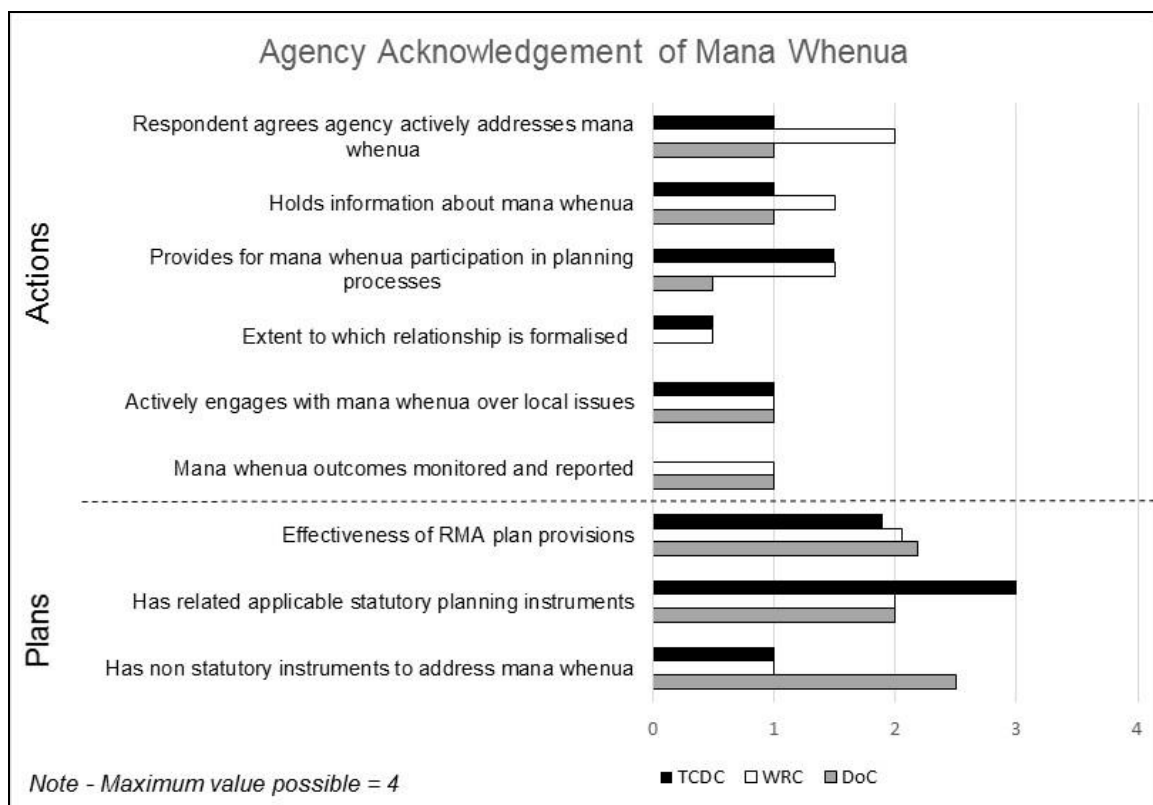


Figure 8.1 My assessment of case-study agency mandate implementation - mana whenua

Plan writing

As discussed in Chapter 6, 3A of Schedule 1 of the RMA requires councils to consult tangata whenua during the preparation of a proposed policy statement or plan. This is necessary as policy statements and some plans are required to identify issues of significance to Māori. Schedule 1 3B requires councils to consider ways to foster the development of the capacity of iwi authorities to respond to an invitation to consult, and to establish and maintain processes that provide opportunities for iwi authorities to consult. These requirements are similar to those in LGA section 81 (relating to building capacity), facilitating

participation in decision-making. Plans operating in the case-study area also trigger the HGMPA.

Iwi involvement in DoC plan writing

DoC ran a series of regional hui for Māori when drafting the first New Zealand Coastal Policy Statement, but iwi involvement was not resourced. Māori planners were included in the writing team, and DoC has long had dedicated Māori liaison staff, on which it drew when drafting its Māori provisions. Despite these measures, iwi engaged primarily via the public process.

DOC local conservancy plans were introduced in Chapter 7. These apply primarily to Crown lands within the conservation estate, but also to some riparian margins and the coastal marginal strip, being locations of significance for Māori. The local planning documents produced by the DoC Waikato Conservancy are the Waikato Conservation Management Strategy (1996 - 2006) and the Coromandel Peninsula Conservation Land Management Plan (2002). The former was replaced long after its expiry date by the 2014 - 2024 Waikato Conservation Management Plan, while the latter was reviewed from 2012, and is due to be revoked at time of writing. Iwi were not separately engaged for either plan, but participated via public notification processes. Both policies are to be revised to reflect Hauraki Treaty settlements, when the DoC will be required to draft separate conservation management plans for the Coromandel Peninsula and Mt Moehau.

Iwi involvement in WRC plan writing

When drafting its first generation plans in the 1990s WRC dealt only with the Māori trust boards in the region. Workshops were held in order to determine issues of significance to Māori, and follow-up hui were arranged to present the completed plan. Travel costs were reimbursed. Council adopted its first second generation plan, the WRCP, in 2004, but several appeals and variations delayed it becoming operative until August 2007. The WRCP was drafted prior to the WRP and to the 2005 amendment to the RMA that imposed a greater obligation on councils to engage tangata whenua in plan drafting.

WRC reviewed the RPS from 2010, and replaced it in 2015. It claims to have involved iwi in the process through a series of combined iwi and councillor workshops. However, a collective approach by Marutūahu iwi for input on a basis

similar to that of Auckland Council was refused. WRC said that resourcing would not be paid for workshop attendees. Iwi pointed to district and regional plans saying that iwi specialist knowledge would be treated in the same manner of any other specialist advice, and that they did not have capacity to resource engagement. When the council would not provide resourcing most iwi declined involvement. Consequently, as with the first generation plans, only the region's Māori Trust Boards were engaged in the process, this via attendance at the workshops. Many iwi did not participate. WRC failed to work with tribal structures when consulting with tangata whenua as intended via WRCP method 17.1.1, or identify iwi, hapū and whānau with the authority to speak on behalf of tangata whenua (method 17.1.1). Similarly, the WRP intended resourcing iwi participation, method 2.3.4.12.c 'Facilitating Tangata Whenua Involvement', providing for tangata whenua participation in the development of regional plans and policy statements, but did not.

Iwi involvement in TCDC plan writing

TCDC held a series of district plan iwi workshops from the mid-1990s to identify tangata whenua issues for the TCDP. Iwi were asked if they wanted to comment on the completed draft, without resourcing. They could engage via the formal plan notification process, as the wider public. Few Hauraki iwi had RMA-related capacity at that time, and participation was therefore minimal. Fortunately, a few Hauraki iwi had lawyers and/or planners, and lobbied for improved Māori provisions. TCDC employed experienced planners with familiarity and sympathy for Māori issues, but the high quality draft Māori provisions were widely opposed by non-Māori submitters, and their intended strength diluted by the Council.

No resourcing was provided by TCDC for iwi involvement in the drafting of its numerous plans since 1991, including local board plans, annual plans, long term plans, many reserve management plans, strategies, policies, bylaws, and others until 2010. The one exception was the Coromandel Blueprint project, a spatial planning exercise between TCDC, WRC and DOC between 2008 and 2010 where iwi input was treated. Iwi had to approach Te Puni Kokiri to obtain funding for engagement of two technical officers and to resource a series of iwi engagements. This, despite RMA Clause 3 of Schedule 1, and TCDP policy 215.4.4, which stated that council will provide for tangata whenua participation in

the development of Council management policies and plans. Method 215.5.11 allowed for financial contributions to help fund consultation and liaison', while method 215.5.12 read: 'engage professional consultant or contract advice in the development of plans, policies and initiatives from tangata whenua on a similar basis as any other specialist input into resource management and planning'.

TCDC reviewed the TCDP between 2010 and 2014, engaging a range of experts. Tangata whenua were refused any opportunity to produce a report, despite many requests. The requests were initially refused, then agreed to after pressure from iwi. Similarly, TCDC initially refused to resource participation, but relented when iwi made involvement conditional on resourcing. That provided was minimal, and significantly less than the real cost to iwi of participation. However, this was the first time the council had provided any resourcing for iwi engagement in a plan writing process, so this was seen as positive. I return to this theme of changes to iwi treatment by councils later in this chapter.

Plan writing nationally

Most councils responded to the obligation to consult with Māori in writing plans, but generally did the minimum required to satisfy legal obligations. I found few examples of iwi being resourced substantially for plan preparation engagement, the prevailing attitude being that councils will pay for travel and lunch.

This treatment is slowly changing as iwi-council relationships improve, and iwi legal actions render councils more amenable to engaging Māori in plan-writing. In 2009 the Tamaki Regional Mana Whenua Forum was resourced to have input into a draft RPS for Auckland Regional Council. Notably, iwi agreed to engage collectively, resulting in significant changes to the draft RPS (Kennedy, 2009c). Marutūahu iwi used this precedent to convince the Hauraki District Council to resource them in district plan drafting in 2011. In both instances letters of agreement were used to formalise engagement, with iwi advice being resourced as expert advice rather than consultation. In 2010, the Matamata Piako District Council resourced its Mana Whenua Forum to provide input.

Auckland Council is a standout example of quality of engagement with Māori. While levels of engagement have varied across Auckland Council's plans (Auckland Plan, Long Term Plan, Local Community Plans, etc.), that for the Unitary Plan was impressive. Iwi, individually or collectively according to their

preferences, were contracted to respond to drafts, after a series of initial hui at which Māori aspirations for the plan were collected. Auckland Council appears to herald a sea-change in terms of Māori participation, and other councils have made notable efforts.

A significant advance is the drafting of the Auckland Conservancy's Hauturu (Little Barrier Island) Conservation Management Plan and Inner Motu (Islands) Plan. These are required in Treaty settlement legislation, and enabled under the Conservation Act (1987), and are to be developed by the Auckland Conservation Board and the Tupuna Taonga o Tamaki Makaurau Trust, established to receive collective settlement lands, including the Auckland volcanic cones. While other conservation management plans are signed off by conservation boards (after comment from the Minister of Conservation), the conservation board and Tupuna Taonga Trust will jointly sign off the Inner Motu Plan. This is an example of Treaty settlements delivering better results for Māori than the RMA.

Nationally, Māori express concern at the lack of resourcing to engage in plan writing processes (Reid, 2011). For DoC and MfE policy documents, iwi generally have no greater opportunity for input than the rest of the community, via a statutory notification processes, and at their own cost.

Participation in decision-making

As discussed in Chapter 6, the RMA and LGA both provide for Māori participation in decision-making. The LGA requires council to provide opportunities for Māori to contribute to council decision-making, to report the ways in which they will build Māori capacity to participate, and also how information is to be provided to Māori to assist them in capacity-building and in participation in councils (sections 76 to 81). The RMA provides opportunities for Māori participation in decision-making through sections 6e, 7a and 8, and allows for the transfers of powers and function to iwi authorities (section 33), delegations of functions (section 34), or joint management (section 36). Other mechanisms for direct Māori participation in environmental decision-making include the option of Māori wards under the Local Electoral Act 2001, and reserves management.

Participation in DoC local decision-making

There are some ways in which Māori participate in DoC decision-making. As described in Chapter 6, the Conservation Act (1987) brought Ministerial Māori appointees on the Conservation Authority and regional Conservation Boards. Neither group directs DoC, but exert influence as representatives of the public. Iwi representation is also provided for by six Treaty settlement statutes, most recently mandatory iwi-rōpu (tribal collective) positions created by Auckland Settlements.

Another avenue for Māori participation in DoC decision-making is via shared management of conservation parks and marine reserves. Ngāti Hei have long had seats on the governing body of the Te Whanganui a Hei Marine Reserve off Hahei. However, the iwi has complained that the arrangement provides minimal resourcing to participate, and that management aspirations for the reserve are not being met. There is also a loose shared management arrangement in place over the Ruamahua (Alderman) Islands, north-west of Whangamatā and gifted by Hauraki Māori in early the 1900s. Iwi have an arrangement to manage and harvest Tītī (mutton birds).

Yet many other Māori-gifted DoC-managed islands have no such arrangement with mana whenua, nor means for providing for their ancestral relationship. There is a lack of tribal partnerships relating to the DOC estate on the Coromandel Peninsula, despite the Department owning a vast amount of ancestral land there, far exceeding that of either TCDC or WRC.

Participation in WRC decision-making

WRC has provided minimal opportunity for tangata whenua participation in decision-making. There are some exceptions, including the previously mentioned MOUs, in that these ensure that they enjoy regular Trust Board-Council meetings. However, a lack of legal status, and the fact that MOUs are intended to be preliminary arrangements, but seldom develop further, limit their effectiveness. Despite this, in the first decade since signing the MOUs the Trust Boards have obtained seats on some regional subcommittees, including catchment liaison subcommittees. But membership remains at the discretion of WRC and there is no Māori representative on the Regional Transport Committee, despite legislation requiring one member to 'represent cultural interests'. The membership

appointment criteria in the terms of reference for the two Regional Pest Management Advisory Subcommittees included 'Māori'. But these were disestablished in 2011, and the succeeding Regional Pest Management Committee was established with no requirement for Māori members (Waikato Regional Council, 2011b).

The 2010 Waikato and 2012 Waipa River co-management arrangements are notable developments for Māori participation in decision-making. Both were Treaty settlements, and are ground-breaking because they require councils to enter into joint management agreements with river hapū within their areas. To date WRC has four joint management agreements, with Raukawa, Te Arawa, Waikato-Tainui, and Maniapoto iwi. While similar arrangements have been available under the RMA, councils have refused to share power with iwi voluntarily.

WRC has recently included two dedicated Māori seats, making it only the second council to do so, and the first via the Local Electoral Act (2001). The Bay of Plenty Regional Council was the first council to provide dedicated Māori representation, establishing three Māori constituencies under the Bay of Plenty Regional (Māori Constituency Empowering) Act (2001).

Participation in TCDC decision-making

TCDC has no formalised means for tangata whenua participation in council decision-making, with the exception of MOUs with Ngāti Hei and Ngāti Maru. It has twice voted against adopting Māori wards, but has at no time consulted tangata whenua, or the ratepayers, about whether wards are supported.

Under the LGA councils must declare intentions for building Māori capacity and providing for participation in decision-making in Long Term Plans, and report on progress in annual reports. In its 2004-2014 Long Term Plan (2004 p.p. 23-24), TDCD undertook to: 1) compile a contact list for consultation purposes that includes Māori; 2) target persons who have identified themselves as Māori for consultation when Council decides that it wishes to consult; 3) resource a community liaison person (not specifically iwi liaison); and 4) hold regular forums with each Community Board to enable Māori to participate in decision-making processes. By the release of its 2009-2019 Long Term Plan, TCDC had modified its policy only slightly, in addition to 1 and 2 above, it stated an intention to identify key issues of interest to Māori (already a statutory obligation

under RMA Schedule 1, 3A and B), 'gather information on Māori perspectives about Council activities', and 'consciously build on the good quality relationships that have already been established'. It undertook to develop a work programme to progress the above 'as staff time and funding allows' (Thames-Coromandel District Council, 2009 p. 226).

Even against these minimal undertakings, TCDC failed to implement plan promises. No liaison person was appointed. A Strategic Relationships Manager was appointed, but not charged with developing strategic relationships with iwi. The contact list was created, but not populated. No consultation process was undertaken to identify issues of significance or iwi views on Council activities.

There are two notable recent examples of Māori participation in TCDC decision-making. One was the inclusion of Māori on the Coromandel Blueprint governing committee, the second the appointment of a Māori to the steering committee of the district plan review. However, in neither instance did Council consult with tangata whenua about the appointments. There was neither appointment process nor effort made to ensure that the Māori selected by TCDC were mandated by, or accountable to, tangata whenua.

Participation in decision-making nationally

The only national-level information gathering undertaken regarding council performance under the RMA is by MfE two-yearly surveys. The latest survey (2011) reported that 74% of councils claimed to have formal agreements with iwi/hapū, a figure that has been gradually rising over the last decade. In the same survey 53% of councils said they had informal agreements with iwi/hapū, this figure falling slowly during the same period.

As previously discussed, these figures are hard to interpret. Responses are not verified and there is no qualification given about what constitutes a formal agreement, or whether these were governance level or operational arrangements. As indicated by the cases above, a council could have a single operational level arrangement with one of many iwi within its area and meet the standard, likewise for informal relationships. In Table 8.1 I present the national averages of council results for Māori-specific measures reported for the last three periods.

Table 8.1 - Council reporting of Māori participation under the RMA			
Measure	2005-6	2007- 8	2010 - 11
Maintaining records and documents of iwi and hapū groups	N/A	90%	92%
Keep and maintain records of the documents that iwi or hapū groups lodge with them	N/A	77% ⁶	72%
Provides advice to resource consent applicants on Māori interests	96%	99%	100%
Written criteria or a set policy for staff to determine when iwi or hapū are considered to be an affected party to resource consent applications	59%	60%	51%
Has policy requiring a cultural impact assessment as part of an application when a site, species or resource is of concern to iwi or hapū	32%	30%	24%
Standard resource consent conditions to cover the discovery of sites or items that are significant to iwi or hapū	89%	88%	97%
Involve iwi or hapū in resource consent monitoring	21%	24%	15%
Formal agreements with iwi/hapū	61%	57%	72%
Informal agreements with iwi/hapū	57%	63%	53%
Make a budgetary commitment to iwi or hapū participation in RMA processes	38%	56%	54%
Committed funds for iwi or hapū participation in resource consent processes	N/A	40%	45%
Source: Ministry for the Environment, Resource Management Act: Two-yearly Survey of Local Authorities (2007 and 2011).			

The survey was criticized by auditors for relying on council self-reporting, the lack of detail provided, and the fact that there is little potential for MfE to qualify or validate responses (Audit New Zealand, 2003). The only attempt to validate responses is by periodic auditing by Audit New Zealand, but three occur only about 10 yearly. Audit New Zealand (2003 p. 1) commented on the accuracy of council responses in its report on the 2002 review, finding that of the 48 Councils visited, only nine were issued with clear letters of certification.

⁶ According to the 2007-8 report the figure was 77% (64 out of 83), but the 2010-11 report states that its result of 72% (56 out of 78) was a 2% decrease from the previous survey, rather than 5%. The number of councils changed between 2007-8 and 2010-11 because of Auckland restructuring. No survey was undertaken in 2009 because of the Canterbury earthquake.

For 39 Councils they were unable to verify at least one item in their survey response, and in one instance they were unable to verify any of the responses. Furthermore, the lack of specificity means that it is difficult to assess what it is that councils have done, levels of resourcing, or the quality or effectiveness of any of the arrangements with Māori reported.

Other studies into Māori-council relationships in the last decade found a lack of formalised agreements with councils (Department of Internal Affairs, 2009 p. 132; Kennedy, 2009a p. 48). In a recent study into Auckland legacy council arrangements, for example, it was found that of the seven councils, the most formal engagement arrangements any had in place was Manukau City Council with six, Auckland City Council had only three arrangements, and the others had two or less (Kennedy, 2012 p. 33). This, in a region with more than 20 iwi.

It should not be assumed that the absence of formal arrangements is entirely a product of council unwillingness to engage, as a significant factor is Māori capacity. However, it has been reported that even for iwi/Māori of low capacity formalised relationship agreements with councils are a priority (Te Puni Kokiri, 2006 p. 11).

Relationships and engagement

As observed above in relation to participation in plan writing, the strength of relationships between tangata whenua and councils is one of the most important determinants of the quality of experience of Māori under the RMA (Jefferies & Kennedy, 2009b p. 38; Kennedy, 2012 p. 32; Te Puni Kokiri, 2006 p. 7).

While both informal and formal relationships have led to improved iwi-council outcomes, formalised arrangements are preferred. These clarify the nature of the relationship, and make clear both parties' responsibilities. They are preferable too because informal relationships rely on individuals, who may leave.

Relationships and engagement with DoC Waikato conservancy

There are few iwi-DoC formalised relationships in Hauraki, although these are soon to materialise with pending Treaty settlements. The notable exception is the Ngāti Hei-DoC arrangement. Iwi struggle to respond to numerous DoC concession applications, wildlife-related applications, pest control consultation,

and other management-related matters, and DoC has consistently refused to resource them.

In some areas Māori-DoC relationships are better. One important DoC conservation instrument that has been used in Hauraki and nationally is Ngā Whenua Rahui, conservation covenants over private and Māori land. Ngā Whenua Rahui was first funded in 1991, although legislated in 1993. Another example is research resourcing provided by DoC through the Mātauranga Kura Taiao Fund, established in 2001, which is a contestable fund to support hapū /iwi initiatives to revive, retain and promote traditional Māori knowledge and practices, and their use in biodiversity management. Both the fund and Ngā Whenua Rahui Kawenata are overseen by a Māori committee, which reports directly to the Minister of Conservation.

Some change in iwi - DoC relations is apparent through Treaty settlements, triggering discussions about co-management arrangements. Improved co-operation with Hauraki iwi is therefore anticipated through settlements. In this spirit Ngāti Whanaunga recently agreed to a DoC whale burial ground being located on ancestral land. Whale rescue and strandings is one area in which DoC – iwi relationships are strong, after several decades of working together according to agreed protocols.

Relationships and engagement with TCDC

The TCDP states that 'Council and Tangata Whenua entities must build effective relationships before establishing appropriate resource management frameworks and procedures'. TCDC enters into project-specific memoranda of understanding, but these are operational level arrangements and do not constitute relationship agreements. TCDC has two formal iwi relationship agreements to date, with Ngāti Hei and Ngāti Maru. Given that there are at least nine iwi within the district, this has caused dissatisfaction. Talk over the last decade of establishing a mana whenua forum has been postponed pending Treaty settlement.

Progress on building relationships has previously been slow, despite repeated attempts at relationship agreements with Council over a period of 10 years. Through Ngāti Whanaunga participation in the Coromandel Blueprint Project, tribal members developed strong relationships with TCDC elected representatives, managers and planners, but has been unable to convert these to

formal arrangements with new TCDC councillors post the 2013 local body elections. That led to changes in senior management, and relationships developed over several years were lost. One casualty was the Coromandel Blueprint, as the new council no longer supported it.

Since 2010 TCDC has changed its attitude to, and willingness to resource, iwi engagement in planning initiatives. Mana whenua are increasingly engaged early, particularly where the initiative by council. Māori Values Assessments were commissioned by TCDC for the Whangamatā Waste Water plant consents, the Whangamatā walkway (despite it not requiring consent), and further afield projects like the TCDC-wide aquaculture infrastructure investigations. But it is difficult to identify substantive recognition of the issues and values raised in MVAs in council planner's reports and recommendations, or in subsequent hearings, as is discussed further in Chapter 10.

Since 2011 TCDC plans have acknowledged Treaty of Waitangi settlement negotiations, including the intention to establish co-governance arrangements that include the Thames Coromandel District. However, these negotiations were between iwi and the Crown, and separately between the councils involved and the Crown. In its 2013 -14 annual plan TCDC wrote that it measured its performance toward this goal by whether a work programme was progressed to address Treaty of Waitangi claim settlements. It stated that a relationship agreement was under negotiation. I sit at the collective Treaty negotiations table and can say that the statement was incorrect. No progress has been made toward formalising any agreement.

Relationships and engagement with WRC

WRC made little effort in the 22 years since the RMA to formalise relationships with tangata whenua despite the declared intention to do so. Council entered into memorandums of understandings with three of the five Māori Trust Boards in the region, the Hauraki Māori Trust Board, Tūwharetoa Māori Trust Board, and the Raukawa Trust Board. Discussions continue with the remaining two, the Maniapoto Māori Trust Board and Waikato-Tainui, over possible memorandum.

WRC allows for engagement by memorandum partners through a schedule of annual meetings with trust boards, and make themselves available for unscheduled meetings with MOU partners. The terms of the memorandums

provide for meetings between WRC and Trust Board representatives on a regular, or as required, basis. They state aims and principles that the Trust Board and Council will jointly work toward achieving, and establish joint working groups tasked with implementation. Memorandums are reviewed annually, and their operation resourced by Council.

WRC insistence on only entering into formal relationship agreements with Māori Trust Boards has been a point of contention for Hauraki Māori. This is the case because unlike Raukawa, Maniapoto or Waikato, the Hauraki Trust Board brings together a number of distinct iwi, with different whakapapa and from different waka (ancestry derived from founding canoes).

It is noted that the 2007 WRP and WRCP refer to these memorandums, but also undertake to identify and work within tribal systems and structures when establishing relationships with tangata whenua (Waikato Regional Council, 2007c pp 2-18). The regional council to uphold this commitment, as I previously noted.

Relationships and engagement nationally.

Despite a raft of legislative support, a lack of participation in environmental decision-making remains a significant issue for Māori (Independent Maori Statutory Board, 2012 p. 30; Royal Commission on Auckland Governance, 2009 p. 486).

I have argued that asking Māori their views and then making decisions in their absence does not constitute participation in decision-making. Many of the council participation/capacity building policies investigated for this research were of this nature. (See for example Auckland City Council, 2006; Central Otago District Council, 2006; Manukau City Council, 2006; Matamata-Piako District Council, 2006; Waikato District Council, 2004). Lower forms of engagement are widely sold as participation in decision-making.

WRC was only the second council to adopt dedicated Māori seats in 2011, Nelson City became the first unitary authority (four Unitary Authorities have both regional and local council functions) to do so the same year. Both received strong opposition from councillors and sections of their communities (Butler, 2012 ; Ihaka, 2011). New Plymouth District Council confirmed in Oct 2014 its resolution to become the first district council to provide dedicated Māori representation,

following a public process from which the Mayor reported he had received 'hate-mail' from residents and from around the country (Rerekura, 2014).

Māori also hold mixed views on Māori seats. Concerns include there being no means within legislation by which local iwi can be directly represented (as opposed to Māori generally), and that under such arrangements Māori are always out-voted (Central Hawke's Bay District Council, 2009 p. 1; Kennedy, 2009a p. 16). However, a counter-argument is that at least Māori are at the table, so that decision-makers are provided a Māori perspective, and Māori representatives also better ensure transparency of council activities to Māori constituents.

Of my survey respondents describing relationships with regional councils, seven groups said they were poor or non-existent, four average, and one good. Only one had a governance level MOU (or similar formalised relationship), one an operational level MOU, and one that was project-specific. For local councils things were little better, as four said relationships were good, four average, and five poor. Only one had a governance-level MOU, two at operational level, and three were project-specific.

Tangata whenua participation in decision-making is essential if Māori issues are to be given appropriate weight. The RMA requires striking an appropriate balance, and attributes weight to Māori knowledge, interests, and values when these conflict with wider community aspirations, or western-validated knowledge. Plan writing is also a balancing act. The following citation is from the Board of Enquiry (Proposed New Zealand Coastal Policy Statement Board of Inquiry, 2009) into the revised NZCPS, in its advice to the Crown:

Many submissions commented on the need for balance in the NZCPS. However, that balance was generally perceived and portrayed differently according to the interests of the submitter. We conclude that there are major problems with the current balance applied by decision makers, reflected for example, in the extent of and growth in residential and rural residential development in the coastal environment.

Māori struggle to retain Māori provisions in statutory plans and risk eliciting an anti-Māori backlash. Campaigns by industry groups, political parties, and individuals include attitudes like 'one law for all', and 'no special treatment for Māori'. Some councillors share these attitudes, and councils are prone to being

steered by the predominant views of elected members. Māori values and aspirations have come under pressure where rural industry groups (farming, forestry and mining) have campaigned to influence councils and their plans in their own favour.

Furthermore, where a council applies for resource consent, it is often applying to itself, albeit in a separate capacity. There was some effort by councils to address this by appointing independent hearings committees or commissioners, but iwi remain concerned at the weight given to council priorities over those of tangata whenua, as illustrated in Chapter 10.

Māori committees

An increasingly popular vehicle for Māori - council engagement are council Māori committees. Councils are able to appoint committees under Clause 30 of Schedule 7 of the Local Government Act. Members of a committee or subcommittee may, but need not be, elected members. Clause 32 of schedule 7 allows councils to delegate functions and powers to committees. Māori committees may also be delegated RMA functions and duties under section 34.

However, it is questionable whether the distinction made above between standing committees and advisory committees is valid. My research revealed that existing delegations relate almost universally to low-level Māori-specific responsibilities, for example the power to receive iwi management plans, or the power to make recommendations to Council on certain matters. The Te Arawa Standing Committee, for example, has a single delegation, being to provide a Te Arawa perspective on all matters that affect Māori. The Māori committee of Wairoa District Council, which has the largest proportion of Māori in the country, can make recommendations regarding governance issues relating to Māori, and can recommend professional development opportunities. The power to make recommendations, amounts to no power at all.

Very few exceptions were found. One was Te Taumata Runanga, a standing committee of Waitakere City Council (one of the councils replaced by Auckland Council), which had delegated authority to develop and adopt goals, strategies, policies and programmes 'within its own field of activity'. Some Māori committees nominate representatives to other Council committees, for example

the Te Arawa Standing Committee, Wellington City Māori Committee, and that of Waipa District Council.

But in each instance these are non-voting positions, so in my view they do not ensure participation in decision-making. However, in the same manner that informal arrangements have been opined to serve iwi well in particular circumstances, it may be that despite their apparent lack of authority Māori committees influence council decisions. While this has not been my experience (I sit on several such committees), it was beyond the scope of this research to assess satisfaction nationally. Further investigation needs to be done into delegations, the level of satisfaction of Māori committee members at the extent to which their council's heed advice given, and into the scope and range of activities that council Māori committees are involved in.

In 2004 a Local Government New Zealand survey found that of 86 councils surveyed 17 had a Māori standing committee, 42 working parties or subcommittees containing Māori representation, and 22 Māori advisory committees (Local Government New Zealand, 2004). The following year the Local Futures research found that 10 of the 19 councils investigated had a formally recognised Māori committee (Local Futures, 2005 p. 6).

The number of council–Māori committees has been gradually rising, although still less than half of councils have any form of Māori committee. Despite requests from iwi, neither the case study district nor regional council has established any form of mana whenua forum. The closest example of such a forum was the TCDC Coromandel Blueprint project 'Hauraki whānui'. But that was temporary project-specific forum, and didn't involve most iwi of the district.

The Tamaki Regional Mana Whenua Forum

A forum of particular interest was the Tāmaka Makaurau Regional Mana Whenua Forum (the Forum). The Forum had seats for all Auckland iwi, and operated independently of any council or legislation, although it received ongoing resourcing from the ARC (Auckland Regional Council). The Forum resourced its operation by charging the agencies that engaged with it, to cover the cost of that engagement. These included ARC and the local councils, DoC, the New Zealand Transport Agency, the Department of Corrections, and the Tamaki Transitional Agency - the organisation charged with implementing the government's

restructuring of Auckland local and regional government.). It was seen as an ideal model for Māori-council engagement, and its independence being highly valued.

Tamaki Māori declared an intention to maintain the Forum, post the new Auckland Council, and it has was not formally disbanded. However, since the advent of Auckland Council and the Independent Māori Statutory Board the Forum has not met, and its future remains uncertain. There have been various investigations to date into a replacement mana whenua vehicle by departments of Council and by mana whenua, but to date no regional mana whenua has eventuated.

The Independent Māori Statutory Board

Warranting specific mention is the Independent Māori Statutory Board (IMSB). The IMSB is significantly different to other Māori committees. Established by Auckland Council's empowering legislation, the Local Government (Auckland Council) Act (2009), the IMSB maintains independence from Auckland Council, from which it receives operational funding. This being the case, the IMSB derives its authority from the Crown rather than Council, and does not rely on council delegations. The purpose of the IMSB (section 81) is to assist the Auckland Council to make decisions, perform its functions, and exercise its powers by:

- (a) promoting cultural, economic, environmental, and social issues of significance for—
 - (i) mana whenua groups; and
 - (ii) mataawaka of Tamaki Makaurau; and
- (b) ensuring that the Council acts in accordance with statutory provisions referring to the Treaty of Waitangi.

The constitution of the IMSB was criticized for its failure to provide individual representation for each of the iwi of Tamaki Makaurau, being made up of two matāwaka (Māori traditionally from outside the area) representatives and seven for mana whenua, despite there being many more iwi in the region. Furthermore, although members are nominated by local iwi, the IMSB is independent of both Auckland Council and iwi, so that members must act in the interest of achieving the IMSB's purpose, and must not act in any other interest (section 82.4). The IMSB has the following functions:

- (a) to act in accordance with its purpose and functions and to ensure that it

does not contravene the purpose for which it was established:

(b) to develop a schedule of issues of significance to mana whenua groups and mataawaka of Tamaki Makaurau, and give a priority to each issue, to guide the board in carrying out its purpose:

(c) to keep the schedule up to date:

(d) to advise the Auckland Council on matters affecting mana whenua groups and mataawaka of Tamaki Makaurau:

(e) to work with the Auckland Council on the design and execution of documents and processes to implement the Council's statutory responsibilities towards mana whenua groups and mataawaka of Tamaki Makaurau.

These amount to an entirely different level of authority to those previously discussed. The IMSB also appoints two full members to Council committees that 'deal with the management and stewardship of natural and physical resources' (section 85.1) and may sit on other committees at the invitation of Council. This is a credible example of real participation in decision-making. In terms of implementation, it is noteworthy that in 3 years the IMSB commissioned four major reports, including a full Treaty audit of Council, intended to fulfil the obligations set out above.

Giving effect to mauri provisions

My analysis in this section is concentrated on implementation efforts aimed at protecting or restoring mauri of waterways, and giving effect to mauri-related plan provisions. An assessment of council/agency implementation of statutory obligations as regards mauri is a difficult exercise, because it is hard to isolate results of mauri-specific interventions of agencies, and others aimed at maintaining water quality generally, from other parties' actions, and naturally occurring environmental change. Nevertheless, I developed a method for assessing the mauri-related efforts of the three agencies. In combination, the list of criteria is intended to reflect the likely combined effectiveness of a council's plan provisions and implementation.

Figure 8.2 below presents scores from my evaluation of agency implementation of the RMA mandate in terms of 10 mauri-related criteria, allowing a maximum agency score of 40. As with Figure 8.1 (p. 200), these

include three plan-related criteria and seven for other implementation actions. Even compared to the low scores achieved for mana whenua, the performance of the agencies in terms of mauri was extremely poor, and again showed a disjunct between the quality of plans and their implementation. While WRC achieved conspicuously higher action-related scores than the other two agencies, even these were disturbingly low. As the discussion below unfolds these results are highlighted.

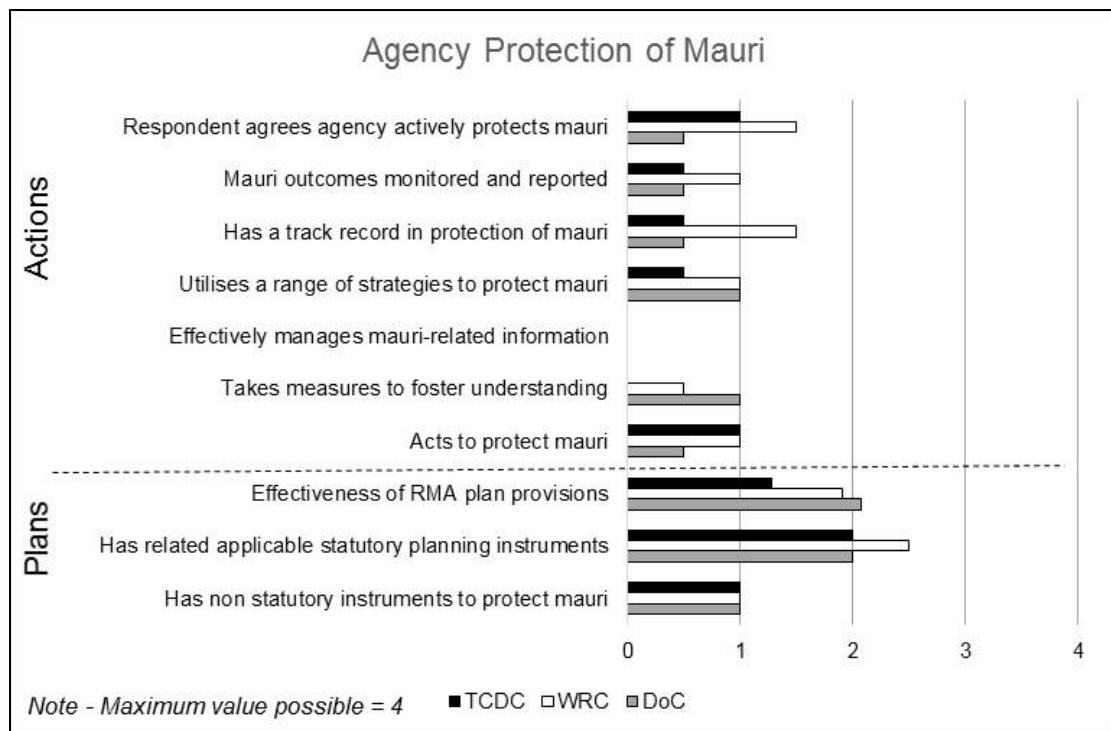


Figure 8.2 My assessment of case-study agency implementation of mandate - mauri

Mauri-related implementation by DoC Waikato conservancy

While DoC's statutory responsibilities off the conservation estate are fewer under the RMA than the Conservation Act, the two jurisdictions are not geographically exclusive. DoC has an overarching advocacy responsibility for historic, natural heritage, and biodiversity conservation. While regional councils exercise statutory roles for waterways and the coast, DoC also has responsibilities there.

The Waikato Conservation Management Strategy (1996) and Coromandel Peninsula Conservation Land Management Plan (2002) both referred to mauri, and contained provisions aimed at protecting biodiversity within both marine and terrestrial habitats. DoC was a party to the Coromandel Blueprint, which included numerous undertakings in relation to mauri. While DoC Waikato achieved an

average score for the quality of its mauri-related plan provisions, these intentions have not translated into practice. Accordingly, for four of the seven action-related criteria presented in Figure 8.2 above DoC scored just 12.5%, for two 25%, and it failed to score in relation to managing mauri-related information.

DoC undertakes stream maintenance on its own lands, but iwi are seldom consulted or engaged regarding work outside of particularly significant places such as the Waikato River and Mt Moehau. It manages biodiversity-related initiatives pertinent to an enquiry into mauri, including the New Zealand dotterel programme, which is a partnership between DOC, Newmont Waihi Gold, and local volunteers. However, iwi were again excluded. This programme included the Opoutere dotterel population, resourcing for which was the primary mitigation requirement by DoC for the case-study Whangamatā marina.

In its advocacy role DoC is able to engage with consent applicants and make submissions, but has been criticised by iwi for coming to side arrangements that compromise mauri. An example is an agreement between WRC, DoC and the forestry company Earnslaw One. Earnslaw required resource consents for forestry roading, earthworks and river crossings in 2005, which were granted by WRC on a non-notified basis. These were appealed to the Environment Court by DoC and the Whangapoua Environmental Protection Society (ENV A 0095/05 and ENV A 0091/05), and iwi were again not notified. DoC withdrew its appeal after coming to a side agreement with the applicant for 15m riparian margins along four major streams, but requiring minimal or no margins for the vast majority of streams. This arrangement was particularly offensive to iwi on the basis of impacts on stream mauri, and contrary to stated iwi positions on this matter, which DoC was fully aware of, these having been fought for in an earlier appeal to which DoC was a party.

There have been other instances where DoC has come to side arrangements that have excluded iwi, exemplified in Chapter 10.

Mauri-related implementation by WRC

Waikato Regional planning documents included substantial mauri-related provisions. But these are rendered ineffectual in practice because of a failure to carry high level intentions for Māori through to credible methods, and a lack of will to implement Māori-specific provisions.

One exception, the Healthy-Rivers project, evolved from Waikato and Waipa River Treaty settlement legislation. It is focused at improving the health of both rivers, and anticipated plan changes. WRC has stated an intention to begin plan changes for other catchments, for the Waihou-Piako and Coromandel starting in 2014, and the West Coast in starting in 2017. WRC has initiated or been involved in a range of other streams-related projects, including the Clean streams accord (riparian margin planting and fencing), Stream health index (classification system and monitoring), and its ongoing stream works programmes.

These were described as being for maintaining water quality, but few incorporated any substantive consideration of mauri. They seldom involved iwi, and Māori approaches such as the previously promoted cultural indicators have not been used, despite ongoing pressure from iwi. Accordingly, WRC implementation is entirely based on western world views and information, and has failed to incorporate Māori perspectives and mātauranga, despite plan promises. For its 'Comprehensive Eastern Seaboard stream maintenance programme' WRC obtained several wide-area resource consents, including for the Waihou River. Some MOUs with iwi were achieved through this process, but again, little express provision was made for mauri.

WRC commissioned several investigations into regional policy statement effectiveness. Gerard Willis authored one report, in which he briefly considered the mauri provisions in the regional policy statement. He said that the Mauri objective could be measured two ways:

First, the phrase recognise and provide for [concerns] may be outcome focused. In that sense the objective is only met if the mauri of water is protected from contamination. According to that definition, little progress has been made at a regional scale since, as discussed in section 5.1.1, water contamination continues to be a major issue and, depending on the contaminant measured, is getting worse.

On the other hand the objective may also be interpreted as focusing on management or process matters rather than the outcome (the objective does refer to recognising and providing for concerns). By that measure progress is mixed. Little explicit recognition of mauri is made in the Regional Plan nor have there been, for example, arrangements to

provide for co-management/kaitiaki interests.

Willis also pointed to WRC involvement in the Raukawa Māori Trust Board's *Wai Ora Project*, as 'one attempt to recognise and provide for tangata whenua concerns in relation to the mauri of water'. This project was intended to consider the mauri of waterways, and explore water quality monitoring methods. It used a cultural health index, and other indicators of mauri health.

WRC's clean streams initiative is another positive program in terms of likely mauri outcomes, and riparian enhancement generally. Clean streams is a voluntary programme for stream fencing and riparian planting, but many farmers have opted out. Such stream restoration initiatives are rare, and if considered as the standard for implementation of mauri-related provisions in the regional plan, the bar has been set low. This becomes evident from WRC river health data (Collier & Hamer, 2012).

WRC has been inconsistent in its protection of waterways. It has been willing to compromise stream integrity when granting forestry consents, and has historically refused to prosecute polluters of rivers and coastal waters, including a number of large-scale discharges of untreated effluent by TCDC at Whangamatā. While there have been some recent examples of WRC prosecuting farmers for unconsented discharges to waterways (Gilbert, 2015), based on my localised assessment of mauri outcomes WRC has, overall, performed poorly.

Mauri-related implementation by TCDC

Regional councils have primary responsibility for the management of waterways and the coastal marina area (CMA), so TCDC has a secondary role in this regard. However, local councils do have statutory responsibilities relating to water quality.

For its district plan review TCDC commissioned a series of evaluations, including an assessment of natural character. The resulting report provided a useful overview of the ecological state of the district, but did not attempt any assessment of the effectiveness of the district plan in protecting natural character. Mauri was not considered at all, and tangata whenua attempts to secure a Māori-specific investigation failed. As discussed in Chapter 7, TCDC failed to develop promised Māori cultural indicators, which would have assisted in an assessment of the mauri of district waterways.

There are some relevant cases in which TCDC has demonstrated a willingness to provide for tikanga Māori. One example is its efforts from 2005 to 2010 to upgrade or replace several of its waste-water treatment plants. Council agreed to tangata whenua requests to utilise land-based treatment and disposal, consistent with the WRPS objectives and policies (section 3.4.10) intended to safeguard the mauri of waterways by preventing the discharge of contaminants. Where irrigation to land was not possible negotiations resulted in the design of denitrification beds and wetlands through which treated waste water could be passed to satisfy tikanga requirements that these pass through Papatūānuku (the earth) before entering any water body.

These isolated initiatives, taken as a resource consent applicant as opposed to the administering authority, are reflected in scores of 25% for two of the action-related criteria shown in Figure 8.2 (p. 212). For three of the criteria TCDC scored only 12.5%, and in relation to managing mauri-related information and education relating to mauri it failed to score.

TCDC decisions and actions relevant to mauri are considered further in Chapter 10, in the context of manawa (mangroves) and the Whangamatā marina.

Implementing mauri-related provisions nationally

The health and natural character of rivers in the Thames-Coromandel district has been reported to be generally high, with ecosystem condition of streams generally well above or above average for the Waikato region (Marra, Trebilco, & Denyer, 2007 p. 25). However, this is a product of the geography of the peninsula, with approximately 30% of the district being DoC estate, and the upper reaches of many streams flowing through intact forest ecosystems.

In contrast, the culturally significant Waihou River, which separates the Hauraki and Thames-Coromandel Districts, has concentrations of total nitrogen and total potassium, and E. coli, two to three times higher than national guideline levels. Nearby Piako River is amongst the most polluted rivers in the country, and these two were reported in the State of the Hauraki Gulf Report (Hauraki Gulf Forum, 2011b p. 67) as the dominant sources of nutrient loads and sediments to Tīkapa Moana (the Firth of Thames). The Piako and Waitoa Rivers were assessed as 'generally poor, oxygen-depleted, and murky', with high concentrations of nitrogen and potassium, 5–7 times higher than health guideline values.

Concentrations of E. coli in these rivers was recorded as being six times higher than guideline standards, and water quality for some smaller Hauraki waterways was even worse (Vant, 2011).

There are at any particular time numerous location-specific initiatives going on across New Zealand councils aimed at water quality improvement, including stream works and riparian restoration. One example is Auckland Council's stream daylighting programme, inherited from Auckland Regional Council. This seeks to restore waterways that were previously piped by Auckland developers and councils.

Yet on balance, state of the environment reporting confirms that pollution of New Zealand waterways remains widespread, and demand on rivers for irrigation and other uses is growing (Ministry for the Environment & Statistics New Zealand, 2015 p. 63). Polluted rivers run into the coastal marine area, creating knock-on effects, including loss of access to kaimoana. Auckland and Hauraki harbours have been repeatedly closed for kaimoana (shellfish) gathering over the last decade, as illustrated in Figure 8.3 (next page), Ngāti Whanaunga and neighbouring iwi suffer ongoing closures. This causes hardship for whānau who rely on kaimoana to feed themselves, and wider cultural impacts, such as an inability to properly host guests, both at home and on the marae, which diminishes personal and tribal mana.

The Crown has tried to tackle deteriorating water quality. Beginning in 2003, DoC, MfE and other agencies began the Sustainable Water Programme of Action, a staged package of actions to improve the sustainable management of freshwater resources. The programme had three national outcomes for fresh water, to: improve the quality and efficient use of freshwater; improve the management of the undesirable effects of land-use on water quality; and provide for increasing demands on water resources and encourage efficient water management (Anderton & Benson-Pope, 2006). This programme led to the National Policy Statement on the Management of Freshwater, National Environmental Standard on methods for establishing ecological flows and water levels, and criteria to identify nationally outstanding natural waterbodies. While not specifically referencing mauri, the programme was important in establishing statutory instruments and methods that will inadvertently lead to improved mauri health.



Figure 8.3 - Public health warnings on the Manukau Harbour January 2014

Yet there is no regional or national level monitoring of fresh water assessing mauri or incorporating a Māori perspective, despite programmes like the Sustainable Water Programme of Action, numerous plan promises, and tools being available. The HGF has made a more credible state of the environment monitoring and reporting effort than councils or MfE, but even this is based on entirely western, often fragmented, and inconsistently sampled information (Hauraki Gulf Forum, 2011a; 2011b p. 12).

Giving effect to wāhi tapu provisions

Of the three tikanga considered in my research, wāhi tapu is most widely addressed in statutory instruments. Yet Māori historic heritage continues to be destroyed at an alarming rate, with RMA and HPA provisions criticised by Māori as being toothless, and a tick box exercise for developers (Allen, 1998; Historic Places Trust, 2008; New Zealand Archeological Association, 2010).

Figure 8.4 (next page) shows the combined wāhi tapu evaluation results alongside implementation efforts for the two case-study councils, DoC, and (unlike Figures 8.1 on p. 200, and 8.2 on p. 218) HPT. It illustrates a contrast between fair plan provisions and low to average implementation by all four

agencies, with performance of both councils being of particular concern, TCDC failing to score at all for four of the five action-related criteria.

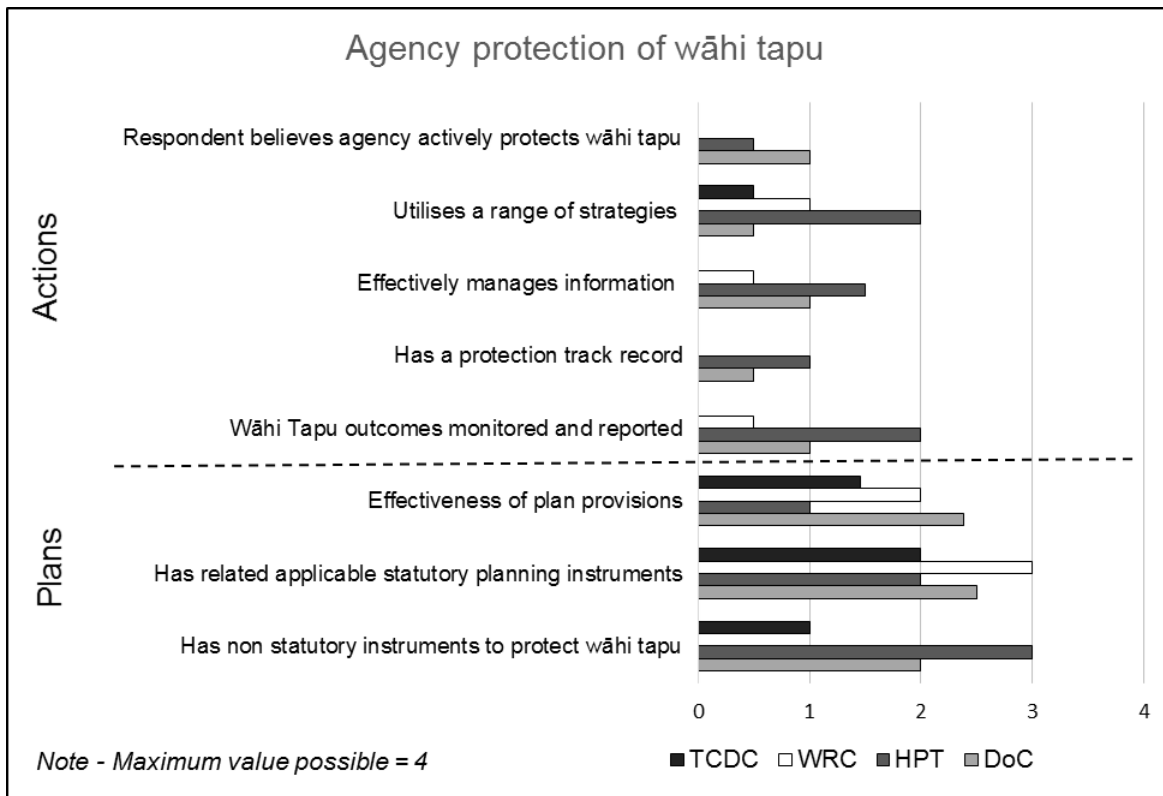


Figure 8.4 Assessment of case-study agency implementation of mandate - wāhi tapu

Wāhi tapu-related implementation by DoC Waikato Conservancy

The Waikato Conservation Management Strategy 2008 - 2018 (Department of Conservation, 2008) included three heritage management objectives, and five associated policies. DoC has also published a range of historic heritage-related resources, aimed at protecting and preserving heritage sites, including those on private land. These include *Recording tangata whenua oral histories and traditions* (Clayworth, 2010), *Caring for archaeological sites* (Jones, 2007), published in collaboration with HPT.

DoC maintains an inventory of ‘actively managed historic sites’, all of which are located within the DOC estate, 41 sites are in the Waikato conservancy, 21 being of Māori origin. While no conservancy-specific information is available, national reporting confirms that approximately half of these sites continue to deteriorate. In addition, there are several thousand archaeological sites of Māori origin within the DoC Waikato estate (over 12,000 nationally), for which the Department undertakes no active protection, preservation or investigation.

DoC seldom advocates for historic heritage off the conservation estate, beyond the aforementioned publications. It undertook a range of site-specific restoration initiatives within the Waikato conservancy, but these have been only for iconic heritage sites it manages. Despite this, DoC's limited protection and restoration work on wāhi tapu in the Waikato conservancy earned it my highest score of the local agencies for actively protecting wāhi tapu (Figure 8.4, p. 219).

Wāhi tapu-related implementation by HPT

As with DoC, it is difficult to accurately assess the effectiveness of HPT locally, as all of its reporting is at a national level. Despite some impressive statutory and non-statutory instruments promoting heritage protection, HPT has developed a poor reputation amongst Hauraki iwi. Several iwi applications lodged for registration of historic places on the Coromandel Peninsula not processed after more than 10 years, despite much shorter statutory timeframes, and repeated complaints.

This contrasts with applications to modify and destroy sites, which are dealt with promptly, generally within statutory timeframes, and almost never declined. HPT has demonstrated a reluctance to refuse applications to destroy sites, even in the face of iwi opposition, due to threats of legal action by developers. In the Whitianga Waterways development emails between a local staff member and the regional manager stated that iwi had a credible basis for opposing authorisations, but that HPT faced a risk of legal action by the developer should authorities be declined, and recommended therefore that these be granted (Robson, 2002).

HPT has several times rejected tangata whenua evidence of cultural significance. For applications for authorisations to modify or destroy sites in relation to a replacement Whangamatā wastewater treatment plan, HPT field staff said that tangata whenua were wrong in their claims that the proposed site included historic occupation areas. Staff asserted that the subject sites were some hundreds of metres away and granted a blanket authority to destroy any sites encountered. When earthworks started large numbers of occupation sites were uncovered, as predicted, and all were destroyed because of HPT's rejection of local iwi mātauranga.

One consolation for iwi is a standard requirement by HPT that archaeological investigations be undertaken prior to the destruction of ancestral sites. Additionally, there has been a growing trend for HPT to advocate for development that preserves Māori heritage, albeit that sites are still regularly modified, for example being buried as a means of preservation. Additionally, HPT has undertaken a number of substantial restoration initiatives for iconic Māori heritage sites, including Gate Pa at Tauranga and Rangiriri pa in Waikato. The higher scores for HPT than for the other agencies in Figure 8.4 (p. 219) reflect these efforts, and the sole focus of HPT on heritage.

Wāhi tapu-related implementation by WRC

Despite strong statutory instruments, WRC has performed poorly in protecting wāhi tapu. Figure 8.4 shows that WRC only scored for three of the five implementation criteria, one out of four for utilising a range of strategies, and half a point for effectively managing information, and for monitoring and reporting. In his evaluation of the WRPS, Willis (2007) observed that there was no available information on which to evaluate the achievement or otherwise of the Māori heritage objective, but that anecdotal accounts from iwi liaison staff suggested concern amongst the Regions' iwi about on-going loss of taonga.

WRC agreed to resource a third of the cost of the NZAA site database upgrade where districts were willing to fund the final third. For this they scored a half point. However, this stands out as a rare example of WRC effort toward the protection of Māori heritage, despite a range of strong plan provisions, and clear direction of community aspirations for heritage protection from its community outcomes process. The outcome entitled 'Community partnerships' reads: 'Heritage sites and landscapes of significance to whānau, hapū and iwi are preserved and valued' (Waikato Regional Council, 2012 p. 16). However, having made no effort to monitor achievement of this outcome, WRC dropped it in 2014, stating that to align with its strategic direction was revising its community outcomes 'to be consistent with the three themes from our new mission statement – healthy environment, strong economy and vibrant communities' (Waikato Regional Council, 2014).

Wāhi tapu-related implementation by TCDC

The results in Figure 8.4 (p. 219) provide a sad picture of the way TCDC has managed Māori historic heritage. It scored only a half point for one of five implementation criteria, although its plan provisions fared better, in particular the heritage protection guidelines. Despite being a heritage authority, TCDC has been a poor steward of a fast diminishing Māori heritage.

As mentioned in Chapter 7, the district plan included, as a method, the intention to compile registers for historic sites and significant trees, to be scheduled in the district plan. This work was started in the early 1990s, but never completed, with only Coromandel and Thames being assessed. Council's list of Māori sites is short. The Coromandel register contains 91 listed pākehā buildings, and 1 Māori site, while the Thames register includes no Māori sites. This 20 years after the plan was notified. Responsibility for applying plan methods was left to the initiative of staff, and, available methods have seldom been used. Importantly, as with WRC and DOC, TCDC has lacked an elected member or senior manager who champions heritage.

TCDC has commissioned occasional reports on Māori Heritage, for example for Thames (McEnteer & Turoa, 1993). These reports are almost always for the purposes of applications to modify or destroy sites, and in this context investigations are almost exclusively into archaeological values, not Māori ones.

Neither has TCDC sought to achieve an overview of the distribution and condition of Māori heritage. In recent years it refused to resource a third share of the cost for a comprehensive on-the-ground review of New Zealand Archaeological Association recorded sites data, thereby preventing the study proceeding for the district. NZAA intended the investigation to cover all districts, but negotiated a funding arrangement of equal resourcing provided by central government, and willing regional, and local councils. This was a lost opportunity of great consequence, as it is unlikely such an assessment of heritage condition will be undertaken again soon.

TCDC (2008) adopted a non-statutory Heritage Strategy in 2008, which like the district plan, bundles Māori heritage with protection of buildings and trees. It does not articulate any actual strategy, but contains 17 Action Points, including restatements of methods from the district plan. Some of the methods are: establishing a heritage committee, establishing a district heritage assistance

fund, serving heritage protection orders, either alone or in conjunction with an iwi authority to protect a place of special interest or character and area surrounding, and, involving local iwi and communities in the identification and management of heritage resources. Under the heading *Implementing, Monitoring and Review* the Strategy states:

This Heritage Strategy will be implemented through various methods, which include current provisions in the District Plan, education, relationships and collaborative programmes with Tangata Whenua, the NZHPT and other organisations, owners of heritage items and the community. Monitoring of the heritage strategy will occur at the time of the District Plan review.

None of these occurred. TCDC commissioned a range of research in preparation for its 2nd district plan. But despite repeated requests from tangata whenua, would not resource tangata whenua research, including that sought for Māori heritage. Instead, non-Māori historic and heritage reports were written by a Pakeha historian, who also did not engage iwi. The McEwan reports (A. McEwan, Schroder, J. , 2010; McEwan, 2009; D. A. McEwan, 2010) included recommendations for increased protection of the district's historic heritage under the district plan and specific Reserve Management Plans, despite her not undertaking a review of plan effectiveness as part of her study. Consequently, TCDC undertook no assessment of Māori heritage outcomes or plan effectiveness, and lost the opportunity to learn from decades of mismanagement and massive heritage loss.

Like WRC, TCDC routinely signs off resource consents allowing the destruction of ancestral sites and areas, despite iwi opposition, examples are discussed in Chapter 10. On other occasions TCDC has applied to destroy heritage sites, as discussed above for the Whangamatā waste water treatment plant. It has a mixed record for providing for wāhi tapu on its own land, but has made some effort to recognise Māori heritage values, particularly on its own reserves. However, tangata whenua have struggled to reserves classified to reflect Māori heritage, or to gain any participation in their management.

National Implementation

Looking more widely, the 2008 State of the Hauraki Gulf report included damning findings regarding historic heritage over the period June 2004 to 2007. Application numbers from that report are presented in Figure 8.5.

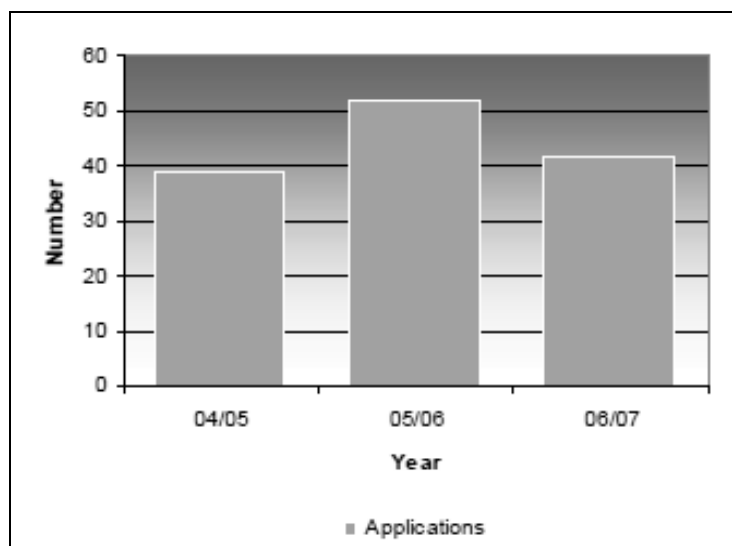


Figure 8.5. Applications for authority to modify or destroy archaeological sites in the Hauraki Gulf Catchment. From (Hauraki Gulf Forum, 2008 p. 82) *Tikapa Moana - Hauraki Gulf State of the Environment Report*. Copyright (2008) Hauraki Gulf Forum. Reprinted with permission.

As discussed in Chapter 6, there are three categories of authorities granted under the HPA: section 18 for archaeological investigations, section 11 to modify or destroy known archaeological sites, and section 12 to modify or destroy unspecified sites within a general area. HPT (Historic Places Trust) received 133 applications for all types of authorities within the Hauraki Gulf Marine Park from 2004 to 2007. All but one was granted. HPT reported that a longer time-series would show a marked increase in authorisations (Hauraki Gulf Forum, 2008 p. 81). Illegal and unreported destruction of sites is also a significant factor, and little understood.

HPT promotes an appearance of meeting obligations to Māori, for example the chairs of the Māori Council and HPT co-write the foreword of the Trust's annual reports (the Trust's structure was described in Chapter 6). But Historic Places Act authorisation processes are seen by Māori as a 'tick box' exercise for the destruction of ancestral sites because virtually all applications are granted, often despite Māori opposition. Appeals to the Environment Court are

costly, and all court appeals against permissions granted by HPT have been declined.⁷

A report written for the PCE (1996 p. 30), entitled *Historic and Cultural Heritage Management in New Zealand*, noted that 50% of all pa in the Auckland metropolitan area were modified or destroyed since city development began. It found that 6% of known archaeological sites in the Auckland region were destroyed between 1979 and 1994, a rate of destruction maintained today. Only 13 places were registered nationally as wāhi tapu under the Historic Places Act since 1993. There are 1012 archaeological sites registered in total, but no assessment of their importance to Māori has been undertaken.

The PCE found that HPT is inadequately resourced for the variety of roles it is required to perform, and the lack of resources means that its available protection mechanisms are largely ineffective. A year later the PCE (1997) observed that the Historic Places Act is deficient in its treatment of Māori values, containing no reference to the Treaty of Waitangi, and that the Māori Heritage Council lacks sufficient authority to act in decisions affecting Māori. A similar finding was made by the Waitangi Tribunal (2011 p. 583), which criticised Crown agency Māori forums, including the Māori Heritage Council, as lacking decision-making power, writing: 'For all the positive initiatives in some of the agencies, therefore, this very lack of decision-making power is a breach of the Treaty and a cause of prejudice'.

HPT makes some attempt at public education, with a view toward protecting heritage, and released a series of guides for 'Sustainable Management of Historic Heritage' (McClellan, 2007). It also undertakes site-specific protection, and occasionally restoration works, but only for regionally or nationally significant sites.

⁷ Cases include: *Ngātiwai Trust Board v. New Zealand Historic Places Trust (Pouhere Taonga) & Green & Attorney-General*. HC No. 3/97; *EM Uruamo & Others v. Carter Holt Harvey Ltd & Pouhere Taonga/The New Zealand Historic Places Trust*. A43/96; *Minhinnick v. Watercare Services Ltd* [1998] 1 NZLR 63; *Taipari & Others v. Pouhere Taonga (New Zealand Historic Places Trust) and Kruithof*. A102/97. Environment Court. 27 August 1997.

DoC implementation nationally

DoC is the primary agency responsible for the conservation of natural and historic heritage. It, along with HPT, has been criticised for failing in its duty of active protection of Māori (and non-Māori) heritage. The PCE (1996) raised these concerns:

- No agency appears to be clearly taking the lead for historic and cultural heritage at either national or regional levels
- The HPA is intended to be the main statute for historic and cultural heritage management; however the main mechanisms for heritage protection are regional policy statements, district plans and heritage orders under the RMA.
- The historic and cultural heritage functions and priorities of the Department of Conservation (DOC) outside the conservation estate are also unclear at both national and conservancy level.
- Most historic and cultural heritage management functions appear to be significantly under-resourced. The Trust's criteria and processes for issuing authorities to destroy, damage, or modify archaeological sites are unclear, and some decisions very controversial.
- HPT is clearly inadequately resourced for the variety of roles it is required by statute to perform, and the lack of resources means that its available protection mechanisms are largely ineffective.

Little has changed since 1996. DoC continues to suffer from inadequate funding, and experienced major budget cuts over recent years (Wallace, 2011).

Furthermore, historic heritage protection features low on the Department's priorities. A 2014 review found that historic heritage conservation is a small proportion of DoC's work, being allocated only 2% of the Department's budget in recent years (State Services Commission, Treasury, & Department of the Prime Minister and Cabinet, 2014).

Like HPT, DoC produced guidelines for preserving archaeological sites (Jones, 2007). The Department takes an active role in managing, promoting and protecting 'key heritage sites' under DOC ownership or stewardship, but these are only a 656 out of approximately 12,000 DoC-owned sites. Overall the condition of historic heritage managed by DoC continues to deteriorate (Department of Conservation, 2007 p. 68).

Tamaki Makaurau - the Auckland region

Neighbouring Auckland region provides good and interesting comparison. Cross-boundary issues require that neighbouring councils consider whether their plans and policies are, or need to be, consistent. Addressing cross-boundary issues is important to iwi spanning multiple districts or regions. It is early yet to assess the effectiveness of the new Auckland Council in heritage management, although it is making some positive moves. Its predecessors had a mix of weak and strong plans, in terms of Māori heritage protection, as is the case nationally (Kennedy, 2012). Yet, as discussed in Chapter 10, RMA plans have proven of little assistance in protecting Māori heritage, particularly in resource consent processes. The deterioration and loss of ancestral sites between 1999 and 2004 is shown in Table 8.2.

Table 8.2 Reported information on condition of recorded archaeological sites within the Auckland region as at 1999 and 2004 by local authority.

	Intact		Damaged		Destroyed		No Info		Total	
	1999	2004	1999	2004	1999	2004	1999	2004	1999	2004
ACC	635	689	1,385	1485	183	275	184	207	2387	2656
FDC	100	118	624	659	44	49	247	238	1,015	1064
MCC	282	303	629	708	86	108	111	108	1,108	1227
NSCC	27	25	105	151	24	30	30	45	186	251
PDC	7	24	21	35	6	9	6	8	40	76
RDC	537	573	1,989	2076	149	181	97	96	2,772	2926
WCC	15	29	432	450	100	114	34	37	581	630
Total	1,603	1761	5,185	5564	592	766	709	739	8,089	8830
Per cent	19.8	19.9	64	63	7.3	8.7	8.7	8.4	100	100

(NZAA Site File)

From Auckland Regional Council, (2004) *Auckland State of the Region report*.⁸
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An apparent inconsistency from 1999 to 2004 results from the fact that 741 sites were added. Of those 158 were intact, 379 were damaged, 174 destroyed, and there was no record for 30. Figures shown in the Figure 8.6 (p. 229) were for the 2004 to 2007 period, and relate to the Hauraki Gulf rather than Auckland region. Although for a different area, overlapping and similar in size, far fewer authorities

⁸ Auckland legacy councils abbreviated in Table 8.2 are: Auckland City Council ACC, Franklin District Council FDC, Manukau City Council MCC, North Shore City Council NSCC, Papakura District Council PDC, Rodney District Council RDC, and Waitakere City Council WCC.

are granted across the Hauraki Gulf than the Auckland region, and while unauthorised destruction is commonplace, prosecutions are rare.

Iwi experiences nationally

Responses to my iwi survey were described earlier in this chapter for relationships with councils. These showed that Māori are often not informed of applications to modify or destroy sites, and that regardless of their response when they are informed, HPT routinely grants authority. Of the 12 kaitiaki groups that completed my survey seven out of 12 were not notified of applications. The HPT-related responses were mixed, considering the negative story told above, with respondents being evenly split on whether HPT did a good job (3 did not know), and half of the respondents rating their relationship with HPT as good.

The national NZAA archaeological sites database of 49,000 archaeological sites was reviewed in recent years, with district by district site inspections. Māori representatives were invited to accompany the field archaeologists, but evaluation did not include Māori indicators. In what was a major undertaking, widely supported by Māori, site location data and site condition was recorded, and photographs taken. But resulting information became the property of the NZAA, with iwi organisations able pay to access site information via a webpage. District inclusion was reliant on three-way funding from central, regional and local councils. Thames-Coromandel District Council refused resourcing and therefore prevented improved knowledge about the location and condition of Māori heritage.

Assessing performance across the three tikanga

At both a local and national level inadequate resourcing has contributed to minimal implementation of statutory environmental plan Māori provisions. Evaluation scores for the case-study-relevant agencies in terms of all three tikanga are presented as percentages in Figure 8.6 (next page).

The number of criteria against which agencies were measured differed for each tikanga, so scores are presented as percentages here. The criteria for each is shown for mana whenua in Figure 8.1 (p. 200, scored out of 36), mauri in Figure 8.2 (p. 218, scored out of 40), and wāhi tapu in Figure 8.4 (p. 225, scored out of 32). The overall scores in Figure 8.6 reveal poor agency performance in delivering

on obligations to Māori. Nation self-reporting by councils is not scrutinised, so it is hard to tell whether there is equivalency between responses to survey questions. Claims made by councils have been found wanting when audited.

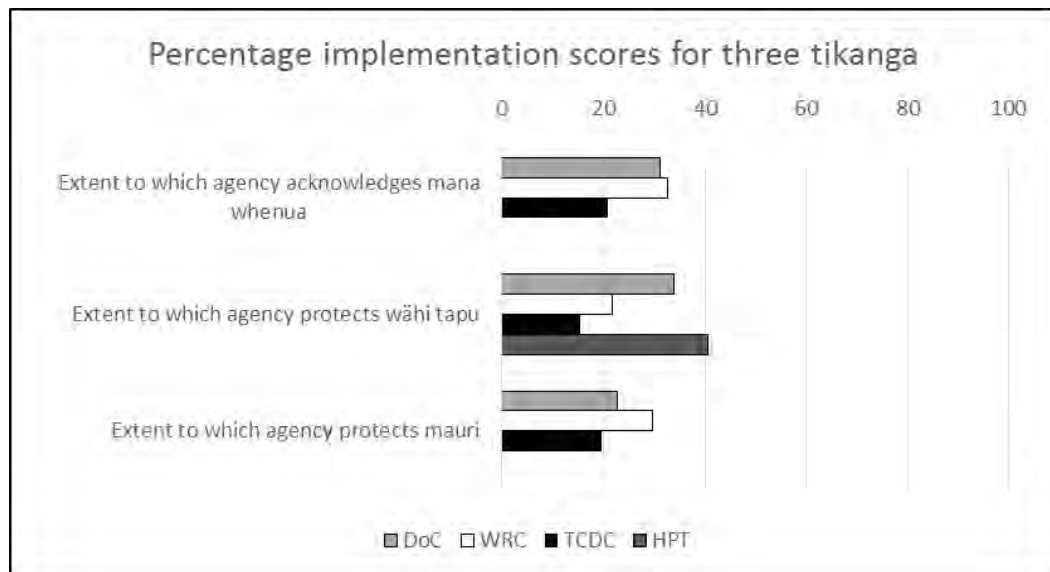


Figure 8.6 Council RMA implementation scores for mauri, wāhi tapu, and mana whenua

The local and national state of the environment reporting reveals widespread stream pollution and heritage destruction. Māori consider these outcomes in terms of mauri and wāhi tapu. But few councils or agencies have developed Māori indicators for measuring cultural and environmental results. I found that monitoring and reporting are the 'missing link' in the planning cycle, and that this prevents understanding of environmental outcomes, and the extent to which agencies have contributed to them.

That is not to say that the case-study councils and other agencies are not making efforts for Māori, and some positive examples were cited in this chapter. The case *Ports of Tauranga (Te Runanga o Ngāi Te Rangī Iwi Trust v. Bay of Plenty Regional Council, 2011)* is an example where a judge required the establishment of an organisation intended to give effect to tangata whenua kaitiaki aspirations, rights, and values, as a means of mitigation for impacts of dredging deeper channels within Tauranga Moana. However, on balance implementation effort for Māori is poor.

In Chapter 6 I described various Acts that overlap and collectively provide the overarching set of rules and approaches to environmental resource management in New Zealand. Even though it manages the coastal environment the RMA excludes fisheries, which are managed under various fisheries acts

described in Chapter 6. While my study is primarily into council RMA administration, outcomes from that administration must be considered with those under the related statutes in order to assess outcomes for Māori. As an example, I described effects from the marina and mangrove removal on kaimoana of local Māori, including the ability to feed their families, and the important cultural imperative of manaakitanga. An article called ‘Listening to the kaitiaki: consequences of the loss of abundance and biodiversity of coastal ecosystems in Aotearoa New Zealand’ (Dick, Stephenson, Kirikiri, Moller, & Turner, 2012) described findings from a comprehensive study with 22 kaitiaki in the North Island under fisheries legislation. Interviewees describe the effects of the depletion of inshore fisheries as rapid and widespread, identifying the following:

- The loss of food species and their reduced availability undermines the ability of hapū to offer hospitality at marae as in former years.
- Species depletion and imposition of harvesting bans have prevented harvesting practice and thereby caused loss of traditional knowledge, such as understanding life cycles, species management and food harvesting methods.
- Locally specific knowledge and skills are no longer used, and therefore are not able to be passed on to subsequent generations.
- It is also impacting on the passing on of stories and knowledge that was part of the communal experience of collecting, preparing and eating local foods.
- Younger generations now have less familiarity with the foods that are part of tribal tradition, or how to prepare them, and lack broader knowledge about their ecology.
- Ultimately resource depletion affects iwi and hapū identity.

These descriptions are consistent with the experience of Whangamatā hapū, as explained in Chapter 10.

Chapter 9 - Treatment of Māori Provisions by the Courts

Kotahi te kōhao o te ngira e kuhuna ai te miro mā, te miro pango, te miro whero. Ā muri, kia mau ki te whakapono, kia mau ki ngā ture, kia mau ki te aroha.

There is but one eye of the needle through which must pass the white thread, the black thread, and the red thread. Hold fast to faith, hold fast to the laws, hold fast to the love. Forsake all else.

Potatau Te Wherowhero - the first Māori King

In this chapter I consider the part of contemporary courts in determining outcomes for Māori under environmental resource management law. To do so I consider some important modern cases dealing with Māori values and interests in relation to environmental resource management. Māori cases have been prosecuted to the highest courts, sometimes establishing important First Nations' precedents. Case law modifies the legal environment. As observed by Bennion and Melvin (2005 p. 2) about Māori jurisprudence in recent decades relevant to 'Māori Affairs':

In the past two decades, owing to the high profile given to Māori claims by the work of the Waitangi Tribunal and associated Court cases, there has been a considerable growth in case law and statute law which might go under this title. In addition, there is a growing acceptance that the Treaty of Waitangi is a founding constitutional document - even if its exact legal status and scope remains uncertain.

They found that previously discrete references to Māori in statutes concerning fisheries, planning, family law, education, broadcasting, and the like (with very few cases decided on those provisions), have been superseded by extensive case law and provisions dealing with Māori issues. I explore how the courts are treating customary interests, values, and practices. Chapter 9 reflects research Objective 5, aiming to understand how the courts have treated Māori values, rights, and interests in environmental resource management decisions.

The cases investigated in this chapter aren't a definitive list of relevant Māori jurisprudence, but rather important RMA (and related) decisions, which are considered for how they recognise Māori, and push legal boundaries within a complex jurisdiction. Customary rights are cognisable at law, unless explicitly extinguished, and Māori retain Treaty rights - expressed today in terms of Treaty principles. The RMA, with related legislation, adds a complex set of overlapping and intertwined statutory obligations to Māori.

I discuss issues arising from this complexity, and inconsistent treatment of Māori by the courts. I conclude that the courts have acted, and continue to act, as a barrier to Māori participation in the RMA. I explain why few Māori get to have their day in court, and that in the vast majority of cases in which tangata whenua are absent, consideration is seldom given to things Māori.

The cases explored are intended to frame treatment of tangata whenua by the courts in relation to the case studies analysed in Chapter 10.

Māori and the Courts

Where consent application decisions impact Māori a lack of capacity and resourcing means that, as a proportion of applications, very few Māori cases reach the courts. Yet Māori have remained determined in pursuing their rights through the courts to uphold tikanga and protect tribal interests where these are particularly threatened. In doing so they have strived to hold the Crown to account in terms of its two-fold Treaty-derived duties of active protection, being: to protect physical resources (lands, estates and taonga), and to protect rangatiratanga. As observed by the Waitangi Tribunal (2008) in *He Maunga Rongo*, its report on the central North Island claims, the fundamental relationship created by the Treaty means that the Crown has a duty to protect both the environment itself, and Māori in the exercise of rangatiratanga (chiefly authority) over taonga. International and Aotearoa courts have indicated that the bar is set high in terms of colonial government's ongoing obligations to First Nations. For example, in *New Zealand Māori Council v. Attorney-General* (1987), the Court of Appeal stated that the incorporation of the Treaty of Waitangi principles in legislation requires 'the Pakeha and Māori Treaty partners to act towards each other reasonably and with the utmost good faith'.

I give an overview of RMA cases notable for the treatment of Māori values or interests. As with the analysis in previous chapters, I specifically consider court treatment of mauri and wāhi tapu. As discussed in Chapter 6, wāhi tapu are specifically identified in the RMA, but mauri is not. In this chapter I substitute consideration of court treatment of mana whenua, for that of kaitiakitanga, this having received particular judicial attention because of the RMA section 7a requirement to have particular regard to kaitiakitanga.

Many of the cases considered are from the Environment Court or its predecessor, the Planning Tribunal. Formative decisions of the higher courts are identified, but this has not been done uniformly. Part of the reason for this is that the Environment Court has played an important role in refining and developing RMA cases. This is partly because the Crown has provided inadequate guidance on the intention of the Act, or means by which this is to be achieved. This was considered by the Waitangi Tribunal in relation to the Crown's failure to develop National Standards in a timely manner. National standards were explained in Chapter 7. The Tribunal (2011) wrote in its report *Ko Aotearoa Tēnei*:

In the absence of meaningful national direction for most of the period since 1991, the Environment Court's decisions became more far-reaching than might have been contemplated, as no other entity was available to fill the guidance gap.

There are three sections in this chapter. The first on Tikanga Māori under the RMA, where I consider case-law relating to consultation with Māori arising from resource consent appeals. Next is the courts' treatment of mauri and 'intangible' matters, and the final section on the courts' treatment of kaitiakitanga.

Tikanga Māori under the RMA

Section 7a of the RMA incorporates the need to consider tikanga Māori, defined as Māori customary values and practices (section 2(1)). Section 39(2) requires persons performing functions under the RMA to 'recognise tikanga Māori where appropriate'. Tikanga Māori incorporates customary practices, and has legal standing arising from common and Treaty law. The courts have had regard to this complex mix of rights that come into play. For example, the Environment Court

in *Land Air Water Association v. Waikato Regional Council* (2000) deliberated over its obligations in terms of tikanga, writing that RMA Māori provisions:

... place the Court directly at the interface between the concepts of British common law (which has its genesis in Roman law) and the concepts of Māori customary law which is founded on tikanga Māori. The Treaty promised the protection of Māori customs and cultural values. The guarantee of Rangatiratanga [sic] in Article 2 was a promise to protect the right of Māori to possess and control that which is theirs: 'in accordance with their customs and having regard to their own cultural preferences'.

Māori have suffered from a refusal by the Courts to accept as legitimate, or accord weight to, tikanga evidence. By definition tikanga is handed down from ancestors, albeit that it is fluid and adjusts to the needs of the time. Tribal kaumātua remain the customary holders of mātauranga Māori, which have often been passed to them orally by parents and grandparents.

The High Court in *Takamore Trustees v. Kapiti Coast District Council* (2003) analysed an earlier Environment Court decision, summarising that it had rejected the evidence of kaumātua for reasons including: that the evidence was cryptic, assertive and sparse, had no backup history or tradition to support it, and was not geographically precise. The High Court found that the Court had erred on points of law:

The fact no European was present with pen and paper to record such burials could hardly be grounds for rejecting the evidence. Unless [kaumātua] were exposed as incredible or unreliable witnesses, or there was other credible and reliable evidence which contradicted what they had to say, accepted by the Court, how could the Court reject their evidence (para 68), and:

If oral history is to be reduced to assertion rather than evidence, then much of the evidence by Māori in support of s 6(e), 7(a) and s 8 matters will be rejected as assertion and not evidence (para 78).

Requirement for a balanced judgment

Despite a multiplicity of rights operating, Māori interests are often trumped when thrown into the RMA mix. For example, in *Watercare Services Limited v.*

Minhinnick (1998), which dealt with a proposed sewer pipeline crossing wāhi tapu, the Māori dimension was held to be important, but not decisive. Even if Māori issues were specifically involved 'a value judgement on behalf of the community as a whole' was required, toward a 'balanced judgment'. Tangata whenua arguments failed to sway the court and the project was allowed to proceed at the expense of wāhi tapu. Similar sentiment was expressed by the Environment Court in *Living Earth Limited v. Auckland Regional Council* (2008):

[281] The Court has to weigh all the relevant competing considerations and ultimately make a value judgement on behalf of the community as a whole. Such Māori dimension as arises will be important but not decisive, even if the subject matter is seen as involving Māori issues.

Although the Māori dimension, whether arising under s 6(e) or otherwise, calls for close and careful consideration, other matters may in the end be found to be more cogent when the Court, as the representative of New Zealand society as a whole, decides whether the subject matter has an adverse effect. In the end a balanced judgement has to be made.

However, the inclusions of Māori provisions, including Treaty references in legislation, means that these become one of many issues for consideration. The Crown has a similar, and prior, obligation to balance Māori aspirations and interests against those of applicants and the wider community. In *McGuire v. Hastings District Council* (2002) the Court of Appeal emphasised the weight that should be accorded to the Māori provisions in the RMA:

The RMA contains many provisions about the protection of the environment, social and cultural wellbeing, heritage sites, and similar matters. The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and these include particular sensitivity to Māori issues.

Referring to sections 6 (particularly e), 7, and 8 the Court found:

These are strong directions, to be borne in mind at every stage of the planning process. The Treaty of Waitangi. . . and the other statutory provisions quoted do mean that special regard to Māori interests and

values is required in such policy decisions as determining the routes of roads. Thus, for instance, their Lordships think that if an alternative route not significantly affecting Māori land which the owners desire to retain were reasonably acceptable, even if not ideal, it would accord with the spirit of the legislation to prefer that route.

These are directives given by our highest courts. However, despite such lofty recognition, 10 years later the lower courts, in particular, continue to provide inconsistent treatment of Māori interests. This is particularly the case when balancing Māori spiritual and intangible values against other matters. I consider some examples of this in relation to wāhi tapu and mauri later.

Consultation with Māori

As discussed in Chapter 6, the Crown passed amendments in 2005 emphasising a need for Māori participation in the preparation of plans while stating explicitly that there is no obligation to consult Māori in relation to a resource consent (section 36A). Yet, there remains a requirement to report on consultation undertaken with affected parties, which often include Māori.

The courts have pushed back against section 36a. Prior to 2005 RMA amendments, it was argued that the duty to consult Māori arises from the Treaty, and rests with the Crown. The Court held in *Carter Holt Harvey v. Te Rūnanga o Tūwharetoa ki Kawerau & Bay of Plenty Regional Council* (2002) that the duty to consult arises out of the relationship of Treaty partners, and not an obligation cast on individual or corporate citizens. Despite this finding, the courts continue to focus on consultation obligations of applicants, councils, and the Crown.

Consultation obligations on the Councils

Councils are required to consult with iwi in relation to plan writing or changes (Clause 3(1)d of the First Schedule), but there is no obligation to consult for consent applications, unless they are identified as an affected party. In this case the obligation falls on the consent authority through its officers (Watters, 2007).

Citing *Krest Energy Kaipara Ltd & Ors v. Northland Regional Council* (2009) the Board of Inquiry appointed to consider plan change and resource consent applications by the New Zealand King Salmon Company (King Salmon Inquiry, 2013) emphasised the importance of consultation in their decision:

[188]...it assists the consent authority and the court to understand the extent to which (amongst other things) assessment of effects on the environment might have been undertaken. That is, it assists the consent authority to decide whether it is confident that actual and potential effects are adequately understood, assessed, and dealt with...

[191]...Iwi consultation [in particular] is important to enable decision-makers to understand the cultural effects of an activity, particularly as regards the matters falling within sections 6(e), 7(a) and 8 of the RMA.

There are instances where councils are both a consent applicant and the consenting authority. In these circumstances councils are under a greater obligation to consult Māori, and other affected parties. In one such case, *Wakatu Inc v. Tasman District Council* (2012) the Board of Enquiry commented not only on whether consultation must take place, but of the adequacy of Council's approach. It found that the way initial consultation had been carried out might have adversely affected the appellant's ability to exercise kaitiakitanga over the Motueka River. It recommended that consultation be undertaken, with the 'proper kawa to be observed in implementing the scheme' (paragraph 74).

Consent applicants

While consent applicants are under no duty to consult, it is recognised good practice to engage with tangata whenua where proposals may affect the matters referred to in sections 6e and f, section 7a and section 8 (Ministry for the Environment, 2003 p. 3). The Board of Inquiry in the *King Salmon Inquiry* observed that statutory instruments may influence the extent to which an applicant may need to consult Māori (Hagan & White, 2013), observing:

[192] The relevant provisions set out in the statutory documents [including Policy 2 of the Coastal Policy Statement] provide a clear direction around consultation and engagement with tangata whenua to ensure that consultation is early, customary values and views of tangata whenua are heard and understood and that the function of kaitiakitanga is taken into account...

[193] ...of particular importance is achieving engagement that is

early, meaningful and in accord with the tikanga of the tangata whenua of the place.

The Environment Court has gone further. For example, in *Te Runanga o Ngāi Te Rangi Iwi Trust v. Bay of Plenty Regional Council* (2011) it criticised the efforts of the applicant, writing that it 'cannot purport that it has no obligation to consider tangata whenua issues or consult with the relevant parties'. The Court noted:

[260] Importantly, Objective 3 [of the NZCPS 2010] intends to explicitly recognise the status of tangata whenua as kaitiaki of the coastal environment and provide for involvement in its management. As has already been identified in this case, a fundamental problem with this application was the failure to identify the relevant parties who had an interest in the harbour, and identify and address impacts upon them. Although consultation is not mandatory, it is difficult to see how the applicant could have addressed these issues without doing so.

While this decision was appealed to the High Court in *Ngāti Ruahine v. Bay of Plenty Regional Council, Port of Tauranga Limited, Te Runanga o Ngāi Te Rangi Iwi Trust & the Attorney-General* (2012), the finding in relation to consultation was upheld. Accordingly, while case-law may not have had the effect of negating section 36a, councils and applicants are increasingly aware that failing to adequately identify and address Māori issues may jeopardise granting of consents.

Consultation obligations on the Crown

The Waitangi Tribunal (2014 p. 5) found that consultation is a duty derived from the principle of partnership, through which the Crown must ensure proper arrangements for the conservation, control, and management of resources are in place. As discussed in Chapter 6, the Crown asserts that local authorities are not the Crown, and therefore not directly bound by Treaty obligations. However, the Waitangi Tribunal (1985 p. 120) (while not accepting the basic premise) has countered that the Crown is unable to divest itself of its Treaty obligations when devolving powers or functions to other agencies, finding:

It follows that the Crown cannot divest itself of its Treaty obligations or confer an inconsistent jurisdiction on others. It is not an act or omission of

the [Harbour] Board that is justiciable but any omission of the Crown to provide a proper assurance of its Treaty promises when vesting any responsibility in the Board .

Recently Crown obligations to consult with iwi were identified in *Trustees of Tuhua Trust Board v. Minister of Local Government* (2012) This case is unusual in that Tuhua (Mayor Island) does not come under the jurisdiction of any local council, the Minister of Local Government being the Island's local authority. The appeal concerned the Minister's engaging consultants to prepare a district plan in 2004 without consulting the island's Māori owners. Noting the different Treaty obligations under which the Minister and local councils operate, the Court found that it should have been clear to the Minister that obligations to consult under the Treaty were paramount, in addition to obligations arising from the RMA.

A ground breaking decision about the Crown's obligations in respect to resource consents is found in the recent *Interim Report on the MV Rena and Motiti Island Claims*. Here, the Waitangi Tribunal (2014) found that the Crown had committed several breaches of the Treaty, largely arising from its failure to consult tangata whenua. These related to resource consent applications to leave the wrecked Rena on Otaiti (Astrolabe Reef), and subsequent Crown negotiations with the owners and insurers of the Rena to settle its own claims arising from the grounding. These resulted in three related deeds of settlement between the Crown and ship's owners, signed in October 2012. Tangata whenua were not consulted at all prior to these being signed. The question at the heart of the claim was whether the Crown has adequately protected Māori and their relationship to their taonga, in accordance with Treaty principles. Noting that the Crown's Treaty duties exist equally outside the resource management process as they do inside it (p. 7), the Tribunal found that the Crown must take particular measures to meet its Treaty obligations. As relates to the Rena RMA process these include that the Crown:

Ensure robust consultation, by providing information on the particularly complex resource consent application and the process itself so that Māori are adequately informed and able to make 'intelligent and useful responses'.

Ensure meaningful engagement, by providing Māori with active support that will allow them to articulate the nature of their relationship

with Otaiti and how the grounding of the Rena has affected their relationship, so as to allow full expression in the consent process of the interests affected and the reasons why Māori wish the wreck to be removed.

Citing *Wellington International Airport Ltd v. Air New Zealand* (1993) the Tribunal found that to fulfil its duty of active protection so far as the taonga itself is concerned, and the impact of a consent on affected Māori, the Crown must:

- Do as much as is reasonable to test the evidence on the feasibility of the removal of the wreck, cargo and debris in order to form a view on whether to make a submission on the consent application and the nature of the submission.
- Seek the imposition of monitoring and mitigation conditions to protect the environment of the reef and Motiti Island on an ongoing basis from the effects of any material left in situ.
- Seek that in the event a resource consent is granted that some positive and worthwhile reasonable mitigation off-set is provided by the consent holder to affected Māori.

It went further still, directing the Crown to take active steps to look beyond the current process, taking into account the possible outcomes in the event of success or failure of the resource consent application, and begin considering how the Crown's duties – both in relation to the taonga and in relation to Māori and their exercise of rangatiratanga – might be fulfilled.

These most recent statements of Crown obligations stand in stark relief to current practice, and would seem to demonstrate that the Crown, and councils as its agents, seldom fulfil their Treaty and RMA statutory obligations to Māori where matters of significance to tangata whenua are involved.

Consultation is a two-way street

The courts have found that consultation is a two way street, and where local Māori fail to take up efforts at consultation this should not prevent consent being granted. This was the case in *CDL Land New Zealand Ltd v. Whangarei District Council* (1997), an appeal against a council decision to refuse a proposed private plan change involving rezoning an area from rural to residential. The applicant made efforts to consult with tangata whenua, but had received no response and

proceeded with the application, which was declined on the basis of inadequate consultation. The Court found that to ask an applicant for more would go beyond consultation and approach a veto for tangata whenua, which was not Parliament's intent. The appeal was disallowed, however, on the merits of the evidence of cultural significance placed at the appeal, rather than for a failure to consult.

Justice Gendall examined this notion of reciprocal obligations relating to consultation, specific to obligations of the Crown, in the High Court decision in *Greenpeace of New Zealand Inc v. Minister of Energy and Resources and New Zealand* (2012), observing that 'Consultation, and good faith listening to concerns, are a two way street, with obligations on Māori interests and the Crown. Each have obligations on the other' (para 133).

In a similar manner to *CDL Land*, referenced above, in *Whangapoua Environmental Protection Soc Inc v. Thames-Coromandel District Council (Blue Mountain*, 2004) Ngāti Whanaunga was denied recognition as a party to the Environment Court appeal, for not having been a submitter to the council consent application process. Following this exclusion from the court process I gave evidence for a local harbour-care group. Having refused to accept that the iwi should be admitted on the grounds of perceived significant cultural damages that would result should the development (a timber mill) proceed, Judge Bollard commented several times in his decision on my evidence, being the only expert Māori evidence before the Court:

[87] The evidence of Mr Kennedy and others called for the society collectively provided an additional perspective and understanding as to the effect that the mill development would have on amenity values in relation to Motutere and about the people with that landmark.

[94] Reference has been made to the evidence of Mr Kennedy concerning an "ancestral pathway" through the valley and a cultural landscape. What he had to say concerning the ancestral association of Māori with the area and their traditional and cultural links was unchallenged by any counterpart witness knowledgeable in Māori tikanga, and familiar with the relevant background. We perceive no good reason for rejecting his evidence, and find that Māori values associated with Motutere, the river, and the valley are very much concerned with

protection of the natural character of the landscape within which the proposed sawmill would be placed.

Given statements by the iwi as to likely cultural impacts, when seeking admission as an interested party, the Court demonstrated a preoccupation with process, even where this was likely to render the court unable to consider Māori issues brought to its attention in correspondence.

This is not the only time admission was refused to the iwi in consent processes and appeals. Refusal of entry represents a significant further barrier, given that iwi struggle to participate in RMA processes. Ngāti Whanaunga does so for a tiny number of applications within its rohe, and was, until the creation of Auckland Council, entirely unresourced to do so. While acknowledging that consultation is not possible without a response, the courts, like the Crown, have little addressed Māori capacity as a factor in ability to engage, and use a failure to previously engage as a basis for exclusion. I have previously discussed other means by which Māori are denied access to legal remedies in Chapter 6.

I investigated iwi environmental capacity, including undertaking a survey of Māori organisations that was based on the Māori Outcomes Evaluation method adapted during this research. Survey findings are explained in Chapter 3, under the heading *Taking a wider view*.

Crown reports confirm that the level of notified consents remains less than 5% nationally (Ministry for the Environment, 2009 p. 10). Iwi have only been made aware of a small percentage of consent applications. However, in a positive development, some iwi now receive regional council consent application lists with brief information on consent applications received. However, for most of the country iwi are only informed of district council applications for notified and limited notification consents. There is some attempt to involve Māori when they are clearly an affected party, but this is motivated largely by a desire to avoid the need for a hearing, and attendant costs, timeframes, and risks.

Mauri, and intangible matters

The courts have struggled with their obligations to consider both physical and spiritual or intangible matters in the course of RMA decision-making. However, a jurisprudence has developed around this, and I consider some cases in which the

courts have given clear direction on the treatment of spiritual values and intangible matters, including mauri.

The Planning Tribunal took a sympathetic stance toward the protection of Māori spiritual values, and mauri in particular, in *Te Rūnanga o Taumarere & Others v. Northland Regional Council & Far North District Council* (1995). In relation to local council plans to discharge treated effluent into a local bay the Tribunal reported:

Rūnanga witnesses said however that no matter how well treated physically any discharge of effluent, it would be perceived by local Māori as altering the mauri (spiritual quality) of the bay and they would view the shellfish there as contaminated and cease to gather from the bay. The tribunal found as a fact that this was the Māori belief and that they would regard any effluent discharge as an affront to their standing as tangata whenua and as kaitiaki.

The Planning Tribunal recognised that the RMA provisions relating to protection of Māori values required more than just lip service, and directed the council to investigate disposal to land. Only if that option proved unfeasible might the urgent public health needs of the community prevail over the important Māori values.

Perhaps the most significant investigation was heard under the Hazardous Substances and New Organisms Act (1996) in July 2000. Section 6d (the relationship of Māori with their culture and taonga) uses the same wording as RMA section 6a. In an application by AgResearch to the Environmental Risk Management Authority (ERMA) concerning genetically modified cattle (*Bleakley v Environmental Risk Management Authority*, 2000) Waikato hapū Ngāti Wairere expressed concerns about three gene applications on the basis that genetic modification is contrary to their spiritual guardianship of the mauri or life force of all living species. ERMA gave consideration to the justiciability of intangible or spiritual values. It had previously found (although there was a dissenting minority view) that spiritual beliefs were different from 'taonga' as understood in other cases, and were 'not amenable to active protection in the same way as more tangible taonga'.

While not overturning the final ERMA decision, the Court of Appeal confirmed clearly that Parliament had intended that the Act provide for Māori spiritual values, reporting:

Further, the inclusion of expressions such as waahi tapu illustrate that it was intended that spiritual and physical matters be taken into account. "A waahi tapu has a spirituality which is inseparable from its physical properties" and "valued" flora and fauna are mentioned, to "reflect the intrinsic value to Māori of certain flora and fauna - it is not the mere physical properties of that flora and fauna which render them important, it is their intrinsic value to Māori, flowing from the attitude of Māori towards them, which transforms them into taonga. Consequently, the reference to "other taonga" simply confirmed the wide embrace Parliament intended for the provision, and included spiritual taonga such as whakapapa and mauri as well as other intangible treasures, such as language.

Another important matter was raised in the initial dissenting position in *Bleakley* noted above, and returned to by the Court of Appeal. The minority ERMA report had suggested that no criteria were established to assess the cultural and spiritual risks to Māori, nor any methodology followed to weigh those risks and relevant costs and benefits. The authority made the observation that 'matters of belief of course, can only be determined by the people who hold them'. The majority of committee members had difficulty accepting the claim that the whakapapa or mauri of the cattle that would be produced would lead to adverse consequences for Ngāti Wairere, including illness and death, and they did not accept that Māori spiritual values would be offended by genetic modification:

....given that those beliefs would have been developed well before human-kind had any appreciation of the evolution of species by genetic mutation and selection, or of the role, function and separability of genes, and the proteins they code for, or of the scientific possibility of transposing gene sequences between species

Even where Māori spiritual values are accepted, these seldom prevail. An example of this can be found in *Mahuta & Ors v. Waikato Regional Council* (1998) where Waikato iwi sought to prevent discharge of contaminants into the Waikato River:

It is our judgement that because of the community value of the proposed expansion of the dairy factory, and because the cultural interests of the Waikato-Tainui people would be provided for in so many other ways which avoid tangible harm to the river, the perceptions which are not represented by tangible effects do not deserve such weight as to prevail over the proposal and defeat it.

Similarly, the same year in *Watercare Services Limited v. Minhinnick* (1998) a case dealing with a sewer pipeline crossing wāhi tapu, the Māori dimension was held to be important but not decisive, even if Māori issues were specifically involved. A 'balanced judgment' was required and 'a value judgement on behalf of the community as a whole'.

Proving mauri - the evidential approach to intangible matters

Some cases have confirmed that assessing spiritual or intangible matters requires the orthodox evidential approach, as explained below in relation to proving adverse effects on mauri, in the Environment Court decision *Winstone Aggregates Limited v. Franklin District Council* (2002):

In any enquiry involving concepts of tikanga Māori there are three states of inquiry before the Court. The first is to determine, as best as we are able in the English language, the meaning of the concept. The second is to assess the evidence to determine whether it probatively establishes its existence and relevance in the context of the facts of a particular case. If so, the third is to determine how it is to be recognised and provided for.

The manner in the Court approached the weight of local evidence of Māori values and beliefs was explained in *Ngāti Hokopu Ki Hokowhitu v. Whakatane District Council* (2002):

We start with the proposition that the meaning and sense of a Māori value should primarily be given by Māori. We can try to ascertain what a

concept is (by seeing how it is used by Māori) and how disputes over its application are resolved according to tikanga Ngāti Awa. Thus in the case of an alleged waahi tapu we can accept a Māori definition as to what that is (unless Māori witnesses or records disagree amongst themselves).

At all stages of inquiry the decision-maker is required to consider the evidentiary basis, being the burden on a party who makes an allegation to present evidence to support the allegation. In the same year the Court in *Beadle & Wihongi v. Minister of Corrections & Northland Regional Council* (2002) arrived at the following proposition as representing the law as it concerns the active protection principle of the Treaty in that particular case:

[671] The person making a decision on a designation requirement or resource consent application has to take into account the principle of the Treaty by which the Crown has an obligation of active protection of Māori property and taonga, which are not limited to physical and tangible resources but extends to spiritual and intrinsic values.

In that case the Court was concerned not primarily with mauri, but with the effects of a proposed prison construction on the pathways of a local taniwha (a spiritual creature). Despite the above-noted observation the Court demonstrated the difficulty it has faced in giving effect to the need for spiritual values be accorded proper weight, writing:

Even so, the Act and the Court are creations of the Parliament of a secular State. The enabling purpose of the Resource Management Act is for the well-being of people and communities, and does not extend to protecting the domains of taniwha, or other mythical, spiritual, symbolic or metaphysical beings. The definition of the term 'environment' in section 2(1) does not extend to such.

The Court found that disputes about taniwha were 'simply not justiciable' (Bennion, 2002 p. 3). However, the Environment Court has demonstrated willingness to engage with Māori intangible matters in subsequent years. For example, in *Ngataki v. Auckland Regional Council* (2004) the Environment Court blocked a plan to install tidal gates across Pahurehure Inlet, partly because of its

impact on the wairua of the Manukau Harbour. It sought to understand the beliefs and spiritual values of the tangata whenua, Ngāti Tamaoho, who that appealed an earlier council decision to allow the inlet to be closed. It wrote:

[96] We find that, from a Māori point of view, at least from the perspective of the tangata whenua appellants, there will be some effect on the Māori spiritual values by an interference with the natural flow of the tide. If the water is interfered with, the wairua [spirit] of its water will decay and when the gates are reopened the resulting decay will affect the wairua of the greater Manukau Harbour.

This is one of few cases where consents have been denied substantially on the basis of Māori spiritual values.

Wāhi Tapu

In *Land Air Water Association v. Waikato Regional Council* (2001) the Court preferred dictionary definitions and the evidence of consultant Buddy Mikaere to that of mana whenua. Mikaere asserted that only urupā or burial grounds and ceremonial or spiritual sites could be wāhi tapu, and that those other places stated by locals could only be wāhi tapu if they were associated with urupā or ceremonial sites, for example a pa site could also be an urupā. In contrast tangata whenua had asserted that old pa sites, urupā, ceremonial or spiritual sites, fortifications, locations where Māori artefacts had been found, cultivation areas, Māori earthworks and any area discovered that may reveal a meaningful linkage with the past constituted wāhi tapu.

Protection of wāhi tapu

In *CDL Land New Zealand Ltd v. Whangarei District Council* (1996) the Environment Court appeared to be willing to protect wāhi tapu, where Māori links to the lands and sites concerned were clear and other options were available to the applicant. The rationale applied, that Māori values can be upheld in so far as such recognition is not detrimental to the developer, can be seen repeatedly.

CDL is of interest in that, while being a resource consent appeal, it would promulgate a Council plan change, and it was largely in relation to effects arising from the proposed plan change that the appeal was disallowed. In *Ngāti Maru v.*

Auckland City Council discussed below, the court again criticised a development driven district plan change, on the basis that this would impact Ngāti Maru rights.

Iwi have turned to the Courts about other areas of the RMA. For example in *Te Runanga o Ngāti Pūkiao v. Minister for the Environment* (1996) the High Court considered MfE's rejection of an application by Ngāti Pūkiao to become an iwi protection authority over wāhi tapu and other sites along the Kaituna River. The ministry rejected the application after the Rotorua District Council lodged a later application to become such an authority, in an effort to spoil the iwi attempt.

The High Court upheld the claim, but did not confirm the status, instead sending it back to the Minister for reconsideration. However, the iwi never pursued the matter, largely because they were provided with no guidance about process, parameters against which a decision would be made, nor any indication that a second application would succeed. Importantly, the outcome in terms of protection of wāhi tapu was little considered in the Court's deliberations, it restricting judgement to matters of process and law. However the decision gave a clear direction that the Court gave support to the intention of RMA section 189, finding Ngāti Pūkiao to be an appropriate heritage authority for its wāhi tapu.

In *Ngāi Tuma puhiaarangi Hapū me ona Hapū Karanga v. Carterton District Council* (2001), a High Court appeal of an Environment Court decision, that the subdivision was on a wāhi tapu was not questioned, nor the appellant's depth of feeling on the issues raised, despite being accepted as 'entirely genuine'. But again Māori interests were subordinated to those of the applicant. Citing *Mahuta v. Waikato Regional Council* Judge Chisholm found that even where section 6 is found to apply, an application for resource consent 'is not necessarily doomed to failure'.

In contrast is *TV3 Network Services Ltd v. Waikato District Council* (1997), an appeal by TV3 to the High Court, against the Environment Court's decision to disallow resource consent for a television transmitter to be constructed on a hill known as Horea on the Raglan Harbour. The Environment Court found that, even though damage to land was minimal and the land was not known to have any archaeological remains, because of a long history of occupation by ancestors of tangata whenua, any disturbance of the ground would be regarded by tangata whenua as a desecration.

The High Court disallowed the appeal and found that although the proposed translator would represent a use of resources in a way which would enable people to watch television and to provide for their social and cultural well-being, it would fail to enable the people who are the tangata whenua of the area to provide for their social and cultural well-being.

This is an important decision, representing a substantive decision in terms of the definition of sites of significance, and is in line with the wider definitions of wāhi tapu explored earlier in this section.

All the above pre-2003 cases were taken under the RMA, but also included HPA matters. Māori can take some comfort from the RMA Amendment Act 2003, which requires that decision-makers recognize the need to protect historic heritage, including 'sites of significance to Māori, including wāhi tapu' from inappropriate development (sections 2l and 6f).

In more recent cases the understanding of wāhi tapu has been revisited. For example, in *Outstanding Landscape Protection Society Inc, Maungaharuru-Tangitu Society Inc and Ngāti Hineuru Iwi Inc v. Hastings DC and Unison Networks Ltd* (2006), a broad area was accepted as being wāhi tapu. This contrasts with the determination in *Winstone Aggregates* and other cases, that wāhi tapu are small discrete areas.

I spoke about the results of planning legislation for heritage protection previously in chapters 4 and 8, describing an ongoing loss of Māori heritage. The courts have offered some protection for wāhi tapu where the issue is brought to its attention, but the usual treatment is the requirement that an archaeological investigation be carried out prior to destruction. In the more than 99% of cases where Māori are not a party to consents, even such cursory treatment is unlikely.

Kaitiakitanga

Legal treatment of kaitiakitanga (mainly in the Environment Court) has focused, as with tikanga generally, on whether kaitiakitanga has been considered by authorities administering the Resource Management Act, and on what kaitiakitanga means. Some important kaitiakitanga cases are considered now.

In the previously mentioned *Haddon v. Auckland Regional Authority* (1994) the Planning Tribunal found, about consents granted to extract sand, that Ngāti Wai should be able to exercise kaitiakitanga over a local sand resource, and

to give guidance on how, and to what extent, it should be developed. Ngāti Wai sought changes to the permits, arguing that they continued to hold mana over the sand, and that they had a claim to the sand before the Waitangi Tribunal.

While the decision was then ground-breaking in terms of recognition of kaitiakitanga, the Planning Tribunal stated that the ownership issue could not be dealt with under the RMA, and would not defer the decision until the Waitangi Tribunal report was complete. They noted the section 8 requirement to take the Treaty into account, as falling short of a requirement to give effect to the Treaty. Bennion observes that the case highlights limitations in the Resource Management Act in terms of giving effect to kaitiakitanga:

...once again the limits of the RMA to address deeper issues is made clear. As was apparent from the objections raised, the role of kaitiaki of the resource implies control and responsibilities to the immediate group and the wider community e.g. 'they would also want to explain to sand extractors the history and spirituality of the sand to the tangata whenua as part of their inheritance and way of life'

Despite the Tribunal's apparently sympathetic response, the remedies sought by Ngāti Wai were refused.

In *Rural Management Ltd v. Banks Peninsula District Council* (1994) iwi opposed proposed sewage outfall to the sea from a subdivision, seeking a land-based alternative. The Planning Tribunal limited its interpretation of kaitiakitanga to the statutory definition in the Act and physical evidence presented. The spiritual relationship, argued to be the essence of kaitiakitanga, was given little recognition, the Tribunal stating that kaitiakitanga was applicable not only to Māori, but also to consent authorities and applicants. The appeal was declined.

This judgment contrasts with the ruling in *Te Rūnanga o Taumarere & Others v. Northland Regional Council & Far North District Council* (1996) the following year, (cited previously in relation to mauri), where the tribunal found that where feasible alternatives were available these should be used rather than waste disposable solutions that are inconsistent with Māori spiritual values.

As in *Rural Management*, kaitiakitanga was found by the court in *Whakarewarewa Village Charitable Trust v. Rotorua District Council* (1994) to be a function that councils could exercise. While Judge Kenderdine in this case

observed that kaitiakitanga most properly requires that control be vested in an iwi authority, she found that there was no clear iwi authority relating to the Trust, and that consequently the Rotorua District Council should assume the kaitiaki role.

As Hayes (1998 p. 896) observed, this denotes a serious divergence from kaitiakitanga in the Māori understanding, as being a responsibility of tangata whenua. I note, however, that this decision was in line with the RMA prior to the 1997 amendments, which made clear that only tangata whenua could be kaitiaki.

There have also been cases where Māori world views, values, and interests have prevailed. In *Kaupokonui Beach Society Incorporated v. South Taranaki District Council* (2008) the Court made clear that the RMA's Māori provisions do not combine to give a veto, but overturned consents granted to establish and operate a quarry on land in South Taranaki. It gave considerable weight to the cultural significance of the landscape proposed for quarrying, and declined the applications for consent in total. Amongst the court's reasoning was effects on a particularly prominent landscape feature and possible burial site. As reported by Bennion and Linkhorn (2008 p. 7), the Court noted that kaitiakitanga did not mean that tangata whenua hold power of veto over proposals in the area where they exercise kaitiakitanga, but it did require that tangata whenua concerns about the possible impacts of development in areas and sites of interest to them must be seriously considered and be given particular regard in the court's considerations.

The previous year the Waitangi Tribunal (2008), in its *Central North Island - He Maunga Rongo Report*, found that tangata whenua had been prejudiced by being excluded from virtually all management and kaitiakitanga of their taonga, including waterways. The Tribunal found that the Crown should have provided for Māori to exercise ongoing rangatiratanga over their environment following the signing of the Treaty, by allowing Māori to manage their own policy, resources, and affairs, within the minimum parameters necessary for the proper operation of the state.

I referred above to Waitangi Tribunal findings of continuing obligations of the Crown, where it delegates administrative and decision-making authority to councils. The Tribunal considered kaitiakitanga in the context of the RMA in its 2011 report *Ko Aotearoa Tēnei*, writing:

....we do not accept the Crown's argument that its Treaty obligation to

protect the kaitiaki relationship with the environment is absolved by the statutory devolution of its environmental management powers and functions to local government.

There have been many cases in which kaitiakitanga is considered, and some where it is materially provided for, although these remain a distinct minority. It is not always necessary for consents to be refused for kaitiakitanga to be properly provided for, changes to the designs of proposed structures and activities, and conditions aimed at protecting Māori values and enabling kaitiakitanga are often what iwi are concerned about. As myself and many other iwi representatives have stated in RMA and similar statutory processes, we are not fundamentally opposed to development, we are trying to protect our interests, rights, and values.

In some cases particular regard was had for kaitiakitanga, the ancestral relationship of tangata whenua with their taonga provided for, and/or substantive measures taken toward having regard for the Treaty (notwithstanding the low bar these directives set, as discussed in Chapter 6). But often resource consent decisions hinge on whether an applicant can persuade the court it can adequately avoid, remedy or mitigate effects on Māori, and on other neighbouring interests.

Typically appeals are denied, but Māori may improve their position either through pre-hearing meetings and negotiations, or via consent conditions. These typically include the imposition of monitoring requirements, encourage the formalisation of relationships with applicants or landowners, and accidental discovery protocols.

A 2011 case in which the Court went significantly further than this was the 2011 case *Te Runanga o Ngāi Te Rangī Iwi Trust v. Bay of Plenty Regional Council (Ports of Tauranga)*. Local iwi appealed the granting of restricted coastal activities allowing enlargement of shipping channels within Tauranga Harbour, intended to allow larger ships at the port. The appeal was taken for a range of matters, including damage to pipi beds, impacts on their relationship with the harbour, general environmental and ecological effects from initial and ongoing dredging, and associated impacts in terms of the mauri of the harbour.

Substantial consideration was given effects on mauri, kaitiakitanga, wāhi tapu, mahinga mātaītai, and sites of significance, and the ancestral relationship of iwi with the moana, with numerous witnesses appearing. Dredging was allowed to

proceed, but the Court put in place substantive measures to provide for tangata whenua not seen elsewhere, including:

- The development of a Kaimoana Restoration Programme to develop research and monitoring criteria to remedy or mitigate the effects on kaimoana, in particular the pipi beds damaged by the dredging works.
- Establishment of a Tangata Whenua Reference Group in relation to dredging operations and disposal activities
- The establishment of further tertiary and post graduate research studies aimed at promoting better environmental health of Te Awanui (Tauranga Harbour).
- provision for renourishment of the beach at Whareroa Marae
- The establishment of a trust to recognise the relationship of local hapū with the harbour, comprised of five iwi and two Port of Tauranga representatives, which will set priorities and allocate funds for harbour improvement projects.
- A minimum separation distance of dredging works from Te Kuia Rock

The purpose of the Trust (condition 7.1), illustrates the care the Court took to properly reflect its RMA obligations to Māori. It consists of three parts:

- (a) To provide an appropriate mechanism through which the Consent Holder can recognise the relevant Iwi and Hapū as kaitiaki of Te Awanui Tauranga Harbour and the importance of Te Awanui, including Mauao and Te Paritaha to Tangata Whenua; and
- (b) To provide an appropriate mechanism through which Tauranga Moana Iwi and Hapū and the Consent Holder can form an enduring relationship and engage with each other directly and equally; and
- (c) To set priorities and allocate funding for projects within Tauranga Harbour including particularly projects to be implemented by the Tauranga Moana Iwi Customary Fisheries Trust and the Mauao Trust.

While this case might be the standard against other decisions are now judged by Māori, it remains unusual in this regard. However, this case and others like it are cause for optimism in terms of a growing Māori RMA jurisprudence, and of improved outcomes on the ground.

Chapter 10 - Two Case Studies: Mangroves and Marinas

'I think it sends a very strong signal that New Zealand is a country for progress. We want to see development as long as it's done in the right way, and this is a tremendous example of that. It's at one with the community and nature'.

Prime Minister John Key, when opening the Whangamatā marina
(Television One News, 2009)

In earlier chapters I introduced the history, geography and tikanga of the case study people (Ngāti Whanaunga) and area (Whangamatā), explained the New Zealand statutory environment in terms of Māori rights, and described council and the Crown efforts to implement their statutory mandate. Chapter 10 now focuses on two case studies at Whangamatā, the construction of a marina and the removal of mangroves, which I describe as *take* (/tʌk.e/), being causes or significant issues for Māori.

I locate the two *take* within my earlier analysis to show that they have created a serious social, cultural and environmental imbalance, presenting them as exemplars of council and Crown mismanagement. I describe the statutory processes involved and the outcomes for iwi. In doing so this chapter provides the 'substance' of my research, the local examples that are invisible in national reporting, but essential to gaining a meaningful picture of the experience of Māori under the RMA.

The findings from Chapter 10 are important to answering the key research questions, being: 1) do Māori provisions in environmental law result in meaningful empowerment of kaitiaki; and 2) does New Zealand's environmental management regime produce, on balance, positive outcomes for Māori. A timeline of major events for both *take* is presented in Figure 10.1 (next page), while more detailed separate timelines are provided in Figure 10.2 for the marina (p. 257), and Figure 10.15 for mangrove removal (p. 292).

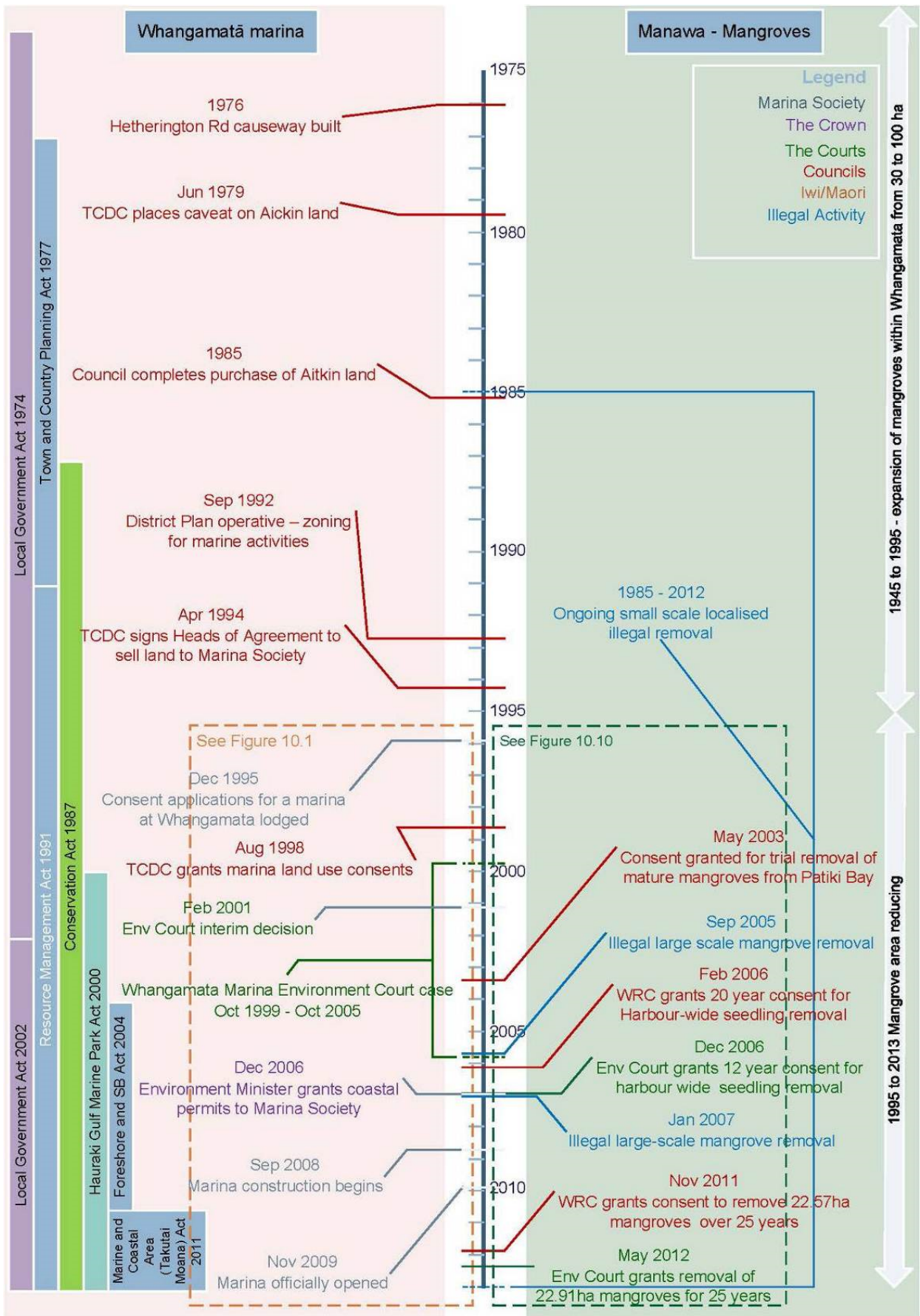


Figure 10.1. 1975 to 2013 timeline, showing case study events, statutes, and mangrove trends

Case Study 1: The Whangamatā marina

The first *take* considered is the Whangamatā marina. I explain the roles of the responsible agencies, then consider the statutory processes that together enabled the construction of the marina. These include Historic Places Trust (HPT) applications to modify or destroy historic sites, resource consents hearings, changes to the WRCP, Environment Court appeals, changes to consent conditions, issuing coastal permits, long-term marine and terrestrial land leases, and review by the higher courts.

Agency roles

The Whangamatā marina process involved four agencies, TCDC, WRC, DoC, and HPT, each having related administrative functions and decision-making roles.

TCDC had several roles in the marina's evolution following its purchasing and rezoning the land. TCDC entered into a heads of agreement with the Whangamata Marina Society (WMS) in April 1994 to sell them the required land. It granted the initial land-use consents in 1998, was a respondent in the Environment Court appeals, granted further non-notified transporting and dewatering consents in 2005, and was a respondent to appeals from 1999 to 2009. In 2009 TCDC voted to lease the land to WMS, and in 2009 notified a temporary stop to a legal unformed road to allow for the construction of the marina. TCDC later agreed to take on a significant portion of marina-related maintenance dredging, contrary to Environment Court-imposed conditions, thereby imposing significant costs of running a private marina onto ratepayers. It was a vocal active supporter of the marina, publically criticising sections of its community, including iwi, for their opposition to the project.

WRC played a number of roles in the Whangamatā marina. Its Regional Coastal Plan established an Area of Significant Conservation Value that encompassed the marina area. WRC had a statutory obligation to manage and protect coastal and harbour margins, it appointed the committee to hear the initial marina consents, and WRC was a respondent in the Environment Court appeals. Figure 10.1 above identifies marina events by agency alongside mangrove removal ones since 1975 and the passage of relevant environmental legislation up to 2012. Figure 10.2 below focuses on marina-related events, from lodging consent applications in 1995 through to 2013.

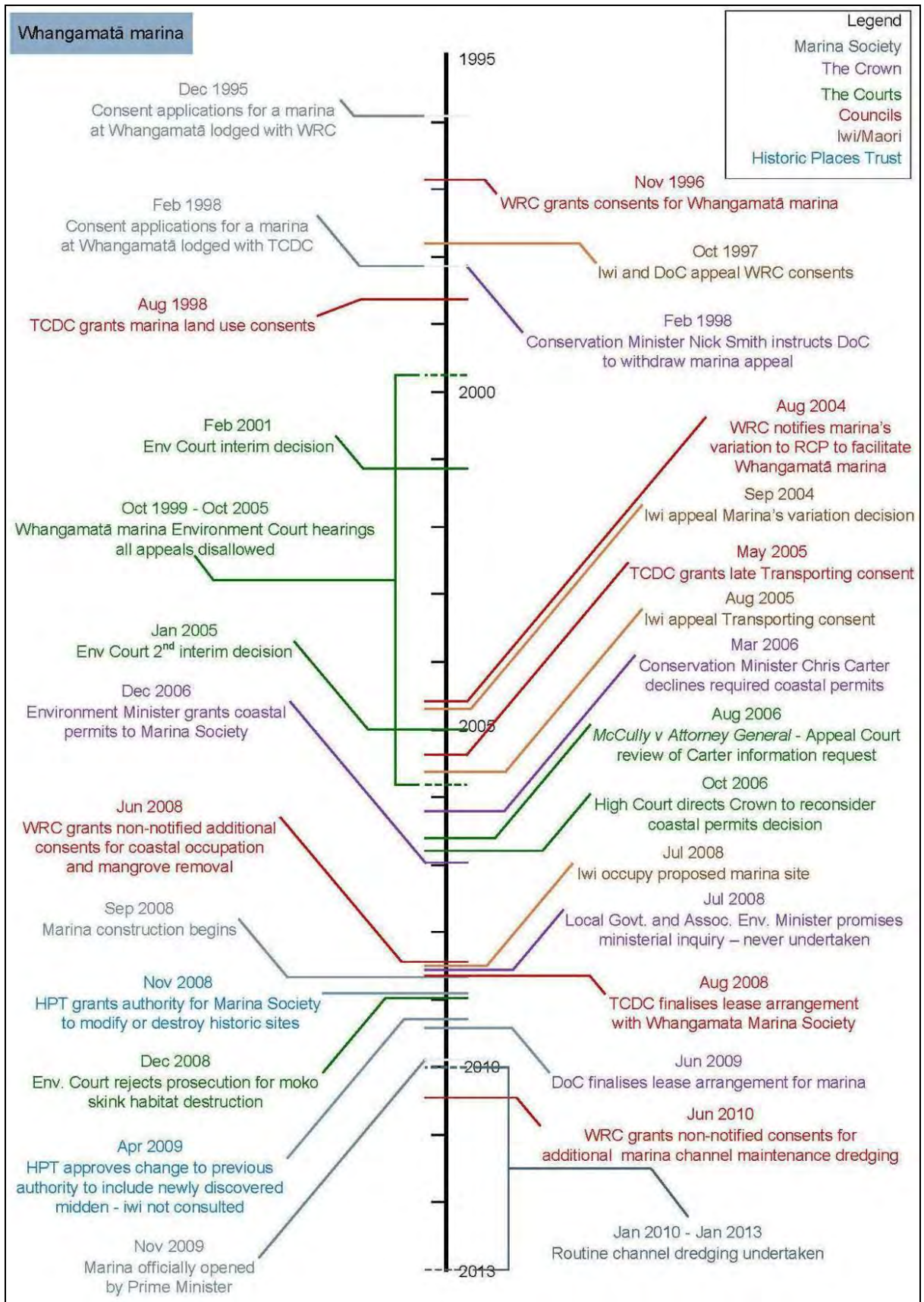


Figure 10.2 - Whangamatā marina statutory processes timeline

WRC was required by the Environment Court to make a plan change to its WRPS, the 'Marinas Variation'. It also granted subsequent consents for matters the Court failed to deal with, including mangrove removal, the marina basin excavation, dredging, and exclusive coastal occupation, granting these on a non-notified basis. WRC allowed several variations to court-imposed consent conditions, including a reduction to the required length of channel lining. Finally, WRC was charged with monitoring and enforcing compliance with the numerous marina-related consents.

DoC appointed a person to sit on the initial hearings committee. Its appointee opposed granting consent but was outnumbered. DoC appealed the decision to the Environment Court, but subsequently withdrew its appeal. DoC is the owner of the land below mean high water springs, and with the passing of the FSSBA (Foreshore and Seabed Act, 2004) inherited authority for, and ownership of, the saltmarsh from TCDC. DoC made the decision to lease the harbour bed and saltmarsh area to WMS, without which the marina could not proceed. Finally, the Minister of Conservation made the decision to grant coastal permits following the granting of consents.

HPT was responsible for processing applications to modify or destroy Māori historic sites, and granted several separate authorisations as part of the RMA consenting process. It granted a further authority when additional sites were discovered during construction.

The purchase of Te Matatuhi, the land required for a marina - 1979

In 1979 TCDC placed a caveat on an area of undeveloped land and wetland at Whangamatā owned by the Aitkin family, preventing them from selling to anyone but TCDC. Stating that the land would become recreational reserve.

It wasn't until 1985 that TCDC bought the property, paying \$25,000 for 5 hectares of harbour-front land. In 1985 sales were averaging around \$70,000 an acre, although the deal included a subdivision concession for their remaining land. Soon after the caveat was lifted.

The Aitkin family advisor for that transaction was to become a partner of law firm Harkness and Henry, the lawyers for WMS. While not illegal, the law firm failed to declare a potential conflict of interest at the subsequent hearings. When asked to produce copies of the sale agreement, Harkness Henry said they

had shredded all the Aitken files, and TCDC could not locate the document (O'Rourke, 2005).

The land was poorly maintained after its purchase, and TCDC began illegally infilling Te Matatuhi wetland the year after they obtained it, as shown in Figure 10.3 below.

Marina-related statutory processes - 1979 to 2012

The marina timelines in Figures 10.1 and 10.2 show a series of separate statutory processes in the genesis of the Whangamatā marina. Numerous statutory provisions discussed in Chapters 6 and 7 were triggered.

The District Plan review and marina purposes zone - 1986-1989

In its 1986 district plan review TCDC rezoned the land from recreational reserve to marine activities and extra high density housing. It did not speak to tangata whenua or the Aitkin family (O'Rourke, 2005), or consult its ratepayers prior to making the change. The new TCDP became operative in 1992 under the new RMA. Hauraki Māori had little planning capacity at the time, and the zoning change was not identified or challenged by iwi in the plan notification process.



Figure 10.3. Purchase area and infilling the saltmarsh. The historic extent of Te Matatuhi wetland is shown in red, the green outline approximates the area TCDC filled after 1986, and the yellow line bounds the most recent dumping

The new zoning was notified in the TCDP just before the introduction of the RMA. Like most iwi at the time Ngāti Whanaunga had little capacity to engage in

environmental matters, and was not consulted in relation to the proposed zoning. Given the declared intention to destroy the saltmarsh TCDC should have anticipated iwi opposition because Māori values relating to the coast and wetlands had been upheld under the Town and Country Planning Act (1977).

Prehearing engagement - 1995

WMS did not consult with iwi/Māori before lodging its TCDC consent applications in December 1995. After doing so it held a single meeting with the Hauraki Māori Trust Board (HMTB). Ngāti Whanaunga did not have an environmental unit at this time, and the iwi was represented by HMTB through its chairperson and Ngāti Whanaunga representative Toko Renata te Taniwha.

After initial discussions confirmed that tangata whenua were opposed to the marina WMS made no further effort to engage. The two councils made some effort to determine Māori views about the proposal, but this did not result in any modification to the proposal, contrary to later claims by the Society's Māori consultant. Many issues were raised by iwi, including:

- the seabed in question is Māori ancestral land and under Treaty claim
- mauri of an ancient salt marsh intended for destruction
- loss of titoki and tuangi (cockles) from the proposed basin area
- impacts on ancestral sites within the area
- the channel would dissect pipi beds
- marina and channel would compromise traditional access route to kaimoana beds, and block access for kaumātua
- loss of rare native fauna and habitat
- impacts of digging basin and ongoing dredging on kaimoana
- culturally offensive to transport dredged material that might contain kōiwi (human remains) and taonga outside of tribal rohe
- loss of puna, the natural springs emerging within the salt marsh

In contrast, the WMS assessment of environmental effects (AEE) identified only four points of concern to Māori: the effects of the proposal on kaimoana, the pollution from increased boat numbers, effects of increased tidal flow on the rest of the harbour, and a general concern that wealthy people would be attracted to

Whangamatā. This was a gross misrepresentation of issues raised by iwi, and showed a determination to down-play Māori concerns.

DoC later stated that WMS had demonstrated an unwillingness to pay the information costs of properly investigating effects of the proposal, noting that these, and resulting environmental costs, would instead be borne by the community. This was described as an environmental subsidy in favour of WMS (Martin, 1998). The large volumes of iwi environmental and cultural evidence placed before the Court represent the subsidy to WMS paid by Māori to overturn claims of minimal Māori effects made by WMS, its consultants, and the councils.

Applications to modify or destroy historic sites - 1995

As part of the resource consent application, authority was required to modify or destroy Māori historic sites. Blanket permission was sought from HPT to modify and destroy any sites encountered. As discussed in Chapter 4, the general area was found to include extensive evidence of occupation including rare archaic sites. The whole area was culturally significant to tangata whenua, but the applicant applied for authority to modify or destroy several listed archaeological sites. Iwi evidence was given of burial sites on the Whangamatā side of Te Wairoa, citing evidence from the early Native Land Court that only some of these had been reinterred after the land was alienated, and considering it likely therefore that there were burial sites remaining.

Despite iwi opposition the authorisations were granted. A further midden was discovered during marina construction and additional authority granted for its modification or destruction. Typically, the only mitigation provided for the loss of these ancestral sites was that an archaeological investigation be conducted before the site destroyed. Several middens were buried and their location recorded. This was argued to provide for the relationship of tangata whenua with their ancestral sites. Being a recent response to a rapid loss of Māori archaeological sites, no research has been undertaken into how this treatment has affected the relationship of tangata whenua with their significant ancestral places.

Resource Consent Applications - 1996

The HMTB submitted in opposition to the applications on behalf of all affected iwi, as did Ngāti Pū, Ngāti Hako and several community groups including a non-

tribal urban Māori group called the Whangamatā Māori Committee. The various issues listed above formed the basis of their opposition.

A series of hearings was held. WRC appointed a hearings committee for the consents relating to the coastal marine area (CMA), including a DoC representative. It heard applications for four consents in the second half of 1996, two for restricted coastal activities relating to the construction of a 205 berth marina within Whangamatā. The applications were publically notified, attracting a large number of submissions both supporting and opposing the marina.

In response to iwi complaints of a lack of consultation, a hearings commissioner said that iwi had available the opportunity to approach the applicants and did not, and that they could have their say in the hearing. The above-listed issues were argued, supported by expert and traditional evidence. I elaborate on the iwi arguments in my later analysis of the Environment Court appeals. The DoC member voted against granting consent, but was outnumbered, and WRC granted all four consents in November 1996.

TCDC heard publically notified applications for the marina-related land use consents. Opposition was lodged by the same parties, and similar effects argued to the extent that these stemmed from landward aspects of the marina. Consents were granted in August 1998, and were all immediately appealed.

Environment Court appeals - 1999-2005

In *Whangamata Māori Committee & Ors v. Waikato Regional Council* (2005) DoC, HMTB, Whangamatā Māori Committee, WMS, Te Kupenga o Ngāti Hako, and the DoC appealed aspects of consents granted to WMS. Ngāti Whanaunga was again represented by the HMTB. Hearings took place at Whangamatā over ten days in October 1999 and one day in November 2000.

In February 1998 DoC's Waikato conservancy withdrew its appeal under direction from the Minister of Conservation, Nick Smith. In a briefing paper to the Minister and DoC's Director General the Regional Conservator argued that DoC should remain in the appeal for the following reasons:

- inadequate information for the Minister to discharge his judicial role;
- withdrawal would set a bad precedent in terms of RMA planning practice;
- the application fails to satisfy the requirements under the NZCPS;

- withdrawing the appeal would be counter to the thrust of DoC's strategic business plan;
- conservation issues relating to rare birdlife, shellfish beds and the saltmarsh;
- relationships with Māori would be damaged;
- an inability to otherwise justify withdrawing to third parties.

He emphasised the Minister's judicial obligations in the case, stressing the consequences of failing to fulfil these:

One of the main reasons for the Minister's appeal has always been concern that there is not enough information available on potential adverse effects. The Department considers that the applicant has not provided the decision-makers with a sufficiently detailed Assessment of Environmental Effects (AEE). For example, the planning consultants engaged by the Marina Society did not address impacts on New Zealand Dotterel despite that the Department had signalled its concerns in relation to this endangered species.

If the Minister were to grant coastal permits when the information provided by the applicants does not provide an adequate assessment of potential adverse effects, he would be abandoning the so-called 'precautionary approach' embodied in Part II of the Resource Management Act.

The Minister again instructed the Conservator to withdraw. WMS provided no more information, and iwi and community groups shouldered the cost of investigating and taking the appeals. DoC had previously indicated an intention to call two expert witnesses, one on marine biology, for salt marshes and shellfish, the other on NZ Dotterel and Variable Oystercatcher. With DoC's withdrawal the burden of proving the environmental impacts fell on iwi.

Hearings began in October 1999. Despite calls from iwi for a Māori commissioner, and many points raised in appeals relating to Māori values and issues, the Court consisted of three elderly Pakeha men. The two deputy commissioners had no Māori expertise, and the Court demonstrated a misunderstanding of, and outright disregard for, Māori values and interests.

Each of the Māori matters previously listed (amongst others) was argued at length by iwi witnesses and experts. Many Hauraki kaumātua and traditional knowledge holders gave evidence on the cultural significance of Whangamatā, and impacts of allowing a marina at the proposed location.

Consultant Buddy Mikaere was contracted by WMS to counter tangata whenua evidence. Despite the statements of a large number of respected Hauraki iwi elders, and without a single word of justification, Judge Bollard stated that Mikaere's evidence was 'to be preferred' (*Whangamata Marina*, above 136, para 46). His fixed attitude was evident throughout the hearings, and most Māori values arguments were closed down immediately by the judge.

Figure 10.4 shows marina plans superimposed over aerial photography, illustrating the destruction of the saltmarsh, bisection of pipi beds, and the barrier to kaimoana beds created by the proposed channel. This mapping was undertaken by the iwi and placed before the Court in response to WRC TCDC and WRC insistence that effects on tangata whenua relating to kaimoana would be minimal.



Figure 10.4 - WMS plans superimposed over aerial photography (red) and pipi beds (yellow). *Source: Ngāti Whanaunga Environment Unit, 2004*

The presence of the saltmarsh in an Area of Significant Conservation Value (ASCV) represented more of a hurdle for the Court. Tangata whenua argued at length the cultural value of the saltmarsh, the importance of puna (springs) within it, and its many inhabitants, which included threatened and taonga species. Despite a wealth of Māori values evidence, the Court confined its consideration to

two matters, whether the saltmarsh was significant in terms of regional and national criteria, and whether it was naturally sustainable.

Environment Court Interim decision – February 2001

The Court released an interim decision in February 2001. Matters raised in the interim decision included:

- potential environmental benefits of a marina at Whangamatā
- traditional access to kaimoana would be cut off, but Māori could gain access from elsewhere in the harbour
- evidence of wāhi tapu had been found wanting when weighed against the analysis advanced for the Society by Mikaere
- the Regional Coastal Plan represents an apparent impediment to a marina through its classification of the upper Whangamatā, including the subject area, as an Area of Significant Conservation Value
- district planning provisions do not contemplate the extensive earthworks and landform alteration implicit in the proposal
- using harbour sand for infilling the saltmarsh would be a waste of a valuable resource

In summary, the Court wrote that, it could do no more than deliver its decision on an interim basis to afford the applicant and the consent authorities an opportunity to consider the implications of the findings, in particular the possibility of introducing changes to the Proposed Regional Coastal Plan:

We have refrained from making our decision a final one, given the concern we share with the society's prime movers over the very real problem at Whangamata bearing on boating accommodation and harbour traffic; also, given the possibility that marina approval at the location in question could be warranted should appropriate planning changes be proposed and prove merited after due process.

Judge Bollard recognised that under the statutory regime that was in place at the time the marina was unable to proceed. Granting a postponement of proceedings to allow for plan changes is an example of the Court going to extraordinary lengths to allow WMS to succeed.

WRCP Plan change - 2002-2003

In response to the above-noted recommendation, WRC notified a variation to the Regional Coastal Plan marina provisions. The variation provided for a number of marina zones within the region, including at Whangamatā and Whitianga. The final changes didn't become operative until December 2007, but WRC (2004 p. 12) previously decided to remove the marina zone at Whangamatā on the basis that it was not satisfied that zoning was the appropriate planning tool to guide development of marinas in the CMA.

There was no reference in WRC's decision to issues raised in iwi submissions, including on the cumulative effect of a growing number of large-scale structures in the CMA, incursions on Māori interests in the foreshore and seabed, damage to kaimoana and culturally significant environments, and a diminishing number of tribal harbours left without marinas. WRC was confident its modified WRCP was no longer a barrier to the marina.

Resumed Environment Court Hearings - November 2004

Hearings resumed at Whangamatā on 19 to 26 November 2004. Appeals against the WRC marinas variation decisions were added. Iwi again sought to argue the cultural and environmental significance of the saltmarsh. They engaged botanist Willy Shaw, a scientist on WRC's Protected Natural Areas surveys, and ornithologist Ray Pierce a specialist in rare birds. WMS engaged botanist Graeme Don for evidence on all ecological matters. Neither TCDC nor WRC engaged ecologists, and as previously stated, DoC's experts were withdrawn.

Part way through the resumed hearings it became clear that WMS's advisors had miscalculated the amount of spoils that would have to be trucked off-site to achieve a stated minimum platform height of 4m, relative to the surrounding area. When the Society sought to increase the height Judge Bollard refused on the basis of visual effects and privacy for surrounding land owners. Iwi argued that this meant significantly larger volumes would be trucked offsite, and that the applicant had failed to apply for the required transporting and disposal consents. The Court reluctantly agreed and took the extraordinary step of stopping proceedings again, to allow WMS to lodge applications for transporting consents.

Second interim decision - November 2004

Following arguments by iwi counsel (strenuously opposed by counsel for WMS and both councils), Judge Bollard issued an interlocutory ruling on the requirement for further consents on 26 November 2004. The Court released a second interim decision in January 2005 indicating an intention to overturn WRC's decision to abandon a marina zone at Whangamatā.

However, such a move was seen as dependant on another planning issue, arising from WRPS clause 6 of appendix 3, which classified any natural wetland as an 'area of significant indigenous vegetation' and 'significant habitat of indigenous fauna', allowing effects to be avoided or remedied, but not mitigated, thereby apparently prohibiting their destruction.

Judge Bollard invited WRC to make a change to the Waikato RPS to address this issue, and stated that should it decide not to do so that the Court would proceed to make a final decision on matters as they stood, noting that 'the chance of the Whangamatā marina receiving a favourable endorsement must be viewed as unlikely'.

Additional transporting and disposal consents – May 2005

The required transporting and disposal consent applications were heard on a limited-notification basis in May 2005 by a TCDC appointed independent commissioner. Ngāti Whanaunga, Ngāti Pū, Ngāti Hako, the Whangamatā Māori Committee and the Whangamata Area School lodged opposing submissions. Ngāti Whanaunga argued five primary issues: dredgings should not be classified as clean fill because of the potential for kōiwi and the extent of organic matter present, a lack of consultation by the applicant, opposition to filling in saltmarsh to form a transport route, potential for effects on cultural sites of disposing of dredgings offsite, and offensiveness of removing dredgings from the tribal rohe.

The consents were granted, and immediately appealed by the iwi parties, Ngāti Hako, with Ngāti Tamaterā joining as section 274 parties, being groups with an interest greater than that of the general public.

Second resumption of hearings – September 2005

The transporting and disposal appeals were added to the others, and heard at Thames in September 2005. Mr Mikaere (2005 p. 8) again challenged all tangata

whenua evidence. He claimed that modification of the marine environment (in this case digging a marina basin and channel) is sanctioned in Māori tradition, with the ancestor and demi-god Maui fishing up his giant fish and later constructing a waterway to trap his wife's lover. He claimed that, in the manner of tribal traditions all around the world, these examples established a guiding precedent of proper behaviour in these circumstances, and that there was therefore no cultural or spiritual offence in such activities because they had been done before.

In rebuttal evidence Canterbury University Māori studies lecturer Garrick Cooper (2004) responded to Mikaere's interpretation of oral tradition, calling it a long discredited Malinowskian structuralist approach:

Mr Mikaere's use of Māori oral tradition (para 3.20) to: (a) rebut Mr Kennedy's evidence; and (b) justify the modification of the environment, is based on antiquated, discredited 'Malinowskian' anthropological theory. It is only indirectly associated with land modification.

Mr Mikaere's claim of 'no cultural or spiritual offence in such activities because they have been done before' is disingenuous. Literal interpretations of oral traditions are particularly unhelpful and are a further example of subscribing to a Malinowskian interpretation of oral traditions. Next Mr Mikaere would have us believe that Maui really did fish up a large mass of land Pākehā call the North Island!

The Court was unmoved, preferring Mikaere's evidence with no explanation. On the previously-mentioned WRPS issue, counsel for WRC argued that on a correct interpretation of the relevant provisions in their context, no de facto prohibition arose (or was intended to arise), and that WRC was not persuaded that changes to the WRPS were necessary to dispose of the appeals. Accordingly, even if an area of the CMA were identified as significant by applying appendix 3 of the WRPS, appropriate use and development might still occur. Counsel for WMS, TCDC and WRC argued that despite the wetland's significance development could occur whereby mitigation was provided for the loss.

Iwi counsel contested this view, taking the position previously stated by the Court that under the RPS an inability to destroy the wetland represented an insurmountable hurdle. The Court returned to the matter of the saltmarsh. In a last ditch effort to protect the saltmarsh, iwi placed a compromise on the table that

would allow the marina to proceed, shown in Figure 10.5. No similar options were considered by WMS, despite obligations under the RMA to consider alternatives if more than minor effects might arise. The proposal was dismissed.

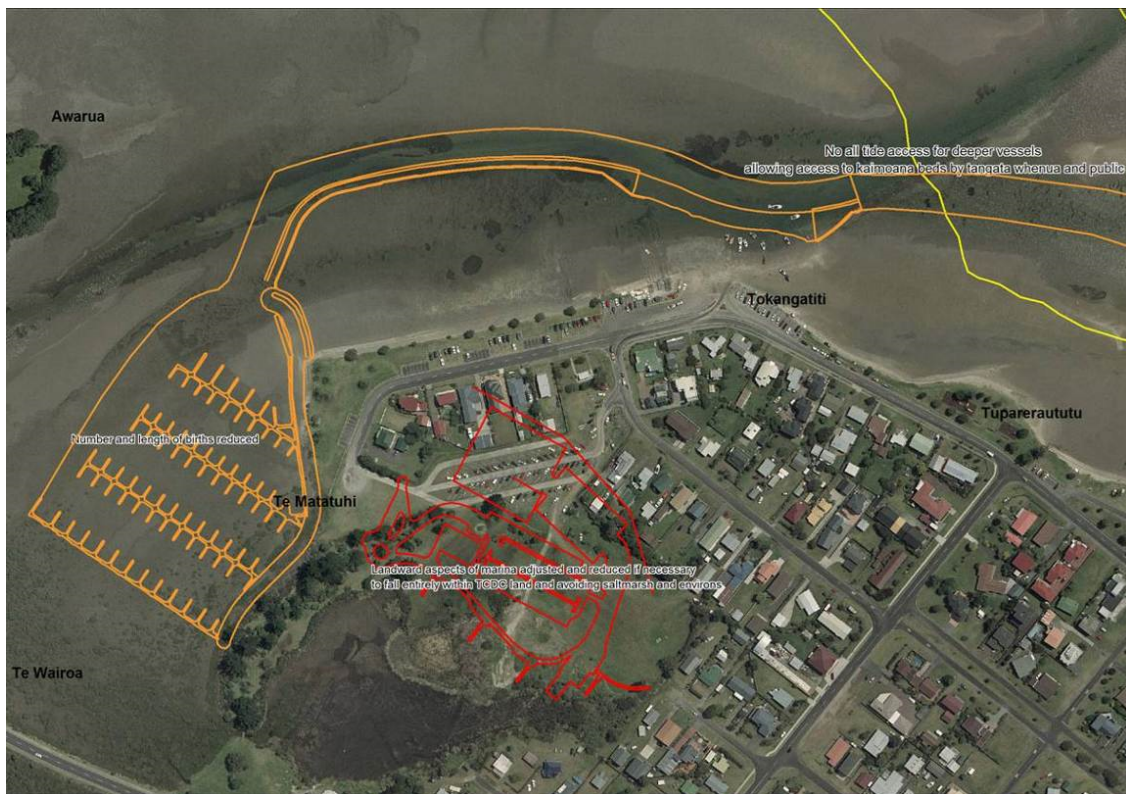


Figure 10.5 - Rejected iwi proposal to allow the marina and save the saltmarsh. Red is Marina Society's plan rotated to approximately fit the open space area. Orange lines show proposed alternative reduced depth channel route avoiding main adult pipi bed.

Ecologists engaged by iwi (supported by the earlier DoC evidence) and WMS's expert took strongly opposed views on the significance of the Te Matatuhi saltmarsh, and its viability. Don (for WMS and both councils) argued that the saltmarsh was not outstanding, pointing to larger saltmarshes in nearby harbours in support of his position. He insisted that without substantial intervention it would deteriorate and die.

Dr Shaw, for the iwi parties, maintained that this was not the case. He said that the saltmarsh was healthy and significant, and that if its channel to the harbour was kept clear, the saltmarsh would survive without intervention. Referring to the evidence as 'strikingly at variance', typically the Court would require experts to confer, and if a degree of agreement was not possible, to explain any outstanding difference in position, as required by the Code of conduct for expert witnesses (Schedule 4, Judicature Act, 1908). Two years earlier, in the case *Whangapoua Environmental Protection Soc Inc v. Thames-Coromandel District*

Council (2005) Judge Bollard sent engineering witnesses from the court to confer, instructing them to try to reconcile their positions, or explain any divergence. However, in this instance Don's evidence (like Mikaere's) was preferred without explanation. This, despite Shaw being one of the country's leading experts in this field, the principle ecologist engaged by WRC for its regional assessment of wetlands, and his position being supported by the DoC ecologist (in evidence submitted prior to DoC withdrawing) and Dr Peirce.

Despite having no expertise in the field, the commissioners were determined that when they visited the saltmarsh the reeds looked like they were dying. Commissioner Hackett (*Whangamata Marina hearing transcript* p.109) first gave his own assessment to Don and then sought his confirmation:

We walked out onto the salt marsh at the site and we were impressed by the fact that wherever we walked it just broke, it was dead and you could pick up great handfuls of it. It is dead, it is quite dry and quite dead. You could see areas of greener marsh beginning to grow through, is that a seasonal thing or has it actually died?

The commissioners pursued this line several times, and Don repeatedly agreed the saltmarsh was dying. The Court would not be swayed from their stated view by the two iwi-commissioned experts', who insisted that the saltmarsh was healthy.

In the final session of the hearing, counsel for iwi argued that the FSSBA (discussed in Chapter 6) imposed new constraints on the Court. The FSSBA transferred ownership of the saltmarsh from TCDC to the Crown, and required that RMA decision-makers consider customary rights and activities. Although Hauraki Māori had not secured recognition of their rights to the subject area, given that the Act had only just been passed, iwi counsel argued that FSSBA must fundamentally alter the court's consideration of the proposal. The Judge demonstrated a total lack of knowledge of the link provisions with the RMA, a serious failing given that he was the Chief Judge of the Environment Court. His frustration at the time the hearings had taken clearly influenced his refusal to investigate the Māori provisions in the FSSBA (2005 p. 128):

Yes, alright. If I accept that, I would need to have a look at this Resource Management Amending [sic] Act that you're speaking of to gain a better

understanding of that, but accepting that for purposes of argument, at face value, I think for practical purposes with matters having come to this very protracted and lengthy stage there is no question but that we will have to give an answer in these proceedings. So if the Foreshore and Seabed Act provides some subsequent problem I don't think that it's something that this court can really be involved with - in the sense that we're simply going to determine the proceedings under the RMA and the applicant will just have to take its chance if it succeeds in meeting whatever impediment may exist under the Foreshore and Seabed Act.

As explained above, every delay to the proceedings was due to failures by the applicant or the two councils, brought to the Court's attention by iwi.

Judge Bollard sought the opinions of counsel for the two councils and Marina Society, who each parroted the Judges assertion that there were no legal issues arising from the FSSBA. When iwi counsel asked that he take independent advice he refused, and stated that the matter was not to be raised again.

Environment Court final decision - October 2005

The Court issued its final decision in October 2005, in favour of the WMS and recommended that the Minister of Conservation grant all consents. Unlike any other type of consent, section 119 of the RMA vests the power to grant consents for restricted discretionary activities in the CMA in the Minister of Conservation in recognition of the public interest there.

As observed previously, the judge provided scant explanation of his reasoning. The tenor of the decision, like his attitude throughout the later years of the appeal, was that an important community initiative had been held up too long, and an injustice done to the applicants. The decision allowed for the destruction of the saltmarsh, with total mitigation for this being \$40,000 to be spent on restoration works for a smaller nearby saltmarsh. In a token gesture to iwi oioi (rushes) from Te Matatuhi were to be transplanted to the restoration site. WMS was also required to contribute to a dotterel protection initiative.

No mitigation was provided for the loss to Māori of the springs, the saltmarsh, and areas of foreshore and seabed. No form of redress was provided for damage to kaimoana beds, thousands of eels killed, or that the channel would

sever the ancestral route to the kaimoana beds for less able tribal members, or for the many other previously described taonga that would be sacrificed.

The decision identified only those Māori groups named in the original appeal, Ngāti Hako, the HMTB, Ngāti Pū, and the Whangamatā Māori Committee. These groups must be engaged and informed in accordance with a few Māori-specific consent conditions. Ngāti Whanaunga was not recognised in the decision and consent conditions. This, despite having given evidence in Court of holding mana whenua over Whangamatā, while acknowledging the important and ongoing ancestral association of the other iwi. Furthermore, Ngāti Whanaunga had taken one of the Environment Court appeals. Following the Moko Skink case (described below) Judge Bollard again attempted to remove Ngāti Whanaunga from the record. His statement that Ngāti Whanaunga was not a party to *Whangamata Marina* was again challenged, and Judge Bollard issued an addendum to his decision correcting the statement (Bollard, 2008). Based on Judge Bollard's omission in *Whangamata Marina* WRC would later refuse to engage with Ngāti Whanaunga in its administration of the consents, despite indisputable evidence of the status of the iwi at Whangamatā.

Conservation Minister declines coastal permits – March 2006

Following consideration of the Environment Court decision, site visits, and consultation with WMS and other parties to the appeal, in March 2006 the Conservation Minister Chris Carter refused to grant the coastal permits required for the marina to proceed under RMA section 119. He said that his decision was based on serious concerns about aspects of the proposal, most notably the destruction of the salt marsh to provide a car park for the marina, and effects of the development on iwi, including damage and reduced access to kaimoana grounds. Mr Carter criticised the Court's rejection of the saltmarsh-related evidence of the DoC and iwi experts in favour of that of the applicant's ecologist (New Zealand Government, 2006).

This was only the second time since the RMA was enacted that a Conservation Minister had declined coastal consents, the first being in 2001 by Sandra Lee in relation to Whitianga Waterways, which is also within Ngāti Whanaunga's rohe. In that case the decision was overturned in response to public and business sector pressure by an amendment to the HGMPA.

The higher courts

Following the Environment Court recommendations, the Hauraki Trust Board resolved to seek a High Court judicial review of the decisions. The iwi lawyer recommended that an appeal be taken based on 11 points of law (P. Kapua, personal communication, 18 October, 2005).

Ngāti Whanaunga was told the HMTB had lodged an application for judicial review, along with an application for an urgent injunction to stop works proceeding. A break down in communications between the organisations meant that Ngāti Whanaunga was not informed when the HMTB subsequently withdrew its appeal, nor given an explanation for this about turn. When the iwi learned of it some months later, it was too late to independently seek judicial review.

Ngāti Whanaunga lodged a claim with the Waitangi Tribunal for Crown breaches at Whangamatā arising from the Whangamatā marina and other issues at Whangamatā, including the Crown's treatment of mangroves. When urgency was not granted the matter was set to one side as the iwi began Treaty of Waitangi negotiations, lacking sufficient resources to pursue both matters. It intends to pursue the Waitangi Tribunal case after settlement of its Treaty claims.

McCully court of appeal case – August 2006

Less well known, and virtually unreported at the time, there was a judicial review and subsequent appeal court case taken by East Coast National Member of Parliament Murray McCully. The appeal, *McCully v. Whangamata Marina Society Inc* (2007) was brought when an official information request from the National Party Research Unit was refused by the Registrar of the High Court. The request related to Chris Carter's decision, and his engagement with affected groups and parties to the Whangamatā marina appeals. The High Court upheld the Registrar's decision in the civil case *Whangamata Marina Society Inc. v. Attorney-General* (2006). There, Justice Wild refused to release the requested court files on the basis that he could not rule out that the applicant's request was made so that he could use documents on the Court file for political purposes, whether inside or outside Parliament. He ruled that this would run roughshod over the principle that Parliament and its members should refrain from commenting on matters before the Courts, which are sub judice.

The resulting Court of Appeal decision also included lengthy consideration of the need for a separation of the executive and the Courts, and implications of political parties using legal collateral to their political advantage, and blurring the separation of executive and administrative process. But despite arguments of political interference the Court found in favour of Mr McCully.

This case was scarcely mentioned at the time, the media focused on the previously mentioned and more controversial and ‘news-worthy’ judicial review of the Minister of Conservation withholding coastal permits, heard days later.

Political interference under the RMA, such as that seen throughout the Whangamatā marina episode, has received growing attention (Palmer, 2015 p. 19). In 2013 the Resource Management Law Association said that recent Government intervention in the Resource Management field, including that involving the Environment Court, reflects ‘an issue of constitutional significance involving the over-reaching of the Government in judicial processes’ (Williams & Berry, 2013 p. 2). One of the authors of the paper was Simon Berry, lawyer for TCDC in the Whangamatā marina appeal, where he raised no such objection.

Marina Society judicial review by the High Court – August 2006

In *Whangamata Marina Society Inc. v. Attorney-General* (2007) WMS sought judicial review of Chris Carter's decision to refuse coastal permits, engaging high profile lawyer Mai Chen. In August 2006 the Court found that the Conservation Minister failed to follow proper process in coming to his decision. It did not overturn the decision, but encouraged the Minister to reconsider.

Following several weeks in which Carter was subjected to criticism and abuse in the print media and on talkback radio and blogs (Cresswell, 2006; Redbaiter, 2011) the Labour-led government backed down. Contrary to the direction in the RMA, authority for deciding the coastal permits was delegated by the Conservation Minister to the Environment Minister, David Benson-Pope. The reported reason for the delegation was that it could be perceived that Carter was tainted by his original decision and the events following it, regardless of what decision he made. Benson-Pope granted the coastal permits in December 2006.

The National party heavily criticised the Minister for overturning the Environment Court decision, and vowed to remove the section 119 final-say powers when it got the opportunity. When National took office in November 2008

the RMA was amended by the Resource Management Amendment Act (2009), which resulted from the Resource Management (Restricted Coastal Activities) amendment Bill, which was introduced by Nick Smith and drafted by Mai Chen.

Post Environment Court consents- 2008

It soon became apparent the Court had failed to provide for activities required for the consents to be actioned, so a number of additional consents were granted after the granting of final consent by the Environment Court. During this period Marina Society contractors began exploratory digging within the proposed marina basin, prior to all consents being in place. Hearing of the works, iwi representatives confronted the digger forcing work to be abandoned, as Figure 10.6 shows.



Figure 10.6. Staunch Ngāti Hako wahine Pauline Clarkin and Zoe Poutama stop unconsented digging while WMS and WRC staff look on from a safe distance.

These included consents in 2008 to occupy the CMA, construct a marina basin, and to remove indigenous marine vegetation. Again, each application was granted on a non-notified basis. WRC met with iwi prior to deciding whether to notify. They argued that substantial cultural and environmental effects would result from each of the proposed activities, and provided evidence for their claim. Non-notified consent was granted, and none of the concerns raised were addressed.

Application was later lodged by WMS for an increase in the number of specified berths from 205 to 210. This was immediately opposed by iwi on the basis that the marina had already been allowed to depart from many court imposed standards, and the effect of these many changes had not been assessed.

WRC's consent planner dismissed the concern on the basis that rule 16.4.25 of the Regional Coastal Plan permitted additional birth structures, therefore effects of the proposed change relate only to the effects associated with the potential for an increased number of boats berthed within the marina, (i.e. boat traffic and potential for pollution), not the berth structures themselves. Rule 16.4.25 dealt with poles and pontoons, and did not mention marina births.

Despite iwi evidence to the contrary, the planner declared that the variation 'will result in a proportionately small increase in the number of boats contained within the marina'. He deemed that no further investigation was required into the matters raised because adverse effects associated with the proposed change would be no more than minor and no parties would be adversely affected. On that basis the application too was processed on a non-notified basis.

This is standard WRC practice, an unsubstantiated statement that there are no affected parties, based on artificially narrow criteria, summary dismissal of evidence to the contrary, and a refusal to investigate stated Māori issues or effects.

Subsequent to the Environment Court consents were granted on a non-notified basis for increasing annual dredging volumes, addition of fuel tanks and dispensing facilities, stockpiling and dewatering dredgings into the CMA, and discharging treated storm and wash-down water from the hardstand and wash-down facilities into the CMA, despite its own plans acknowledging that discharging pollutants into the CMA is offensive to Māori. Furthermore, the marina complex was allowed to vary massively in scale and form from what the Environment Court consented. In addition to the above-noted additional births the administration building was consented for 50 square meters and became 1500, and dredging volumes increased significantly. In combination, these changes mean the final marina varied significantly from what the Environment Court allowed.

A basic tenet of planning theory is that all effects arising from a proposed activity should be considered together, to arrive at a comprehensive assessment of effects (Memon, 2002). The many and varied consents that were allowed to be heard separately here, over a period of more than 10 years, demonstrates that

every effort was made by WMS, and allowed by the agencies, to avoid such an assessment in relation to this marina.

Iwi occupation – July 2008

On July 1st, 2008, when construction was due to start on the Marina, tangata whenua occupied the site in a peaceful civil protest aimed at preventing works and motivating an enquiry into the marina processes, as seen in Figure 10.7. Their position was that the Crown failed to recognise or protect Māori interests and values, so they would directly prevent the destruction of the saltmarsh and damage to kaimoana.



Figure 10.7. 2008 Tangata whenua month-long occupation of proposed marina site

The occupation lasted for a month, during which time HMTB and iwi continued to push for an independent review. Support was shown from iwi from around the region and country, and members of the local community joined tangata whenua in opposition. There was initially widespread media attention, but this waned, with only Māori media maintaining interest throughout.

Iwi leaders attempted discussions with the two councils, DoC, and MfE while tribal members and supporters undertook a four week nohoanga (sit in). Eventually, negotiations took place with local Māori MP and deputy Minister of both Local Government and Environment Nanaia Mahuta. Assurances were

received that the Minister for the Environment would commission an investigation into the marina process, upon which iwi agreed to leave.

In what iwi believe to have been deliberate deceit, the promised investigation was never started, and soon after the occupation ended diggers began the destruction of the saltmarsh. It was completely destroyed by the time iwi learned that work had begun and arrived on location. This was prior to the WMS obtaining leases required for their occupation of the land and seabed.

Leasing the required land – June 2009

Although not discussed in the court hearings, the consents created no right to use the lands and resources at the proposed location. Leasing or sale of the coastal and marine areas remained at the discretion of DoC and TCDC.

TCDC consulted with Ngāti Whanaunga about its intention to sell or lease the land to WMS, again claiming to be bound to lease the land by the earlier MOU, about which it had never consulted any party. However, TCDC was advised that alienating the land constituted a significant decision under the LGA, and accordingly it was obliged to use the Special Consultative Procedure under LGA section 83. Despite opposition from iwi and sections of the community TCDC voted to lease the land to WMS for substantially less than market rates. At least one voting councillor, Jan Bartley, was a WMS Member and did not declare a potential conflict of interest.

DoC consulted with Ngāti Whanaunga and other iwi about its intention to lease the land below MHWS. DoC is bound by a higher Treaty of Waitangi obligation than councils by virtue of section 4 of the Conservation Act (1987) where administering agencies are required to interpret and administer the Act to give effect to the principles of the Treaty of Waitangi.

A point of contention during consultation was DoC's determination to consider whether to lease the land to WMS (and for how much) on the basis of the land in question being bare land. At the time the land continued to have substantial conservation and Māori cultural values, but DoC argued that the leasing question was being approached on the basis that WMS could now undertake the activity. They indicated that there was no need for consideration of any conservation values of the land, as these were matters dealt with by the Environment Court. The iwi maintained opposition to the land and seabed being

leased or sold, stating that it was now subject to claims of cultural interests under the FSSBA, which they asserted existed in this location. Ngāti Whanaunga was notified that DoC agreed to lease the land and foreshore to WMS in June 2009. The lease amount was not disclosed and no response whatsoever was made to iwi arguments and claims.

The moko skink case – December 2008

Following the Environment Court case a rare colony of Moko skink (*Oligosoma moco*) were 'discovered' by WRC staff, when investigating illegal mangrove removal. WMS's ecologists claimed they had not seen the skinks during several site visits, despite these being well known to the public and iwi, and commonly viewed basking on rocks along the causeway. WRC (2007b) later reported:

An investigation initiated by Environment Waikato following unauthorised mangrove clearance and burning of saltmarsh areas discovered that an apparently healthy population of Moko Skink (*Oligosoma moco*) is present on the causeway. Numerous individuals were sighted sun-basking along the causeway banks immediately above the cleared mangrove area. This species is confined to northern New Zealand and has mostly been recorded from offshore islands, with only a few known mainland populations in Northland, Auckland and the Bay of Plenty. This population had not previously been recorded and must be regarded as highly significant.

Iwi knew that mokomoko lived in this area, but not of their threatened status. This was one of only five mainland colonies surviving in New Zealand, and their classification meant that destruction of the skink's habitat was prohibited.

It is not credible that WMS's ecologists did not find moko skink when conducting field visits, as their presence is known to locals and holiday visitors alike because they are not secretive and bask in the sun along the harbour edge. DoC authorised the destruction of the protected habitat without alerting iwi.

A member of the surfing community, who had been involved in the appeals' process with iwi, took a case against the local and regional councils for illegal destruction of moko skink habitat. *M R Gunson v. Waikato Regional Council, and Thames-Coromandel District, and Whangamata Marina Society*

Incorporated (2008) was an application for an interim enforcement order under section 320 of the RMA.

Judge Bollard took the case himself. He stated early in proceedings the inappropriateness of the case being taken, and that all relevant matters raised had been resolved by the Marina appeals. His attitude throughout the case demonstrated that he had started the case with a closed mind. Ngāti Whanaunga gave evidence on Gunson's behalf, but the case was lost.

Consistent with his affront at having his authority challenged, Judge Bollard ordered Gunson to pay costs of \$48175, \$20,000 to WRC, \$13,725 to TCDC, and \$14,450 to WMS. He did not sanction or reprimand either of the councils, or the applicant, for failing to identify the skinks in the Whangamatā marina proceedings, or for the unauthorised destruction of the habitat of protected 'at risk' species.

Had the appeals been frivolous or vexatious the Judge had the option to refuse to hear them, but this was clearly not the case. Mr Gunson and his witnesses provided strong evidence that illegal habitat destruction had taken place, producing photographs of TCDC contractors spraying known skink habitat. They gave evidence that the effects of the marina on moko skink and their habitat had not been considered by the Environment Court in *Whangamata Marina*. Mr Gunson bore the cost of investigating illegal habitat destruction and commissioning evidence because the WMS, DoC, and the councils failed to assess the effects of the development. For this Bollard imposed massive costs, which cost Mr Gunson his home.

Outcomes for tangata whenua from the Whangamatā marina

Following the previously-described statutory processes and appeals, construction began on the marina soon after iwi ended their occupation. The effects on tangata whenua, and on the environment at Whangamatā were significant, numerous, cumulative, and ongoing. Before and after photos in Figures 10.8 and 10.9 (next page) show the destroyed saltmarsh, and tribal foreshore and seabed captured for the exclusive benefit of the WMS.

Loss of ancestral foreshore and seabed

The foreshore under the marina is Ngāti Whanaunga customary land. The Environment Court provided no means by which tangata whenua might maintain their relationship with the taonga in the vicinity of the marina, or continue to exercise kaitiakitanga. An ancestral route to the pipi beds was severed, and an ancient wetland, and a wealth of resources within it, destroyed.



Figure 10.8 - Saltmarsh and adjacent harbour January 2007 *Source: Google Earth 2013*



Figure 10.9 - Modified area and marina October 2010 *Source: Google Earth 2013*

Critically, the area of foreshore and seabed, including the wetland, to which iwi consistently claimed ownership, was passed over for the exclusive use of wealthy and influential Pakeha businessmen. By failing to include recognise Ngāti Whanaunga in the iwi listed in his decision the Court effectively severed their centuries-long ancestral relationship with Te Matatuhi and the area was passed over for exclusive use of the WMS and its customers. WRC's reliance on the decision to refuse in engage with Ngāti Whanaunga in its administration of the marina consents further eroded the ancestral relationship.

Prior to the Whangamatā marina there were over 180 boats moored in the Whangamatā, approximately half each on pole and swing moorings. The Harbour Master had stated a desire to reduce the number of boats on swing and pole moorings because of siltation and they represent a navigation hazard.

The WMS argued similarly that pole moorings presented a navigation and environmental hazard, and assured the Court that the marina would result in some of these being removed (Alderton, Williams, Kessels, & McKenzie, 1995 p.p. 4,11,27,45). The Court heard assurances from both councils that there would be a sinking lid policy for pole moorings if the marina went ahead. TCDC argued a trade-off was being made between public space being privatised for the marina, and the release to the community of exclusively occupied and traded moorings:

[p.192 para 5 and 10] Just picking up a point which my friend just made in relation to the moorings issue, of course a sinking lid policy and the rationalisation that goes with that is only going to operate when there is an alternative to the mooring provided, and we heard some evidence at the 2000 hearing I think, that there were quite a significant number of Marina Society members who would go into the marina and relinquish their mooring. But of course, with no marina, no relinquishment because they have still got a boat.

The Court accepted assurances that an unspecified rationalisation would occur. The WRCP allows for a maximum of 157 moorings (WRCP method 16.4.9, and appendix III: schedule 1), but provides no active method for achieving this reduced number. Instead a passive approach is adopted, prohibiting the transfer of swing moorings while total moorings exceed 157. But the number of moorings did not reduce, and no moorings were relinquished by marina birth owners. Pole

moorings continue to be sold, fetching up to \$3000 (Thames-Coromandel District Council, 2013). The promise to Māori and the community of returning privatised harbour space as a trade-off for the Marina was demonstrably false.

The saltmarsh

The destruction of the saltmarsh is significant both culturally and ecologically. The saltmarsh was fed by two springs, and tidal inundation, forming an environment graduating from essentially marine marshes to almost entirely freshwater areas to the saltmarsh's southern extent.

Another consequence of the marina was habitat loss for the species inhabiting the saltmarsh, including crustaceans, tuna, and other marine and terrestrial species. Juvenile tuna, inanga and similar 'whitebait' species rely on saltmarsh and natural harbour and river edge, habitats that are continuously diminishing. Iwi monitors witnessed hundreds of tuna, killed when the saltmarsh was excavated. No conditions for protecting this treasured resource were imposed, and no recovery or translocation effort was made. When tangata whenua arrived the tuna were dead and dying in dewatering piles.

The Court required that the applicant transplant oioi from the saltmarsh to a mitigation wetland to the west of the causeway. A condition for this exercise was that transplantation must be undertaken by hand.

Iwi assertions that the oioi would not transplant successfully were ignored, and all of the plants died. The Court accepted the advice of the applicant's ecologist, over the mātauranga of tangata whenua. As iwi predicted, the Court's token effort at preserving the oioi failed, and the mitigation was a disaster. Following the death of the transplanted oioi WMS was not required to provide any replacement habitat, as compensation for the significant environmental loss. On the next page the thriving oioi can be seen in the Figure 10.10, prior to infilling of the saltmarsh shown in Figure 10.11.

Five years on, iwi monitors continued to observe schools of spawning mullet ending up in the marina basin where the entrance to the wetland used to be. Similarly, consistent with observations following the illegal mangrove clearance, large numbers of inanga pass through the area before heading upstream in search of ever decreasing habitat (Riddell, 2005 p. 4). The Whangamatā marina

mitigation saltmarsh area is shown in Figure 10.16 in the second part of Chapter 10, where its margins are shown burnt by the mangrove cutters (Image A, p. 297).



Figure 10.10. View east across the claimed dying saltmarsh at Te Matatuhi



Figure 10.11. In-filling the saltmarsh using marina dredgings

Mokomoko - Moko skink

Despite WMS failing to acknowledge their existence in its assessment of effects, 259 moko skinks were removed between May 2008 and January 2009, before their habitat was destroyed. These were held for several years, in which time they bred successfully. Between October 2008 and February 2012, 362 moko skinks were released to three places around Whangamatā agreed between iwi and DOC. While WMS had proposed that it create habitat for the skinks to return to marina land, iwi opposed any WMS involvement. Ngāti Whananga and Ngāti Hako took part in the releases, giving younger members a rare opportunity to interact with this rare taonga, as shown in Figures 10.12 and 10.13.



Figure 10.12 (a and b) – Tamariki have a rare opportunity to hold and release mokomoko at Whangamatā in 2010



Figure 10.13 – Ngāti Hako and Ngāti Whanaunga tamariki prepare to release mokomoko Whangamatā in 2012



WMS consultants Bioresearches Ltd monitored the released skinks for 5 years under an approved DoC translocation proposal. While they reported static or

slightly growing populations until 2012, the final report revealed that of the 257 mokomoko released on the eastern side of the harbour it appeared that none had survived, and that large populations of rats and mice were present. There was also a substantial reduction in numbers at the Hetherington Road location.

Bioresearches Ltd assessed that DoC's discontinuation of pest control in 2012 was the reason for the crash, stating that it had been stopped because previous year's monitoring results indicated that skink numbers were increasing and there was no observed change in the habitat quality (Wedding, 2015).

Learning of the death of the entire population released on the eastern side of the harbour was devastating for those tamariki who had participated and followed their progress since, and to their parents. It was a great loss to iwi, their kaitiaki obligations to their tuakana (senior cousins) held to be a solemn inherited responsibility. That the agencies failed to maintain predator control, having authorised the destruction of the habitat in which the mokomoko had lived for millennium, resulted in a deep resentment within the tribes.

Matā – obsidian

The cultural and historical utility value of matā was described in Chapter 4. Rare on the Aotearoa mainland, matā remains a taonga for tangata whenua of Whangamatā. It is still worked to create jewellery, and serves as a teaching medium for transmitting tribal practices and knowledge specific to Whangamatā. Te Matatuhi is a natural gathering place for matā within Whangamatā. Accordingly it has long been gathered and worked in the area around the marina, a practice continued by tribal members prior to marina construction.

Since the creation of the marina, matā transported there by harbour processes is collected during dredging, trucked away, and dumped. This is considered to be an act of theft of a tribal taonga, sanctioned by the Crown.

Kaimoana – shellfish

An environmental factor that was never anticipated by the applicant or councils was the presence of a Taupo volcanic ash layer within Whangamatā. Being extremely fine and corrosive, when disturbed by the creation of the marina basin and channel the ash distributed widely within the harbour. This covered the kaimoana beds and penetrated shellfish, unlike the courser sediment from

catchment erosion that is usually found in the harbour. Whanau gathering kaimoana found pipi and tuangi (cockles) with discoloured flesh over several months, rendering the kai inedible. The flesh colour returned to normal some months after completion of the marina basin excavation, but recurred several times following major dredging events.

Ngāti Whanaunga asked DoC, the local and regional councils to undertake an investigation after whānau reported discoloured flesh. Iwi argued that various consented activities within the harbour had together contributed to the observed effects, so DoC, the councils, and Marina Society should jointly resource an investigation. All three agencies refused, saying that the marina consents did not require them to undertake the testing, and they did not have available resourcing. DoC's Regional Conservator eventually undertook to ask the Ministry of Fisheries to investigate, but never did so. When it became apparent that none of the agencies would act iwi approached the Ministry of Fisheries, and undertook a joint investigation, but by this time the kaimoana had recovered.

In addition, populations of juvenile tuangi and pipi were present in the proposed marina basin, as were mangroves, an important tio (oyster) habitat. These are shown in Figure 10.14.



Figure 10.14 - Pipi and tuangi spawning grounds (yellow) in the vicinity of the marina basin, mangroves removed (green), and the main pipi bed (yellow top right). The Court-proposed path to the pipi beds is from the red point.

Despite Māori anticipating the kaimoana-related impacts in their evidence (with the exception of the volcanic ash), no measures were imposed to protect these taonga or to remedy their loss.

Perhaps the greatest injury for tangata whenua from the marina was the bisection of the kaimoana beds by the marina channel. Access for kaumātua, young, and less able tribal members is now cut off by the extra depth. In response to concerns raised about this during the marina hearings TCDC offered to make additional car parking available at Moana point, where the Court had proposed tangata whenua walk from to access the pipi beds. Notwithstanding that the proposed route crosses deep mud, the promised car parks were not provided, and the scallop shell path that the applicant misguidedly proposed never eventuated.

RMA section 6a requires decision-makers to recognise and provide for the relationship of Māori with their ancestral taonga. The marina channel physically severed the relationship of the elderly and youngest Hauraki tribal members to the treasured pipi beds their ancestors frequented 'mai rā nō' - since earliest times. It similarly hindered access for non-Māori community members.

Manawa - mangroves

I concentrate in detail on mangroves in the second half of the chapter. However, they are mentioned now also because the marina consents authorised a large area of mangrove removal. Throughout the hearings there was a clear bias against mangroves shown by decision-makers. The Court heard and accepted statements about negative consequences of mangroves, and appeared to adopt this line in their own deliberations. This can be seen in the following excerpt of the transcript of Judge Bollard, with responses from the applicant's ecologist:

[p. 95 para 5] HIS HONOUR: Yes. It would be more accurate perhaps to describe this as remediation of the area rather than mitigation, in as much as from our site visit yesterday it appeared that there is quite a risk of continuing intrusion of mangroves and this area to be rehabilitated as it were, to the quality that is contemplated will not only require removal of the encroachment that is apparent in more recent years, but the continuing application of maintenance?

---Yes, sir, there will definitely be a level of maintenance required.

This theme was later picked up by Commissioner Hackett:

[p. 141 para 5] Now, whilst I am aware that every time somebody says we should cut out the mangroves, he is labelled as an ecological vandal, when we come to the maintenance area, what are you going to do about the mangroves, and how are you going to keep them out of that area in the future?

---Well, sir, I think you will find that the mangroves in that area have established their particular zone, and I don't think, from the information I have read, and they have just done a reasonably significant survey in Tauranga Harbour, I don't think there is going to be that significant an incursion of mangroves higher up the shore into the rush marsh. The spread of mangroves mainly relates to the colonisation of presently bare areas. I suppose, if mangroves were to start creeping up the shore, the only answer is to remove them as part of the maintenance exercise.

That would be part of a maintenance programme?

---Yes.

Commissioner Hackett repeated his questioning on mangroves to three subsequent witnesses, the Judge to two. Both demonstrated a presumption that mangroves must be removed, although no such intention was declared in applicable statutory plans, and at the time they were protected under the NZCPS. As discussed in Chapter 5, mangroves are a taonga in Ngāti Whanaunga tikanga, and should not be removed.

Kaitiakitanga and mana whenua

As a result of wording adopted by the Environment Court in its Whangamatā marina decision, Ngāti Whanaunga was denied any ongoing involvement in the construction and ongoing operation of the Whangamatā marina. Court (and later council) imposed token Māori-specific conditions, being to allow iwi to comment on a draft landscape management plan, and provided them with monitoring results and reports. Ngāti Whanaunga wrote to the Court complaining about their treatment, but received no response. Despite this, iwi strived to remain engaged in

monitoring, and minimising effects from the marina, the approach to the Ministry of Fisheries to achieve an inspection of kaimoana beds being an example.

Various kaitiakitanga-related complaints that iwi have with the two councils and DoC, which were discussed in Chapter 8, are relevant here. For example, a seat on the Whangamatā Harbour Committee made available for Ngāti Whanaunga remained empty as the councils refused to resourcing their participation. This would have provided an ability for the iwi to be informed of wider harbour impacts from the marina. Ngāti Whanaunga had long sought a role in the management of TCDC reserves around the harbour, but this was denied. This too would have assisted tangata whenua to carry out their kaitiaki role at Whangamatā.

In combination, the impacts from the marina, and refusal by the councils to give effect to Māori participation provisions in their plans and the RMA, resulted in a major and irreparable erosion of Māori values and interests at Whangamatā, alongside substantial ecological destruction.

Case study 2 - Whangamatā mangroves

The second of the *take* reported in this chapter is the removal, both illegal and authorised, of manawa (mangroves) from Whangamatā.

In Ngāti Whanaunga tikanga manawa are considered to be an element in an age-old struggle between Papatūānuku and Tangaroa, the gods of the land and the sea, and their expansion is a response to an environmental imbalance created by humans, as descendants of the son of Papa and Ranginui, Tane.

Accordingly, the iwi believes that mangroves are not to be removed in the absence of a compelling need, but rather, the man-made imbalance must be restored. On this basis Ngāti Whanaunga has consistently stated its opposition to mangrove removal to the district and regional councils, and the Crown.

Background and timeline

There are various estimates of when Manawa arrived in Aotearoa, from 10,000 years ago (Coffey, 2006 p. 7) to 19 million years (De Luca, 2015). Their history at Whangamatā is described in Chapter 4. Clearing of mangroves at Whangamatā started with the introduction of farming to the area. Grazing of mangroves, and droving stock along the harbour edge pushed mangroves back along much of the

western and upper harbour until about 1950. From then until the 1990s they expanded at Whangamatā as a result of increasing volumes of sediment and nutrients entering the harbour from hill country erosion, forestry, and farming.

The Whangamatā mangroves *take* includes a long period of illegal removal, a small trial removal, a wide ranging seedlings removal consent, an incomplete pro-mangrove-removal harbour management plan, and consent applications for mangrove removal by WRC. WRC council refused to prosecute those who illegally removed large areas of mangroves over more than a decade. Mangrove opponents claimed that the harbour would revert to the pristine white-sand they remembered in their youths. But bad engineering decisions made since then within Whangamatā, created shadow areas where sediment gathers. Also, estuaries are natural sediment sinks and gradually infill over time, although investigations of Coromandel estuaries indicate that natural rates of infilling prior to human settlement were very low (Hume & Dahm, 1992; Swales & Hume, 1995). Either way, mangroves are the last barrier between land use effects and the harbour, and their buffering effectiveness is being undermined.

Figure 10.1 (p. 255) located key mangrove events from 1975 to 2013, alongside marina-related events. The 2000 to 2013 timeline in Figure 10.15 (next page) provides greater detail for important mangrove-related events, and colour-differentiates those of the Crown, councils, iwi, courts, and illegal actions.

Agency roles

The statutory responsibilities of councils were discussed in Chapters 6 to 9. As with the marina *take*, there are a number of agencies with statutory responsibilities relating to mangrove removal at Whangamatā. WRC was the agency most directly involved in the mangrove *take*. As manager of the coastal marine area WRC is required to monitor and manage mangroves, for example to maintain stream flows. It is required under the RMA to prevent and prosecute illegal activity within the CMA.

WRC heard each of the three mangrove removal consent applications (some under delegation to commissioners), was the applicant in the most recent removal consent applications, and announced an intention for district-wide mangrove removal.

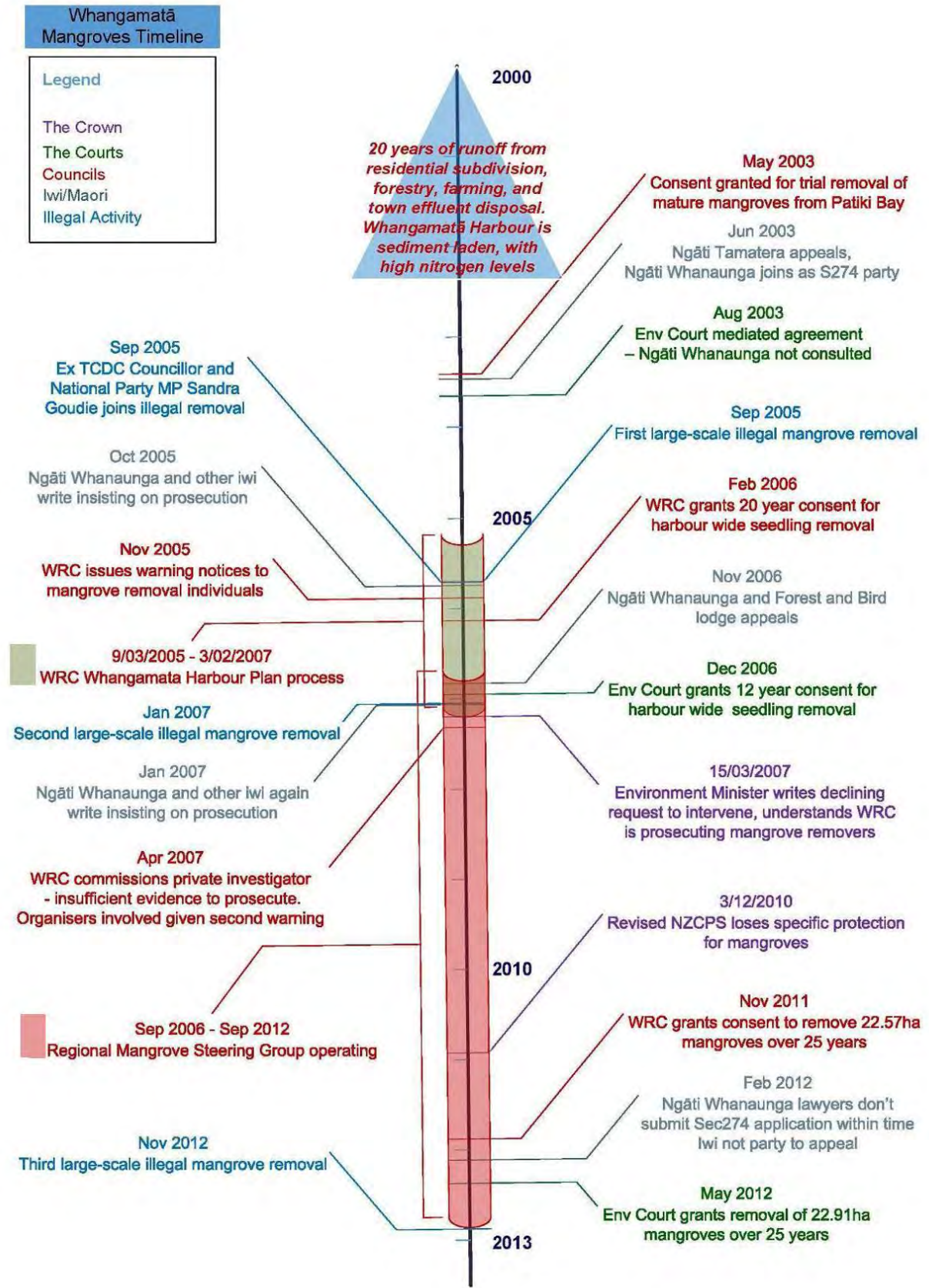


Figure 10.15 - Whangamatā mangrove removal timeline showing events and RMA processes

TCDC has several roles relating to Whangamatā, including: administering wharf infrastructure; and managing harbour-adjacent reserves. Some reserves extend into the CMA, and support mangroves. TCDC elected representatives were active mangrove removal campaigners, and (like WRC) supported district-wide mangrove removal consent.

While having no statutory role in relation to mangroves, outside community advocacy, the Whangamata Community Board was an outspoken supporter of mangrove removal, lobbying WRC and TCDC. Its Whangamata Community Plan, advocated mangrove removal (Thames Coromandel District Council, 2001 p. 17). The Community Board sought the maximum removal-extent option in the last of the consent applications. Up to three members of the mangrove-removal group were also members of the Community Board.

DoC has various responsibilities within the CMA, and (since 2004) is the owner of the harbour bed. DoC is also the owner/manager of one of the biggest sources of sediment on the Coromandel Peninsula, and at Whangamatā, and it has been criticised for prioritising tourist winning tracks over pest management.

DoC was quiet during the mangrove debate until the most recent consents process. It was not a submitter to the first two consent processes, or a party to the appeals. Despite approaches from iwi, DoC made no comment about the illegal clearances, or the refusal of WRC to prosecute. DoC was also a party to the latest consent applications, its submissions being in part supportive of, and elsewhere in conflict with, those of Ngāti Whanaunga. DoC advocated for a reduction in removal extent, and for caution in the face of incomplete knowledge, and it was also a party to the appeals to those decisions. As I previously noted, DoC's section four Treaty obligation is higher than the RMA and LGA ones that direct councils.

Finally, the PCE had statutory responsibilities relating to the mangrove removal *take* in its overarching environmental protection role, however it refused to exercise these in relation to Whangamatā mangrove removal. The role of the PCE was explained in Chapter 6, along with Ngāti Whanaunga's complaint to the PCE about the Whangamata Community Plan. Despite approaches from the iwi, the PCE declined to investigate the illegal removal of mangroves at Whangamatā, or the decisions by WRC to not prosecute those responsible.

Historic illegal removal

For about 30 years small scale mangrove removal has been occurring at Whangamatā, largely by land owners seeking to maintain an unobstructed view of the harbour. It is difficult to determine the exact area cleared because no agency has recorded this, but iwi estimate this runs into several hectares. The immediate effects of removal have not been measured, and cumulative effects are little understood for this removal in combination with the large-scale illegal removal events, mangrove loss authorised for the Whangamatā marina, and the large-scale authorised removals discussed below. WRC has known of the illegal removal, but despite iwi pushing it to take action, no prosecution has ever taken place, or, as far as the iwi is aware, formal warnings ever been served.

Mangrove-related events and processes at Whangamatā - 2000-2012

Like the marina, there has been an ongoing series of statutory and informal processes relating to mangrove management at Whangamatā, interspersed with illegal mangrove removal events. I describe these now, in chronological order, to the extent possible given that events overlapped in time.

2000 Patiki Bay trial removal consent and Ngāti Tamatera appeal

The first mangrove removal consent applications related to a small area in Patiki Bay. Consent was granted to a group called Whangamata Harbour Care in May 2000, for the removal of established mangrove communities from Patiki Bay (resource consents 102475 and 107665). Ngāti Whanaunga was not aware of the process and not a party, but Ngāti Tamatera was.

Despite its limited area, the Patiki Bay consents were appealed by Ngāti Tamaterā to the Environment Court. They stated they were appealing on behalf of Ngāti Tamatera and Ngāti Whanaunga. Ngāti Whanaunga joined the proceedings as a section 274 party (a party with an interest greater than that of the public generally), having not been advised of the consent applications and therefore not a party to the consent hearings, under the RMA they were not recognised as an affected party. However, following discussions with the consenting authority Ngāti Tamaterā withdrew its appeal. Ngāti Whanaunga was not involved in those discussions, and was deprived of the opportunity to put its position of opposition. The legal remedy was judicial review by the High Court. However, as I discussed

in Chapter 9, recourse to the law in New Zealand is expensive and risky. The consents were exercised from 2000 to 2004.

The Mangrove Steering Group – 2001-2010

The Mangrove Steering Group was established in 2001 in response to mangrove expansion across the upper North Island and growing pressure for their removal. It is a combined council, Crown, and NGO forum charged with investigating mangroves and the state of knowledge about these, and considering management options. Agency membership of the group includes DoC, Auckland Council (previously Auckland Regional Council and some Auckland local councils), Bay of Plenty Regional Council, WRC, Northland Regional Council, and some local councils, including TCDC. Member community groups include the BOP NZ Landcare Trust, Western Bay of Plenty Care Groups, Whangamata Harbour Care, Forest and Bird, Pahurehure Inlet Protection Society, and Environment and Conservation Organisations of Aotearoa/NZ (ECO).

Initially the group met quarterly, but this dropped to annually in 2005, and then irregularly, a meeting in September 2010 being the first in 3 years. Meetings rotated between Northland, Waikato, Auckland, and Tauranga.

There was never iwi representation, despite this being anticipated when the group was formed. Ngāti Whanaunga communicated with the group over several years, concerned at the lack of Māori participation, and at reports commissioned by the group being used to support mangrove removal. The iwi was encouraged to attend by Forest and Bird, Northland Regional Council, and TCDC. However, the status of the iwi at the table was unclear, and no resourcing was available. The iwi was therefore unable to attend.

A vocal anti-mangrove lobby dominated the forum, which became increasingly pro-mangrove-removal despite push back by environmental groups like ECO and Forest and Bird. Removal advocates relied on reports produced for the Mangrove Steering Group to promote their cause, including *The New Zealand mangrove: review of the current state of knowledge* (Auckland Regional Council, 2007) and others (Alfaro, 2006; Schwarz , Burns , & Alfaro, 2004). None of these reports included consideration of Māori perspectives or values (Maxwell, 2005).

The three participating regional councils, along with an active mangrove-removal lobby, achieved a shift from legal protection for manawa, which

identified tangata whenua values in addition to environmental ones, to one in which removal was the default management response. This was resisted by Forest and Bird (M. Bellingham, personal communication, 25 Jan 2010), who appealed to the members when the pro-removal lobby sought to wind down the group:

I can understand why some parties wanted to stop meeting; the mangrove clearing groups had got the councils to agree to their agendas (and fund them); councils had got groups like F&B to accept some clearing; but for Forest and Bird (and iwi) there was still no recognition of the role of mangroves (and saltmarshes) as wildlife and fisheries habitat, their cultural values and the significant effects of poor land management on estuaries. Unfortunately most of the mangrove clearing groups did not seem to understand that the vegetated parts of estuaries have any value.

Senior regional council scientists and planning staff were of a similar view. The group was never formally disbanded, but did not meet after 2010.

WRC Mangrove management guidelines - 2004

In 2004, WRC published *Guidelines for Community-Focused Ecological Monitoring of Mangrove Habitats in Estuaries* (Schwarz et al., 2004). It included methods to address three questions identified by the Mangrove Steering Group, 1) what is the distribution and character of mangroves and adjacent habitats, 2) how do these change over time, and 3) what are the special considerations for monitoring the effects of mangrove clearance? The guidelines' stated objective was to provide techniques that groups interested in mangroves could employ to 'investigate local estuaries' (Schwarz et al., 2004 p.i). But it reads more like a guide for mangrove removal, the Introduction ending with 'Finally, we stress that the activities outlined in this document in no way substitute for the need to obtain a resource consent for any proposed activity in an estuary'.

First large scale illegal removal – August 2005

Despite the best efforts of WRC to get everyone to play by the rules, three large mangrove removal events took place at Whangamatā in August 2005, January 2007, and November 2012 (see Figure 10.16, next page). Founding Whangamata Harbour Care members instigated and participated in each event.



Image A. Extent of 2005 cleared areas



Image B. Looking north over burnt wetlands

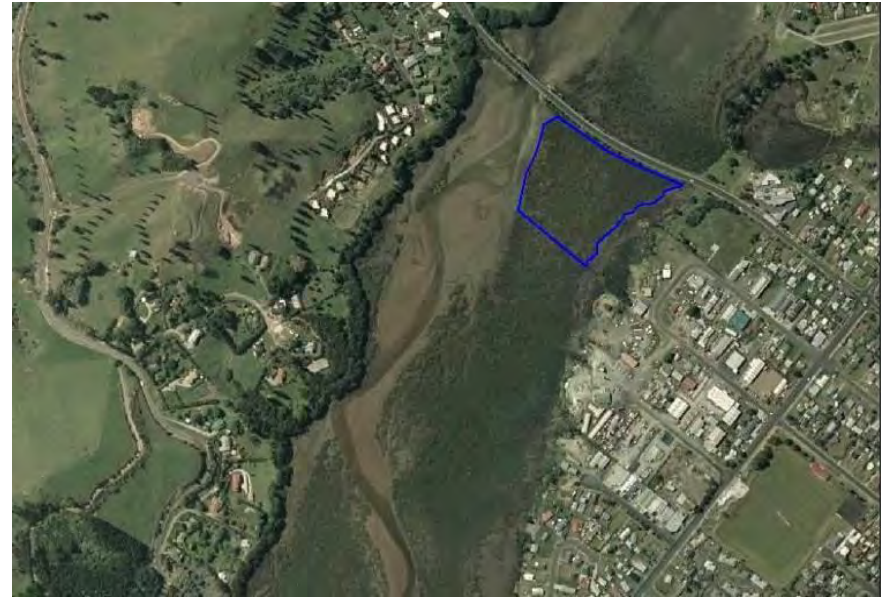


Image C. Location and extent of the 2005 and 2007 main clearance



Image D. Looking south at burning piles

Figure 10.16 Four images of the illegal mangrove clearances

After the 2005 event a national newspaper reported that 120 self-labelled ‘protesters’ used slashers and chainsaws to clear an area of mangroves the size of two rugby fields within Whangamatā (Crewdson, 2005), with photos of the participants. Large areas of mangroves and associated habitat were destroyed, leaving an area of thick smelly mud that had not noticeably reduced 9 years later. Adjacent saltmarsh and areas of eelgrass were trampled, and coastal vegetation burned. The damage is shown in the photo series in Figure 10.16 above.

In response to iwi pressure a WRC officer attended the scene on the third day of illegal removal to ‘gather evidence’, but made no attempt to stop the illegal activity. The WRC Resource Use Group sought legal advice on appropriate enforcement action for the activity, which contravened Rule 16.2.3 (Removal or Eradication of Indigenous Plant Species) of the proposed WRCP (H. Keane, personal communication, March 19, 2005).

WRC commissioned a report on effects of the illegal removal, which noted that the harbour was of national significance, and the destroyed area regionally ecologically significant (Riddell, 2005). Yet no enforcement action was taken. Hauraki iwi pushed the regional council to prosecute, but it refused. Instead, iwi were told, several individuals, thought to be organisers, had been spoken to and verbal warnings issued.

National Party MP for Coromandel and previous long time TCDC Councillor Sandra Goudie helped stack the cut plants the day after she was re-elected to office. A Herald on Sunday article entitled ‘National MP joins mangrove chainsaw massacre’ (Crewdson, 2005) said that Goudie did not regret being at the protest, described it as ‘a wake-up call for regional politicians’. The article claimed Goudie faced hard questions from her party, but further on said National Party leader, Don Brash, said he had no comment on Mrs Goudie's involvement, calling it a local matter (I wrote about Don Brash in Chapter 6 making speeches in 2004 and 2006 that stirred up widespread anti-Māori-rights sentiment). The media made little further mention of the event, except for periodic articles in the local newspapers sympathetic to the mangrove cutters.

Seedling removal consent - February 2006

In February 2006 the group called Whangamata Harbour Care lodged applications to remove seedling mangroves from the majority of Whangamatā.

Hearing of the application late, Ngāti Whanaunga missed the statutory timeframe for becoming a submitter. Ngāti Whanaunga lodged an application for a waiver, but TCDC planning staff insisted that the commissioners would have to determine whether the iwi might be included, at the hearing, despite having authority to consult other parties and grant a waiver prior to the hearing. Whangamata Harbour Care opposed iwi being granted late admission, and WRC agreed. Accordingly, the iwi had no standing in the proceedings. Neighbouring iwi Ngāti Tamatera opposed the application, and Ngāti Whanaunga gave evidence through them. Tamatera criticised WRC for refusing to admit Ngāti Whanaunga, as mana whenua at Whangamatā.

Council's planner reported that there were no significant issues arising for Māori, but both iwi refuted this, citing various cultural reasons (as described in Chapter 5 under Manawa). While seeking that consent be declined, were consent to be granted they sought to have various areas of the harbour excluded, and for the term to be reduced considerably from the 25 years sought by the applicant.

Significantly, WRC appointed a committee to hear the application, which included one Māori member. Despite this, consent was granted for 20 years, no areas were excluded, and the decision did not mention iwi concerns. Ngāti Whanaunga and Forest and Bird appealed the decision to the Environment Court.

Iwi and Forest and Bird Environment Court appeal 2006

The case *Ngāti Whanaunga Incorporated Society and Royal Forest and Bird Protection Society of New Zealand Incorporated v. Waikato Regional Council* (2006) was heard in late 2006 by Environment Court Alternate Judge D. Sheppard, Commissioner P. Catchpole, and Commissioner W. Howie. As in *Whangamata Marina*, three older Pakeha men.

By the time of hearing, Forest and Bird had resolved most of their outstanding issues with WRC and the applicant, and withdrew its appeal. This weakened the chances of Ngāti Whanaunga preventing the consent, so in the lead up to the hearing Ngāti Whanaunga also had discussions with the applicant and WRC, achieving agreement on a reduction in area for seedling removal, but not on duration.

The matter went to hearing on the question of duration. Whangamata Harbour Care sought 30 years (10 years longer than the WRC granted consents), and Ngāti Whanaunga sought 3 years. In support of its position the iwi gave

evidence on their own preferred and intended use of their harbour, and tikanga-related effects that would result from mangrove removal, and sought to minimise effects by minimising the consent duration. Their compromise was a mistake. On the basis that outright opposition to the consent had been withdrawn, the Court set aside any consideration of Ngāti Whanaunga's evidence, saying that any effects would be just as great no matter the length of consent. The Judge relied on the initial hearings committee as having properly considered and addressed any cultural or other iwi-related matters that he might need to consider, saying:

1321 We accept that there are aspects of the Harbour Care proposal that call for consideration in terms of provisions of the Act and instruments under it cited by Ngāti Whanaunga. Those aspects, and others supporting the proposed activity, were weighed by the Council's hearing committee acting as the primary consent authority. Having considered them, the committee made the evaluative judgement that the purpose of the Act would be better served by granting consent, on the conditions it imposed, than by refusing it. The committee made a full report recording its deliberations.

That was the decision that Ngāti Whanaunga had appealed, and the iwi had been refused admission as a party. I gave evidence on behalf of Ngāti Tamatera, not a submission for Ngāti Whanaunga. In any case, no mention was made of the iwi arguments in the 'report' that Judge Sheppard referred to. Satisfied that all iwi issues were addressed, the Court set aside the iwi evidence:

[36] It also follows that, to the extent that evidence on behalf of Ngāti Whanaunga tended to show that removal of the mangrove seedlings would have adverse effects on the environment, or would otherwise be inconsistent with any provision of the legislation or instruments made under the Act, we decline to allow it to influence our decision on the term of the coastal permit.

The evidence of tribal experts, elders, local community representatives, and an expert planner was largely dismissed as a result of the iwi departing from a position of fixed opposition to one of compromise. Consent was granted to remove seedling mangroves from most of Whangamatā for 12 years. While not the outcome the iwi had sought, this was a reduction of 8 years. The only other

concession to iwi was a requirement to be notified of clearing dates so the iwi could watch, although in the hearing the Judge misguidedly commented that iwi members could exercise their kaitiaki role by joining Whangamata Harbour Care.

Harbour and catchment planning - 2006-2007

As previously mentioned, WRC undertook a consultation process to develop the Draft Whangamata Catchment Management Plan (2007a) and the related Draft Whangamata Harbour Plan (2007bB). Neither plan was finally adopted, although both were made available as drafts on Council's website and by order.

In 2006 and 2007 Ngāti Whanaunga and others took part in the consultation/drafting process, in which it was agreed that all parties intended working collaboratively on a harbour plan. At the initial meeting Ngāti Whanaunga challenged WRC on whether the position stated by its councillor, Simon Friar, reflected Council's official position about Whangamatā mangroves. Friar was among the leaders of the illegal mangrove removal, a committee member of Whangamata Harbour Care, and publisher of an anti-mangrove website, on which he and his associates sought the removal of mangroves at Whangamatā and nationally (Friar, Grant, Kerr, Wells, & Bartley, 2012). The anti-mangrove advocates had been invited to the plan drafting table. In response, agency and council staff clarified their organisations' positions, as being neutral on the need for mangrove removal, pending the results of the planning process.

Following this challenge, the mangrove removers present at the first iwi-attended meeting stated to the mediator that they would not meet further with iwi, because they felt like they had come under attack. Iwi first heard this when attending a WRC-organised meeting, and told they were to continue engaging with Council in a separate process.

Iwi continued involvement in the preparation of the Whangamata Harbour Plan. Representatives met several times in an attempt to piece together a Māori response to the issues at Whangamatā. However, the resulting proposed management approach did not translate in any meaningful way into the two resulting draft plans, despite assurances from project management. When Council later declared that iwi were in full support of the draft Plan, iwi disputed this.

The dual planning process primarily provided support for mangrove removal. In this regard, the harbour plan process reflected WRC's declared motivation for undertaking the plan drafting, being to accommodate a more

moderate removal of mangroves than that being advocated by the mangrove cutters (P. Singleton, personal communication, November 16, 2006).

Second large scale illegal removal - January 2007

A second large scale mangrove removal took place in January 2007, expanding the previously cleared area by several hectares (see Figure 10.16 Images A and C on p. 297), despite granting of the seedling removal consent and promises by the mangrove-cutters to refrain from further illegal action. The removal resulted in adjacent saltmarsh and other coastal vegetation being burned and trampled. They used heavy machinery in the harbour again to remove the mangroves, the tyre marks remain visible in the mud 7 years later.

This time Council employed a private investigator, and initially indicated a willingness to prosecute offenders for contravening Rule 16.2.3 (*Removal or Eradication of Indigenous Plant Species*) of the proposed Waikato RCP. But WRC again decided there was insufficient evidence to prosecute.

Communication with Minister for the Environment 2007

Ngāti Whanaunga wrote to the Environment Minister David Benson-Pope six months after the illegal clearing when it was obvious that WRC would not take action. The iwi sought his intervention in pursuing prosecution. Six months after granting the coastal permits for Whangamatā marina, the Minister contacted WRC and accepted their explanation. He then wrote to the iwi that he was not able to intervene, but stated his understanding that WRC had initiated enforcement proceedings against the individuals undertaking the illegal removal of mangroves in Whangamatā (D. Benson-Pope, personal communication, 15 March, 2007).

Comprehensive mangrove management consent - 2010

WRC didn't enforce anything, but lodged an applications for a comprehensive mangrove removal consents. The application was heard by a two person committee constituted by the regional council, it included no Māori expertise.

Ngāti Whanaunga and other iwi submitted, and conceded that the application was considerably improved in terms of extent of removal, but identified several reasons for their opposition, including tikanga-based ones. WRC sought the ability to use tracked machines to mow and mulch mangroves within the harbour, in some circumstances leaving mulched material in situ.

However this approach had failed in the previous Tauranga Harbour clearance, when material left rotted and stayed where it was rather than dispersing and quickly breaking down as anticipated.

Ngāti Whanaunga argued that the upper harbour has insufficient energy to disperse material left on the harbour floor. They explained how, in 2004, they had a protracted dispute with WRC to remove stream maintenance material from, which council left piled along the stream channel out into the harbour. After 2 years maintaining the tide would disperse the material Council finally had to concede and removed the material.

Despite this evidence, consents were granted to remove mangroves from an area of 22.5 ha, reduced from the 38 hectares sought. The committee wrote of the need for a precautionary approach, marine and bird-related ecological concerns, and that the extent sought would impinge on the value placed in mangroves by mana whenua.

Environment Court appeal - 2011

In *Royal Forest and Bird Protection Society of New Zealand v. Waikato Regional Council* and *Waikato Regional Council (River & Catchment Services Group) v. Waikato Regional Council* (2011) the Environment Court heard appeals against the 2010 council-granted consents.

The appeal sought to extend removal areas and loosen consent condition restrictions on removal methods. WRC (2011a) reported that the applications were a response to community pressure. A staff report supported an appeal, covering matters, legal opinions, a statutory analysis, and community views. It was silent on Māori views, values and interests (Fowlds, 2012). Despite strong iwi and community opposition to mangrove removal, staff adopted the anti-mangrove lobby position that the community is supportive of widespread mangrove removal. The recommendations were adopted by WRC and an appeal lodged.

Ngāti Whanaunga missed the statutory timeframe for joining proceedings, and miscommunications with lawyers meant an application for a time waiver was not lodged. Consequently no iwi evidence was presented. The Court heard iwi evidence from the WRC independent committee hearing, and from the seedling removal appeal heard by Judge Sheppard 5 years earlier.

Sitting alone under section 279 of the Act, Judge Whiting granted WRC consent to remove 22.9 hectares of mangroves at Whangamatā and control

regrowth for 25 years. The consents contains four concessions to iwi, providing only the ability to comment on plans drawn up by the applicant and to monitor.

An arrangement for an advisory panel, agreed between the parties outside the court process, was struck out by the court. It was to consist of three independent people experienced in environmental management monitoring in the coastal environment, with one member each nominated by Ngāti Whanaunga, Whangamata Harbour Care, and the Director General of Conservation.

A review of the environmental monitoring management plan is required to assess whether monitoring and management practices recorded in the management plan comply with consent conditions and whether the objectives of the management plan are being met. But in the view of Ngāti Whanaunga, the performance of the WRC in administering the consents was poor. Plans that were required to be forwarded for comment were not, or were provided late with comment from the council that they had been satisfied with the content or intention of the plan, but constraints or circumstances had prevented obtaining prior iwi agreement.

The requirement that iwi members attend a council run course before they would be certified as monitors acted as an additional barrier. Iwi monitors have extensive training and experience and did not requiring training. Additionally, the iwi lacked the capacity to resource monitors and WRC refused to do so. As a result, the ability to observe works within the CMA was restricted to an occasional inspection after weeks where removal had taken place.

Third large scale illegal removal - November 2012

A third large-scale removal took place in November of 2012. Ngāti Whanaunga did not learn of this until months later. Taking place between the WRC granted consents and commencement of the appeal, this event appeared to be a protest at the further delay in authorised mangrove removal.

Again WRC refused to prosecute. Instead the Harbour and Catchment group contracted the removal of cut material. Council did not contact iwi to allow monitoring of removal, provide for iwi involvement, or let them gather the displaced kaimoana.

Mangrove removal - outcomes for tangata whenua

In combination the more than decade-long events described here have yielded terrible results for Whangamatā Māori. As is evident from (most of) the effects-related headings, the effects are similar to and overlapping with impacts resulting from the Whangamatā marina.

Manawa – mangroves

The loss of treasured mangroves was obviously the immediate outcome. Their cultural and environmental values were explained in Chapters 4 and 5. They buffer the harbour and sea from impacts of sedimentation, and provide a rich habitat for a thriving coastal marine ecosystem. They are favoured for their value as a tio (oysters) nursery, and the shelter and food source they provide for many terrestrial and marine species, included endangered wading birds.

Ngāti Whanaunga tikanga prohibits removing manawa without compelling reasons. Tribal elders explained to the Environment Court that tangata whenua have watched the mangroves expand and recede without human intervention, in response to environmental conditions (Renata, 2006, para. 19). The removal of mangroves has materially affected the harbour's ability to cope with the many pressures constantly on it, and this must contribute to a reduction of mauri. Human land-use effects have accelerated their expansion, and the filtering and trapping functions of mangroves are necessary until these are addressed.

Yet almost 100 hectares was been consented for removal in 2011, with little assessment of the combined effect of removal at this scale with previous illegal removal. Despite this, iwi face new District-wide removal applications, and similar consent applications in neighbouring regions.

Kaimoana

As discussed in the previous Whangamatā marina section, manawa provide a habitat for a range of kaimoana, in addition to acting as a nursery to juvenile and a feeding ground for them. Manawa are prized for tangata whenua are the titiko and tio (oysters) that thrive amongst the roots and stems.

They are an important kōhanga for kaimoana, including titoki and kūtai. They are slow to colonise wetlands, eelgrass, or kaimoana beds, and incursion can be easily managed without wholesale removal. The removal of mangroves has

exposed resident kaimoana beds to substantially higher levels of sediment, and possibly reduced dissolved oxygen.

The mauri of Whangamatā

The removal of mangroves disturbed several hectares of putrid mud on several occasions. This area has served as a sink for the vast volumes of nitrogen and associated waste water contaminants for decades, being adjacent to leaking waste water treatment ponds, and a recipient of ongoing excessive irrigation by TCDC, and numerous illegal spills, none of which were prosecuted by WRC. The removal of mangroves disturbed the mud, resulting in a stench that continues, and mobilisation of this material across the harbour onto pipi and tuangi beds.

While a formal rāhui was been called through the Ministry of Fisheries, tangata whenua have avoided the kaimoana beds for months at a time. As described previously, Ministry of Fisheries stood alone in its support of Ngāti Whanaunga efforts to address shellfish pollution.

Otherwise, kaitiaki have been disempowered in the ongoing mangroves saga. The light-weight harbour plan process fell to pieces when the people listed on the Mangroves website refused to meet with Māori in the plan drafting process. The kaimoana protection provision that tangata whenua developed never made it into the plan, which the council released despite iwi opposition. Still up on the WRC website in 2014, the plan is described as draft and was never adopted.

Kaitiakitanga and mana whenua

The treatment of kaitiakitanga and mana whenua (those holding traditional authority over land) described in relation to the many mangrove-related events clearly falls short of the lofty recognition and promises in the RMA, and all of the statutory plans described in Chapter 7. It demonstrably fails to meet the standards established in jurisprudence on Māori values rights and interests, which were explained in each of the preceding chapters. Mangroves may be seen to have generated lesser effects than the marina, in the sense that their removal is more credibly reversible.

The purposefully setting aside tangata whenua values and interests, and the various ways I described for excluding iwi participation in the management of the harbour and significant ancestral places demonstrates that iwi are routinely not

acknowledged as kaitiaki, and ancestral relationships are seldom recognised and provided for as the RMA requires.

Scientific evidence is routinely preferred to that of iwi, mātauranga Māori being almost universally treated as inferior and deemed unpersuasive. Councils and other decision-makers seldom consider iwi or seek to understand their perspectives or management approaches. Despite the resulting lack of information with which to proceed with any certainty (in terms of outcomes for mana whenua), the councils, and the Environment Court, have shown no caution.

For both *take* opportunities to provide meaningful remedies for mana whenua were lost, for example the 'advisory panel' parties to the 2011 mangrove appeals proposed offered some opportunity for mana whenua involvement in the ongoing management decisions for the harbour. This contrasts starkly with the standard set by *Ports of Tauranga* case (see Chapter 9).

Manawa - a wider view

There is a disturbing trend toward mangrove removal in the policies and practices of regional councils within the geographic range of mangroves. In its 2011 Annual Report, Northland Regional Council (2011) stated an intention to 'Collaborate with, and align the council's [mangrove-related] policy approach with WRC, Environment Bay of Plenty, and the Auckland Council on the management of mangroves'. Each of those councils sought and obtained consent for large-scale mangrove removal.

Not satisfied with its harbour by harbour approach, in mid-2014 WRC announced its intention to apply for district-wide mangrove removal consents. This reflects a growing culture within local and regional councils in recent years. WRC councillor and anti-mangrove campaigner Simon Friar (2010) criticised his own council investigating the illegal mangrove removal, at the same time announcing plans for mangrove removal across other harbours, and claiming to have turned the councils attitude about mangroves:

In the three years that I have been on Council, I have managed to turn that attitude around to a point where the Councillors were unanimous in their support for proper management of mangroves as a part of harbour and catchment plans. Not a bad effort for a "one trick mangrove show pony" in my humble opinion.

This is a classic example of interest-groups wielding the machinery of local government to achieve their own agenda. As previously mentioned, regional councils paths were consistent with a national trend, for example protection for mangroves was removed from the second NZCPS. But while regional planning instruments are required to give effect to that document, it appears that momentum achieved through the like of the Mangrove Steering Group was more influential on regional councils than national instruments.

Combined and cumulative effects

The Whangamatā marina and mangroves are related *take*. They happened at the same time and place, the same people were involved, and many of the physical effects were the same. Results of the activities described sit shown side by side in Figure 10.17.



Figure 10.17. Cleared mangroves and a marina – overlooking the illegal clearance site and the marina in construction

The look of the marina changed, west of the causeway has not, although a moderate effort was made later to plant imported oioi, the tyre marks remain in the mud 10 years on. Impacts include the loss of mangroves, environmental degradation, impacts on kaimoana, habitat loss, increased sedimentation, a loss of iwi interests within the harbour, impacts on their ability to fulfil kaitiaki obligations to previous and future generations. For local Māori both the marina and mangrove removal resulted in serious ongoing impacts.

The events described breach Treaty, customary, and statutory rights, as well as human and civil ones. The iwi-specific experience described is common-

place, as competition for coastal space grows, and tensions escalate as resources become scarcer. Under the current 'wild-west' approach to the allocation of coastal resources ever-growing pressure results in Māori being repeatedly injured.

Virtually landless, tangata whenua of Whangamatā continue in their kaitiaki role at Whangamatā, but watch their residual interests whittled away.

Kotahitanga - Race-relations and community cohesion

An indirect but important result of both the marina and mangroves issue is a deterioration of relationships between local Māori and sections of the Whangamatā community. Both activities escalated inter-racial disharmony. WRC preferred not to prosecute the illegal mangrove removers because of the harm it would do to the appropriate management of mangroves, and to community cohesion. They clearly valued less the wellbeing of the local Māori community.

Tangata whenua suffered abuse from the Whangamata Community Board and local Grey Power chapter in relation to both the marina and mangroves. They claimed there are no tangata whenua, and that local people shouldn't be compelled to talk to some Māori from elsewhere about their own harbour. This resulted in rhetoric about selfish Māori, claims that the mangrove cutters and WMS speak on behalf of the reasonable Māori who live in town, and that Māori are always anti-development.

These are 'grist for the mill' for talkback radio and newspaper columns, and for politicians set on 'one law for all' and removal of the Treaty from legislation. Political pressure was applied at Whangamatā, and the hand of the National Party wielding the machinery of government for its own agenda can be seen in relation to the marina and mangroves removal.

Balancing community groups' rights and needs with those of Māori, when significant tensions arose, was handled poorly by TCDC, WRC and the Crown. All demonstrated a willingness to impose injuries on iwi to pacify a group of determined businessmen and a loud and nasty anti-mangrove and anti-Māori lobby. As an example I refer to the anti-mangrove website. A mob mentality was plain in their nation-wide campaign to champion mangrove removal, and their anti-gay sentiment in the campaign against Chris Carter following his decision to oppose the marina, and comments supporting mangroves:

Give it to the Minister - Let the Minister of the Environment and

Conservation, that man Chris Carter, know your feelings. He has previously demonstrated that he is very susceptible to emails. This was demonstrated in his disgraceful and dishonourable interference with a proper decision of a properly convened Court of NZ in the Whangamatā marina decision. Click on Get Carter to get an addressed email that you can insert your own comments for his enlightenment. Tell your friends to do the same. You will get an auto reply. If you don't, your message has been blocked. Let me know.

These men, whose names appear on the webpage shown in Figure 10.18, have all since entered local-body politics, where they have sought to steer their councils toward mangrove removal, with substantial success.



Figure 10.18 Screen capture of Whangamatā residents' anti-mangroves website.

After WRC repeatedly failed to prosecute the mangrove cutters and the Crown refused to investigate or intervene, I was reported (correctly) as having written to WRC that if it was unwilling to prosecute people responsible repeatedly and severely breaking the law then I 'would personally sort out some punishment for the bastards'. Council forwarded the letter to the mangrove cutters, who went to

the media but not the police. This was a tactic aimed at escalating council consideration of the matter, and generated national media interest (Cuming, 2007; Robinson, 2007). But it was also a reaction to ongoing insults aimed at the iwi through the media. Decision-makers have little idea of or concern for the turmoil, including inter-generational conflict, and growing resentment between Māori and Pakeha, arising from their decisions and actions, or lack there-of.

I raise the issue of social cohesion in relation to both the marina and mangroves, because the demonization of Māori was similar in both cases. The rangatahi that occupied Whangamatā to stop the marina were verbally abused, called black bastards and told to get jobs using the most insulting language. When prohibited by protest leaders from responding, they stood holding placards saying simply 'We have jobs'. They watched police seek to placate their parents after explaining that they would not press charges against an elderly Pakeha man who assaulted one of the occupying women, saying that the local constable had a word with him and he wasn't feeling well, but that he wouldn't do it again.

Occupiers were repeatedly told that decisions were in the interest of community wellbeing, but never told why this didn't include the wellbeing of their community. Parents also had trouble explaining the nastiness of the city kids, who talked with occupiers one day then snuck back that night and smashed the huts our kids had created. Māori kids are, sadly, no strangers to that kind of behaviour.

Tangata whenua still regularly encounter hostile attitudes from developers, and sections of the community that have conflicting aspirations, values and views. These people substantially influence the institutions charged with protecting Māori values and interests, and Māori face an 'up-hill battle'. These growing and little-addressed tensions are a real and significant social and cultural outcome from the implementation of the RMA.

Chapter 11 - Conclusions

E ora rawa atu ana te tāmitanga o te iwi taketake kei Whangamatā

Thriving is the oppression of the First Nations' people of
Whangamatā

(Personal observation of the author)

Kaitiakitanga, the environmental management approach of Māori, is aimed at maintaining an equilibrium between the needs of humans and the natural environment. Tangata whenua have gained a thorough understanding of their places, of which management approaches work, and which do not. Māori are a Treaty partner, and a First Nations people with traditional rights and interests in the resources and environmental management of their ancestral places. Māori customary practices are defensible before the courts, being protected under New Zealand's common law. International conventions impose obligations to allow First Nations peoples meaningful participation in environmental management, requiring that their knowledge and practices be accorded recognition by 'post-colonial' governments.

Into this mix the RMA was enacted in 1991, containing a range of Māori-specific provisions and protections, and incorporating Māori concepts. The RMA was heralded as a ground-breaking sustainable management-based planning regime, partly because of its First Nations provisions. Despite the conditions I have described, the implementation of the RMA by local government, Crown agencies, and the courts has largely confounded Māori environmental aspirations and expectations. Councils have operated with minimal knowledge of Māori customary or Treaty rights, yet frequently decided that tangata whenua were not affected parties when processing a torrent of resource consents. On those occasions where Māori were permitted admission to statutory processes, councils, and the courts, rarely availed themselves of Māori capacity and expertise. The burden fell on iwi to educate hearings committees or courts and to prove and defend their interests. Overall, the evidence shows that Māori customary interests

and practices, and effects on Māori arising from both consented and illegal activities, have been little considered in RMA decision-making.

Despite over 20 years operation of the RMA there has been little research into results for Māori of environmental management from a Māori perspective. Thus, the goal for my research was to address a gap in knowledge about outcomes from the inclusion of Māori provisions within environmental and resource management legislation. To reach this goal I posed two research questions:

- 1) Are the Māori provisions within environmental resource management legislation resulting in meaningful empowerment of tangata whenua in their kaitiaki role?
- 2) Is the existing Aotearoa environmental resource management regime, and Māori provisions within environmental legislation, on balance, resulting in positive outcomes for Māori?

To answer the questions five objectives and associated tasks were proposed. In summary, Objective 1 aimed to draw out elements of kaitiakitanga and environmental tikanga that are referred to in legislation. The remaining research objectives aimed at investigating the treatment of Māori values and interests within legislation (Objective 2) and in statutory instruments (Objective 3), their implementation by councils (Objective 4), and rulings and directions of the courts (Objective 5). Table 1.1 (p. 16), entitled Research Questions and Objectives linked each of the objectives to the thesis chapters.

In the recapitulation of findings below, I summarise the evidence-base for answering the two research questions, derived from completing each of the five research objectives. For each of these objectives I provide my findings, first for kaitiaki empowerment, and then for outcomes for Māori from the RMA.

Assessing outcomes in terms of kaitiakitanga and tikanga Māori

Objective 1 to provide an understanding of kaitiakitanga, and associated tikanga that are referred to in legislation, statutory plans, or court and tribunal decisions. This was intended to provide concise explanations of these tikanga against which to assess Māori-specific provisions in: legislation, statutory instruments, implementation of the RMA, and case-law. Particular consideration was given to perspectives of Ngāti Whanaunga, as tangata whenua of Whangamatā.

Information for meeting Objective 1 was distilled from published and unpublished literature relating to environmentally significant tikanga and mātauranga (Māori knowledge systems and world views), including evidence given within RMA processes, before the courts, and to the Waitangi Tribunal. More specifically, for the case studies, understandings of tikanga and mātauranga of Ngāti Whanaunga were gained through participation in tribal whare wananga (houses of learning), from ongoing discussions with pukenga (tribal knowledge holders), and from my own kaumātua (Māori elders).

Kaitiaki empowerment

I found that kaitiakitanga is an overarching tikanga governing environmental management, and that it is informed by mātauranga Māori, Māori traditional knowledge and world views. I emphasised that tikanga varies from place to place, and that it is adapted over time, but that the foundation principles, kaupapa, remain constant. I identified in Chapter 5, that according to a Māori world view people are not considered as distinct from the rest of the natural world, as per Western conceptualisations, but linked genealogically by whakapapa. This world view brings familial responsibilities to the environment, such that Māori approach resource use and environmental management entirely differently to councils. As a kaitiaki model I referred to the Mead's (2003) approach *Take, Utu, Ea*, its underlying principle being the maintenance of an appropriate balance.

Despite widespread exclusion from participation in the management of ancestral lands and waters, Māori maintain traditional kaitiakitanga efforts. There are a large number of ways in which they strive to fulfil inherited environmental management obligations, consisting largely of defacto or informal efforts. I found, for example, that iwi and whānau relocate kaimoana and terrestrial species to restock depleted resources, and initiate rāhui (ceremonial restrictions or closures). They keep an overview of stocks across their rohe, harvesting resources according to tikanga, to minimise harvest impact.

I also found that local environmental knowledge provides a unique view because of the length of customary observation, and the knowledge derived of long term trends and cycles. Kaitiaki pass on inherited knowledge to succeeding generations, like locations of fishing grounds, properties of taonga such as rongoa (medicinal plants), and tikanga around how and when to harvest.

Outcomes for Māori

The overall outcomes of the RMA for Ngāti Whanaunga, and for Māori generally, have been variable but generally poor. I described the relationship of Ngāti Whanaunga with Whangamatā, and the role of the iwi as kaitiaki, and made comparisons with the tikanga, experiences, and circumstances of neighbouring and related hapū and iwi, and with tribal areas elsewhere. I showed that Crown policies and practices since the signing of the Treaty of Waitangi resulted in widespread native deforestation, polluted waterways, massive destruction of historic heritage, alienation of, and dislocation from, ancestral lands, disempowerment, and impoverishment. This is relevant to a study of the RMA, for example the Waitangi Tribunal (2011) found that the environmental and cultural devastation suffered by Māori (described in Chapters 3 and 4) provides a baseline against which contemporary Crown environmental management decisions should be assessed.

Māori provisions in legislation

Objective 2 was to determine how contemporary Aotearoa environmental resource management legislation provides for Māori. Modern Māori-specific provisions were considered in terms of historic legislation, obligations to Māori arising from international conventions and treaties, native-title and customary rights, Treaty of Waitangi obligations, and evolving jurisprudence.

The quality of statutory Māori provisions and interpretations of Māori concepts were assessed using an effectiveness matrix, and by reviewing writing on Māori statutory provisions. Literature included specific findings of the Waitangi Tribunal and courts about Māori legislative provisions. This analysis revealed the Crown's intent, against which Māori plan provisions and implementation could be assessed, in order to evaluate outcomes for Māori.

Kaitiaki empowerment

Part 2 of the RMA (Purpose and Principles) makes provision for the relationship of Māori with their ancestral lands, waters, and taonga (section 6e), protection of historic heritage (6f), protection of recognised customary activities (6g), kaitiakitanga (7a), and the Treaty of Waitangi (8). Additionally, there are numerous other Māori-specific references throughout the Act. In combination these provisions appear to significantly empower kaitiaki. However, the Part 2

sections have reducing injunctive force, so that section 6 matters are to be 'recognised and provided for' as matters of national significance, 'particular regard' must be had for kaitiakitanga, while decision-makers need only 'take into account' Treaty principles. Furthermore, there are 28 other non-Māori-specific matters in Part 2 that administrators have to balance in making decisions, and these must diminish weight given to the Māori provisions. Several other sections within the RMA provide the potential for empowerment of kaitiaki. In particular it provides for management functions and powers to be transferred to iwi authorities (section 33), the delegation of powers to Māori, or combined Māori-council, committees (section 34), for joint management agreements with Māori in relation to natural or physical resources (sections 36b to e), and for iwi to become heritage authorities (section 188). However, the RMA failed to stipulate processes by which Māori might secure such arrangements, leaving it for national policy instruments or council plans to provide guidance, and certainty, in this regard. This lack of specified process has proven a substantial barrier to Māori realising some of the most tangible opportunities for kaitiaki empowerment.

I found that links with Acts such as foreshore and seabed legislation and the Reserves Act (1977) provide additional protection when the administration of the RMA triggers cross-over provisions. For example, a resource consent or coastal permit must not be granted for activities that will, or are likely to have a significant adverse effect on a recognised customary activity established under the Marine and Coastal Area (Takutai Moana) Act (2011). However, such link provisions are poorly understood and sometimes not applied.

The RMA has evolved substantially since 1991. A vast body of Māori case-law modifies the Act, and clarifies its Māori-related intentions. Furthermore, since 1991 numerous legislative amendments have been made to the RMA which have watered down Māori provisions, and diluted public participation provisions.

Despite this, when taken as a whole, the many Māori provisions within the RMA do provide real potential for empowerment of kaitiaki. However, the most significant legislative advances, in terms of kaitiaki empowerment, have been Treaty settlement arrangements, such as the Waikato River Accord. Unlike the RMA, these have formalised the requirement for meaningful participation in environmental management, compelled responsible agencies to engage with Māori, and provided a statutory guarantee of resourcing.

Outcomes for Māori

The RMA provides the potential for positive outcomes for Māori. Its overarching sustainable management purpose, and the requirement to provide for the needs of future generations, would appear consistent with a Māori environmental world view. Furthermore, the stated intention that the Crown produce national policy statements as vehicles for ensuring nationally consistent policy direction, and national environmental standards which all agencies would be obliged to maintain, provided the potential for coordinated and effective environmental management, including in terms of Māori environmental views and aspirations.

However, the enabling nature of the legislation, whereby non-prohibited activities are presumed to be allowed to proceed unless they generate more than minor effects, and the tension between permitted baselines on one hand and the avoidance of cumulative effects on the other, created the potential for an ongoing compromise of environmental values, including those of Māori.

While concepts like *kaitiakitanga* and *wāhi tapu* are included in the RMA, associated institutions like *rangatiratanga* are ignored. The favoured Māori concepts enshrined in legislation operate, therefore, within a Western legal tradition, removed from the Māori social and political structures within which they traditionally operated, and stripped of authority and cultural significance.

As a result, the law has weakened Māori connections to the environment, by both inadvertently ignoring and purposely undermining First Nations' institutions and ideas (Ruru, 2012). The RMA, in particular, has prevented *iwi* and *hapū* from controlling the management of their own *taonga* or natural resources, contrary to the principles of the Treaty of Waitangi (Fox & Bretton, 2014 p. 2; Waitangi Tribunal, 1993 p. 154; 2011 p.p. 285-286).

Assessment against Māori provisions in statutory instruments

Objective 3 was to evaluate how legislative Māori provisions are given effect in environmental resource management statutory policy statements and plans. These included national policy instruments, environmental standards, and council plans. I relied on earlier plan quality research undertaken within the PUCM research programme, a wide review of plan assessment literature, and in-depth evaluation of the various case study local and regional council plans, to provide a national view of plan quality.

Kaitiaki empowerment

I found that plan Māori content suffered from a widespread refusal by the councils to facilitate the participation by kaitiaki Māori in plan drafting processes, and that this denied both Māori and councils the opportunity for distilling plan provisions that truly reflected the views, rights, and values, of local kaitiaki.

Local planning instruments suffered from a failure of the Crown to publish guidance in the form of national-level policies and standards, this being one of the key reasons that local authorities have struggled to effectively engage with Māori. The Waitangi Tribunal criticised the Crown for its slow development of national policy statements and standards, noting that until recently none made reference to kaitiaki involvement in decision-making. It recommended the Crown develop national policy statements on Māori participation in resource management processes (Waitangi Tribunal, 2011 p. 118), but 5 years later the Crown had not even responded to the report, and no such policy statement was intended.

Despite this lack of national guidance, as discussed in Chapter 7, there were some fair kaitiakitanga-relevant provisions in first-generation plans at an objective and policy level, but most of these copied or rephrased RMA provisions, making little effort at reflecting local conditions. Some council plans included adequate objectives and rules, but lacked methods for implementing these. This remains a common failure, even in recent second generation plans, and is true of kaitiaki-specific plan provisions, and Māori provisions generally.

National policy instruments and local and regional plans did not stipulate processes or criteria by which kaitiaki might utilise opportunities for formalising participation in environmental management. This leaves entirely at the discretion of councils how kaitiaki apply, and the determinants of success or failure.

Outcomes for Māori

Plans focused narrowly on Māori-specific issues, but often failed to identify the wide range of matters important to Māori. Māori sections were generally bundled into a single Māori chapter, but with a corresponding lack of recognition of matters of relevance to Māori across other plan sections and issues, or links from these to relevant Māori provisions.

Despite this the case study council plans were found to have fair, and occasionally strong, Māori provisions when tested against the three tikanga mauri,

wāhi tapu, and mana whenua. But these were again let down by a lack of suitable methods to likely provide positive outcomes tailored for local conditions.

While lower order plans were initially required to be 'not inconsistent with' higher ones, this changed in August 2005 to a requirement to 'give effect to' higher order instruments. While it is dubious whether the initial requirement was met, in terms of Māori provisions, I found a widespread failure for lower order plans to be amended to reflect the more strenuous and active obligation. This is particularly important in terms of Māori provisions, as some of the strongest examples are found in national policy statements such as the New Zealand Coastal Policy Statement (2010) and the HGMPA.

A similar inconsistency was found between neighbouring planning instruments, which are required to take cross-boundary issues into account, including those relating to Māori, but rarely do so. This is particularly relevant where iwi rohe include multiple councils, as is the case for Ngāti Whanaunga, rendering iwi subject to numerous differing, and sometimes conflicting, policies and rules addressing the same matters in different parts of their rohe.

Implementation of statutory Māori provisions

Objective 4 aimed to assess how tikanga Māori and interests are recognised and provided for in the implementation of environmental management legislation. Objective 4 findings were provided in several chapters, although implementation was the specific subject of Chapter 8. In Chapter 4, I described contemporary Whangamatā, in order to provide a background of roles and actions of the local and regional councils therein, while in Chapter 10, I described two examples of RMA implementation, the Whangamatā marina and the removal of mangroves.

Kaitiaki empowerment

Despite the previously acknowledged apparently-adequate kaitiaki-related statutory and plan provisions, this research makes clear that it is at the implementation stage that kaitiaki are most let down.

The Whangamatā and neighbouring Harbours filled and shallowed within my lifetime. Forestry continues to be grown to the edge of the harbours all the way up the Coromandel. This is the sediment that mangroves respond to. This is also the land the Hauraki Māori are likely to own within a few years. This begs the question of whether iwi will be better kaitiaki than recent and current

managers, the jobs of environment officers will be uncomfortable if they too are in court against themselves in the manner that WRC and the Crown have been for the two case study *take* described here.

There is little substantive effort from councils to give effect to RMA and plan provisions, and Māori remain rendered largely ineffective in their efforts to participate in the management of ancestral lands and waters, to uphold tribal values, or protect customary interests.

Notwithstanding the many opportunities for empowering kaitiaki contained within the RMA and related legislation, examples of joint management arrangements remain rare, few devolutions and no transfers of functions and powers to Māori have occurred, few joint management arrangements have been formalised, no iwi has been granted the status of heritage authority, and reluctance remains to provide meaningful opportunities for participation in decision-making.

Some important exceptions were identified, including joint committees of councils, and working groups, which are becoming more common. These represent an important development in terms of improving iwi-council relationships, allowing iwi to be informed, and facilitating a dialogue. But such arrangements were criticised for having little authority, and, despite occasional devolutions, being effectively advisory bodies. By definition, advising is not participating in decision-making.

A notable exception is the Auckland Independent Māori Statutory Board. I explained that the Board has achieved an unprecedented degree of influence in terms of Auckland Council's planning and decision-making, both under the RMA and LGA. While constituted under separate empowering legislation, the Board is held up as a model for formalising Māori-Council relationships nationally.

However, outside of Auckland the aforementioned lack of methods renders kaitiaki unable to get positive action despite lofty ideals and promises in high-level plan objectives and policies. Importantly, iwi have been almost entirely excluded from the resource consent processes via which their values and interests are most often impacted. RMA statutory processes, including plan drafting and consent applications, are onerous, require a range of expertise, and are expensive both in financial and time terms, this when iwi suffer widely from a lack of capacity. Even where they do engage, kaitiaki encounter a lack of knowledge of, and often institutional disregard for, things Māori. In many cases Māori

arguments are not even considered in hearings, as planning officers consistently accept applicant assertions that Māori are not affected.

Outcomes for Māori

Overall, results of more than 20 years operation of the RMA illustrate that Māori have not fared well. This, however, was not easy to quantify, as I found monitoring and reporting to be the 'missing link' in the planning cycle, particularly as regards to Māori. Despite regular promises made to develop Māori-specific environmental indicators, at a national, regional, and local level, these have rarely eventuated, leaving the Crown and councils ill-equipped to measure Māori cultural and environmental outcomes under the operation of the RMA.

However, as evidenced by limited monitoring and reporting undertaken using Western indicators, combined with iwi observations, outcomes for Māori are poor. Evaluation of performance against the three environmentally-relevant tikanga investigated (mauri, wāhi tapu, and mana whenua) shows that councils have made, overall, little effort toward protecting Māori values and interests.

According to national state of the environment reporting waterways are widely in poor health. I described numerous instances over recent decades of rivers and harbours closed for swimming or gathering of kaimoana. Māori continue to fight to avoid impacts of intensive land-use, excessive extraction for irrigation, and river diversion and modification, including damming of tribal waterways. This when Māori rights to water remain legally untested.

Māori historic heritage continues to be lost at an alarming rate. Nationally, reported destruction of Māori heritage runs close to a 1000 'sites' per year, but my own and others' research suggests a significant level of illegal and unreported destruction. Councils widely fail to monitor Māori heritage, despite obligations to evaluate plan outcomes and environmental results, thereby avoiding accountability for its demise.

The refusal by councils to ensure Māori early participation results in them being repeatedly demonised when trying to modify development plans at a late stage, thereby necessitating appeal. The media perpetuates such attitudes, consistently painting Māori as anti-development, self-interested, and unreasonable.

These results place the Crown in contravention of various international conventions and covenants to which it is a signatory. These require that states

recognise and employ First Nations' traditional practices and knowledge, and provide for participation in the management of ancestral places. Furthermore, as explained in Chapter 10, the RMA routinely operates to extinguish customary practices and interests via resource consent processes, which would otherwise require express extinguishment via legislation, would only be legal when for compelling reasons, and would demand commensurate compensation.

Treatment of tikanga Māori by the courts

Objective 5 sought to understand how the courts have treated Māori values, rights, and interests in environmental resource management decisions. The courts are the arbiters of disputes and final decision makers for the RMA. They serve to give it effect, but also act to interpret statute law, and in the case of the RMA are required to also take into account customary practices and interests, and Treaty obligations. Accordingly, the courts have shaped the way the RMA and associated laws operate.

Some prominent cases were considered in Chapters 6 and 9 for their treatment of Māori interests, and located internationally within an evolving First Nations' jurisprudence. I identified that a customary practices jurisprudence is building up relating to environmental resource management, but that important precedents do not routinely filter across national jurisdictions, or, in Aotearoa, down through the Courts.

Kaitiaki empowerment

Barriers remain to Māori participation in the Environment Court or higher courts, such that legal recourse is often practically impossible. Māori have fared better in the courts, than through council decision-making, despite rarely getting through the door. A range of results were identified from Māori RMA legal actions.

The courts have played a role in the interpretation of the RMA's kaitiakitanga provisions. In *Haddon v. Auckland Regional Authority* (1994) the Planning Tribunal found that iwi should be able to exercise kaitiakitanga over local treasured resources, and to give guidance on how, and to what extent, it should be developed. In *Whakarewarewa Village Charitable Trust v. Rotorua District Council* (1994) the Environment Court observed that kaitiakitanga most properly requires that control be vested in an iwi authority, but found that in the absence of an appropriate body that councils could exercise the kaitiaki function.

Notably, the RMA was subsequently revised after that decision, following Māori pressure to redefine kaitiakitanga as being the exclusive function of local Māori.

On the rare occasion that Māori issues are placed before Aotearoa's highest courts, these have fared better, but this is generally prohibitively expensive, and the threat of costs represents a substantial barrier. In response, as explained in Chapter 6, Māori have turned to the Waitangi Tribunal as a means of leveraging legal rights to resources and to environmental management. The Tribunal has been influential on the courts in relation to both Treaty and environmental issues through the many historic claims on which it has reported. Several contemporary breaches claims reports have looked specifically at the RMA, all of which have been critical.

Despite the findings and recommendations of the Waitangi Tribunal and directions of the highest courts, Environment Court judges remain little versed in tikanga, Treaty jurisprudence, or Māori common-law-derived rights, or established practices. Failing to identify this as a weakness, the court has not utilised the RMA provision for appointing Māori Land Court judges to its bench.

As a result the courts have struggled with tikanga Māori, finding variously that intangible values were not matters about which they could make determinations, then reversing this position. Councils and the courts have had difficulty dealing with the non-uniformity of tikanga Māori, and struggled to adduce tikanga-related evidence, and to decide what weight to accord to it. Despite case-law establishing the validity of oral history and the place of tribal elders as experts, the Courts continue to prefer the evidence of Western experts, and that of Māori consultants.

The courts have often been dismissive of kaitiakitanga. For example, the Environment Court found that simply by virtue of participation in the statutory processes Māori have been allowed to exercise kaitiakitanga, and that to fulfil kaitiaki obligations appellants could join the groups whose activity they opposed.

Some decisions have included substantial recognition of kaitiakitanga, as reflected in the interim *Rena Report*, the 2002 Court of Appeal decision *Ngāti Maru versus Auckland Council*, and the *Ports of Tauranga* Environment Court case. In the former, the Waitangi Tribunal (2014) found that the Crown breached Treaty obligations to Māori in coming to arrangements with third parties without consulting with, or addressing the rights of, local Māori. In *Ngāti Maru* Auckland City Council (a predecessor of Auckland Council) was prevented from making

plan changes that would potentially reduce iwi rights to engage. In the latter, a joint mana whenua, Ports of Tauranga, and agency body was created, in order to undertake harbour and kaimoana-related research and required involvement of mana whenua in future harbour management decisions.

These can be seen as a credible examples of kaitiaki empowerment, and a kaitiakitanga-related jurisprudence is developing slowly, strengthened by case-law on customary and Treaty rights here and abroad. Yet cases empowering kaitiaki remain rare. More often Māori are not present in court appeals that affect them, and, as demonstrated by the many cases researched and referred to in Chapters 6 and 9, and 10, kaitiaki often fail to prevent or materially reduce anticipated negative impacts of development.

Outcomes for Māori

Some successful court action by Māori were described in Chapter 9, particularly when appellants and other parties to appeals pursue these through to the highest courts. The Court of Appeal and Supreme Court have determined that the RMA's Māori provisions are strong directives to be kept in mind at every stage of the planning process, stated a need to view Māori issues through more than just a European lens, where reasonable alternatives exist that would impose lesser effects on tangata whenua these should be preferred, these are the directions given by the Court of Appeal and Supreme Court.

A trickle-down effect is noticeable. It is now common practice for the courts to impose consent conditions in response to Māori concerns, the most common being Māori monitoring requirements and accidental discovery protocols. An important finding of this research was inconsistency in court treatment of Māori issues and interests, particularly at the Environment Court.

However, Māori interests are still often trumped when thrown into the RMA mix, pre-existing Māori interests are often set aside, and mitigation, which is almost always employed in preference to avoidance or remedy, is often demonstrably incommensurate with effects suffered.

In summary

My research investigated the many factors that contribute to the outcomes for Māori of environmental management in Aotearoa. Results for Māori, generally, were considered as part of a regional and national overview, while the two cases

studies provided a localised view of agency processes and practices, the important detail in seeking to draw a picture of planning effectiveness. The results were often disturbing.

Resource consents processes have been a source of ongoing injury for Māori. There has been a continuous externalisation of development costs onto neighbours, the wider community, and disproportionately onto tangata whenua. Wider research, including my survey of kaitiaki, supports a conclusion that Māori suffer significant and cumulative effects from consents. The term 'death by a thousand cuts' is an apt metaphor here in terms of RMA effects on Māori.

While examples exist of real kaitiaki-related advances, these pale when compared to the number and scale of those instances where, under the RMA, Māori were thwarted in their aspirations and endeavours, or fought unsuccessfully to preserve some pre-existing practice, interest, or value. The RMA offers credible mechanisms for kaitiaki to be empowered, but these have been widely rejected by decision-makers. The reasons for this are many and complex.

While most councils have moved on to second generation plans, they have not learnt from the failures when implementation of the first ones, particularly as relate to Māori. This 'missing link' in the planning cycle shows a significant flaw in the Crown's approach. It is important to remember that councils and the courts are not separate to the Crown, the honour of the Crown is always at issue, the Crown's many legal responsibilities to Māori remain, and a ledger is being kept.

At the same time that the RMA claims to not deal with property rights it continuously alienates those of Māori, and of the public. This despite international jurisprudence establishing that indigenous common law and native-title rights can only be extinguished by legislation, with justification, and with appropriate compensation. In contrast the operation of the RMA over the coastal marine area has been likened to a 'wild-west' rush for public-sphere resources, and Māori property rights are disproportionately affected.

Despite the best efforts of kaitiaki Māori, councils and courts continue to allow a torrent of activities that generate significant effects on Māori. These include offences against tikanga, undermine kaitiaki efforts, and terminate age-old rights and practices. The two questions of this research are clearly answered in the negative, kaitiaki are disempowered by the operation of the RMA, and, overall, Māori have suffered significantly negative outcomes.

Remaining gaps in knowledge and future research

In completing this thesis I was constantly updating previously written text to adjust for new cases, modifications to legislation and statutory plans, and in particular to outcomes for Māori from Treaty settlements. In combination these things have made Māori participation under the RMA a moving target, and I have several times described improving results for tangata whenua.

Despite these many advances it is my (educated) understanding that there remains a long way to go, and although there have been some important publications relating to Māori participation in environmental management, there remains little in-depth understanding of the experience of iwi and hapū nationally. For example, I found in Chapter 7, that only the PUCM study had undertaken a national assessment of RMA plans from a Māori perspective. But even in that study, Māori provisions were just part of an overall plan-quality evaluation. There has been no similar comprehensive research into the experiences of Māori in the implementation of the Act and plans by councils and the courts.

Similarly, councils and other agencies have largely refused to have their plans assessed to determine their effectiveness for Māori before writing new plans. This research builds on earlier attempts to provide methods with which such assessments can be undertaken, and with which RMA decision-makers can better understand and provide for Māori values and interests. However, there remains a need to refine these methods, to apply them, and to test and modify them as required in order to provide a more realistic picture of outcomes for Māori, and promote better uptake by councils and the Crown.

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Kupu Māori - Glossary of Māori words (fold out page)

ahi ka	keeping fires alight on tribal lands/ maintaining ancestral rights
Aotearoa	New Zealand
hapū	sub-tribe
harakeke	New Zealand flax/ Phormium tenax
hui	meeting/ gathering
iwi	tribe
ika	fish
kai	food
kaikōrero	speaker (in a formal context)
kai moana	seafood
kaitiaki	guardian or agent responsible for an area or resource
kaitiakitanga	the Māori ethic and system of care and guardianship
karakia	prayer or incantation
kaumātua	generic term for elders (male or female)
kaupapa	foundation principles or the task/issue at hand
Kaupapa Māori	a Māori epistemology
koha	gifts or contributions
kōhanga reo	Māori pre-school
kuia	woman elder/ grandmother
kura kaupapa	Māori primary school
mahinga mātaihai	traditional fishing ground
mana	inherited or earned authority/ prestige
mana motuhake	self-determination
mana whenua	territorial authority
manaakitanga	hospitality/ kindness
manuhiri	visitors
Māori	the indigenous people of Aotearoa
Māoritanga	Māori culture, practices and beliefs
marae	gathering place
mātauranga Māori	Māori knowledge and world views
mauri	life force and life supporting capacity
mihi	speech of greeting, acknowledgement
moana	ocean
pātaka kai	food cupboard, food gathering area
puna	natural spring
rāhui	closures or prohibitions imposed on places or resources
raihana	rations, advances to Māori used to create debt
rangatira	person of chiefly rank

rangatiratanga	chiefly authority/ sovereignty
raupatu	conquest/ land taken through battle
rohe	ancestral domain
taiapure	local fisheries management areas (Fisheries Act 1996)
take	cause, origin, or issue
tangi	funeral, to cry
taunahanahatanga	nomenclature
tauparapara	chant or incantation
Te Mātāmua	taking/holding the status of first-born
te taiao	the natural environment
Te Tiriti o Waitangi	Treaty of Waitangi
tikanga	correct procedure, customary system of values and practices
tohu	natural environment indicators
tuku whenua	the practice of gifting lands
waiata	song
whakapapa	ancestry/ genealogy
whakatauākī	proverb or significant saying
whānau	extended family
whanga	harbour
whare kura	Māori-language secondary schools
whare wānanga	traditional houses of learning, Māori universities

List of abbreviations used

AEE	Assessment of Environmental Effects
ASCV	Area of Significant Conservation Value
CIA	Cultural Impact Assessment
CMA	Coastal Marine Area
CMS	Conservation Management Strategy
CMP	Conservation Management Plan
DoC	Department of Conservation
DP	District Plan
EIA	Environmental Impact Assessment
EW	Environment Waikato (now WRC)
FRST	Foundation for Research, Science and Technology
FSSBA	Foreshore and Seabed Act (2004)
HGF	Hauraki Gulf Forum
HGMPA	Hauraki Gulf Marine Park Act (2000)
HPA	Historic Places Act (1993)

HPT	Historic Places Trust
HNZ	Heritage New Zealand
IMP	Iwi management plan
IMSB	Independent Māori Statutory Board [Auckland]
ICCPR	International Covenant on Civil and Political Rights (1976)
LGA	Local Government Act (2002)
LTCCP	Long Term Council Community Plan
LTP	Long Term Plan
MACA	Marine and Coastal Area (Takutai Moana) Act (2011)
MHWS	Mean High Water Springs
MfE	Ministry for the Environment
MVA	Māori Values Assessment
NES	National environmental standards
NPS	National Policy Statement
NWIS	Ngāti Whanaunga Incorporated Society
NZCPS	New Zealand Coastal Policy Statement
PCE	Parliamentary Commissioner for the Environment
PUCM	Planning Under a Cooperative Mandate
RAMSAR	Convention on Wetlands of International Importance (Ramsar Pakistan 1971)
RMA	Resource Management Act (1991)
TCDC	Thames-Coromandel District Council
TCDP	Thames-Coromandel District Plan
TCPA	Town and Country Planning Act (1977)
TPK	Te Puni Kokiri / the Ministry of Māori Development
WMS	Whangamatā Marina Society
WRC	Waikato Regional Council
WRP	Waikato Regional Plan
WRCP	Waikato Regional Coastal Plan
WRPS	Waikato Regional Policy Statement

Appendix A - Interviews with Ngāti Whanaunga kaumātua

Interviewer - Nathan Kennedy, May 2010

Interviews have been organised with several Ngāti Whanaunga (NW) kaumātua as part of my PhD research. They are aimed at ensuring opportunities for Ngāti Whanaunga elders to influence and inform my research, to ensure that Ngāti Whanaunga views are adequately considered. Prior to interview kaikōrero were provided a summary of my research questions and an overview of research and writing to date, and given an opportunity to comment.

The purpose of this 'cue card' is to ensure that key topics are covered, while allowing a free flow of conversation and minimal structure to the sessions, so that kaumātua feel comfortable discussing matters of importance to them.

Kaupapa to cover

Prompt kaikōrero (interviewees) to talk about their memories and understanding of the following subjects:

1. Ngāti Whanaunga history and mana whenua

What are your understanding of the history of NW in Hauraki?

What is NW mana whenua and mana moana?

What are your thoughts about the impacts on NW of land loss?

2. Kaitiakitanga

What is your understanding of the tikanga associated with kaitiakitanga

What does kaitiakitanga mean to us today - how has it changed?

What has been your experience in dealing with the Crown and local government?

3. Manawa (mangroves)

What are your memories of manawa and our relationship with them?

Have you been taught tikanga relating to manawa - what are they?

What role (if any) do manawa play in protecting our harbours?

Do you think these tikanga and related 'rules' hold true today?

4. Mauri of water

Please describe your understanding of mauri (particularly as relates to water)

How is mauri harmed, and how can it be restored?

What are your views about the treatment and state of mauri today?

5 Wāhi Tapu

What are your views about the state and management of NW wāhi tapu today?
How have we sought to protect wāhi tapu in your experience?
How do we apply our tikanga around wāhi tapu today?

6. Whangamatā

What are your personal recollections/knowledge of Whangamatā?
What is your understanding of NW mana whenua at Whangamatā?
What knowledge do you have regarding the alienation of Whangamatā?
What have you been told about wāhi tapu at Whangamatā?

Appendix B: PUCM Phase 1 - Criteria for evaluating plan quality

1. Interpretation of the Mandate: Articulation of how a legislative enabling provision is interpreted in the context of local (or regional) circumstances.

1.1 Is there a clear explanation of how the plan implements key provisions involving matters of national importance, Treaty of Waitangi, duties to assess costs and benefits, and duties to gather information and monitor?

1.2 Is there a clear explanation of the functions of a district plan, as required by key legislative provisions?

2. Clarity of Purpose: Articulation of a comprehensive overview, preferably early on, of the outcomes the plan attempts to achieve.

2.1 Does the overview consist of a coherent explanation of environmental outcomes?

2.2 Does the overview contain a discussion of social, cultural and economic matters affecting those environmental outcomes?

3. Identification of Issues: Explanation of issue in terms of the management of effects.

3.1 Are issues clearly identified in terms of an effects-based orientation?

4. Quality of Facts-Base: Incorporation and explanation of the use of factual data in issue identification and the development of objectives and policies.

4.1 Are maps/diagram included? Do the maps display information that is relevant and comprehensible?

4.2 Are facts presented in relevant and meaningful formats?

4.3 Are methods used for deriving facts cited?

4.4 Are issues prioritized based on explicit methods?

4.5 Is cost/benefit analysis performed for main alternatives?

4.6 Is background information/data sourced/referenced?

5. Internal Consistency (of Plans): Issues, objectives, policies, and so on are consistent and mutually reinforcing.

5.1 Are objectives clearly linked to issues?

5.2 Are policies clearly linked to certain objectives?

5.3 Are methods linked to policies?

5.4 Are anticipated results linked to objectives?

5.5 Are indicators of outcomes linked to anticipated results?

6. Integration with Other Plans and Policy Instruments: Plans should integrate key actions of other plans and policy instruments that are produced within the agencies or by other agencies.

6.1 How clear is the explanation of the relationship of each mentioned policy/policy instrument of the plan under study?

6.2 How clearly are cross-boundary issues explained?

7. Monitoring: Plans should include provisions for monitoring and identify organisational responsibility.

7.1 Are provisions for monitoring the performance of objectives and policies included in the plan?

7.2 Are the specific indicators to be monitored identified?

7.3 Are the organizations responsible for monitoring and providing data for indicators identified?

8. Organization and Presentation: Plans should be readable, comprehensible and easy to use for both lay and professional people.

8.1 Is a table of contents included (not just a list of chapters)?

8.2 Is a detailed index included?

8.3 Is there a user's guide that explains how the plan should be interpreted?

8.4 Is a glossary of terms and definitions included?

8.5 Is there an executive summary?

8.6 Is there cross-referencing of issues, goals, objectives and policies?

8.7 Are clear illustrations used (e.g. diagrams, pictures)?

8.8 Is spatial information clearly illustrated on maps?

8.9 Are individual properties clearly delineated on maps?

Appendix C: Survey Questionnaire RMA experiences of hapū and iwi

Nathan Kennedy PhD research – Iwi/Hapū survey

Note to respondent – please provide as much detail as you are able for each question. I recommend filling this out on your computer, if filling out a printed form include additional details on a separate page and please always note question number.

If reporting on multiple councils either list responses for each council in the Details boxes, or complete additional forms for each council.

Respondent's name	Iwi / Hapū Organisation
Date completed	

1. Capacity to engage in planning processes

- 1.a How long has your organisation been involved with council-related environmental planning?
- 1.b How many people in the Hapu/Iwi deal with RMA / LGA issues and processes including resource consent applications?
- 1.c What is the combined experience of those dealing with RMA issues for your organisation in number of years (add together the number of years experience of all voluntary and paid staff)
- 1.d Is anyone paid by your hapū/iwi to deal with resource consent applications? If so, how many, and do they work part or full time?
- 1.e How is their work funded?
- 1.f Approximately how many resource consent applications do you deal with per year, and what percentage of the consents you are informed about does your group get involved with?
- 1.g Do you participate in other planning processes, such as RMA or LTCCP plan changes?
YES/NO
Details
- 1.h Has your Hapu/iwi received any financial and/or technical support from local, regional, or central government agencies (e.g. MFE, regional council) to assist your participation in planning processes.
YES/NO
Details
- 1.i How many local councils are within your rohe, and for how many do you participate in RMA processes?
(i) Number of local (District or City) councils –

(ii) Number for which you participate in RMA processes -
Comments

1.j How many regional councils are within your rohe, and for how many do you participate in RMA processes?
(i) Number of regional councils –

(ii) Number for which you participate in RMA processes -
Comments

1.k Approximately how many people does your organisation represent?
Comments

1.l Has your organisation (or the iwi/hapū you represent) received Treaty Claims Settlement?
YES/NO
Details

2. Maori Values Assessment / Cultural Impacts Assessments

2.a Have you been contracted and/or funded to write Maori values assessments or Cultural Impacts Assessments?
YES/NO
Details

2.b Number commissioned by Regional Council and over what period?

2.c Number commissioned by Local Council and over what period?

2.d Number commissioned by consent applicants and over what period?

2.e Have you been commissioned to write MVAs / CIAs other than for resource consents?
YES/NO
Details

2.f To what extent do you feel the council has taken MVAs / CIAs into account when processing resource consents?
Never / Some of the time / Most of the time / Always
Details

2.g To what extent do you feel applicants takes the MVA / CIAs into account before applying for resource consents?
Never / Some of the time / Most of the time / Always
Details

3. Iwi Management Plans

3.a Does your Hapu/Iwi have Tribal or Environmental management plans?
YES/NO
Details

3.b To what extent do you feel councils take the management plan(s) into account when processing resource consents?
Never / Some of the time / Most of the time / Always
Details

3.c To what extent do you feel applicants takes the management plan(s) into account when applying for resource consents?
Never / Some of the time / Most of the time / Always
Details

- 3.d To what extent do you feel councils takes the management plan into account when drafting or making changes to statutory plans?
Never / Some of the time / Most of the time / Always
Details

4. Relationships with Agencies

Local Council (City or District council)

- 4.a How would you describe you relationship with Council ?
Very poor / Poor / Average / Good / Excellent
Details
- 4.b Does Council provide resources (financial, information, staff assistance etc) to support participation by your Hapu/Iwi in planning processes?
YES/NO
Details
- 4.c Is your organisation routinely notified of consent applications by your local council, other than those that are publicly notified?
YES/NO
Details
- 4.d Does your organisation have MOUs (or similar) with Local Council(s)?

MOU type		How many
Governance level MOU	YES/NO	
Operational Level MOU	YES/NO	
Project Specific MOU	YES/NO	

Regional Council (or unitary authority)

- 4.e How would you describe your relationship with your Regional Council(s)? Very poor / Poor / Average / Good / Excellent
Details
- 4.f Does Council provide resources (financial, information, staff assistance etc) to support participation by your Hapu/Iwi in planning processes?
YES/NO
Details
- 4.g Is your organisation routinely notified of consent applications by local councils, other than those that are publicly notified?
YES/NO
Details
- 4.h Does your organisation have MOUs (or similar) with Regional Council?

MOU type		How many
Governance level MOU	YES/NO	
Operational Level MOU	YES/NO	
Project Specific MOU	YES/NO	

Details

Department of Conservation

- 4.i How would you describe your relationship with DoC?

Very poor / Poor / Average / Good / Excellent
Details

4.j Has DoC taken action to protect sites, values or resources important to tangata whenua on DoC land? (e.g. physical protection works, protective covenants, HPT registration)
YES/NO
Details

4.k Has DoC taken action to protect sites, values or resources important to tangata whenua other than on DoC land? (e.g. advocacy, taking legal action)
YES/NO
Details

4.l Is your organisation routinely notified of concession applications by DoC, other than those that are publicly notified?
YES/NO
Details

4.m Does your organisation have MOUs (or similar) with DoC?

MOU type		How many
Governance level MOU	YES/NO	
Operational Level MOU	YES/NO	
Project Specific MOU	YES/NO	

4.n Does your organisation have any joint management arrangement with DoC over ancestral lands?
YES/NO
Details

Historic Places Trust

4.o How would you describe your relationship with HPT?
Very poor / Poor / Average / Good / Excellent
Details

4.p How would you describe the performance of HPT overall?
Very poor / Poor / Average / Good / Excellent
Details

4.q Is your organisation routinely notified of applications to modify or destroy sites?
YES/NO
Details

4.r Does HPT advocate or facilitate consultation between applicants and tangata whenua in relation to applications to modify or destroy sites?

MOU type		How many
Governance level MOU	YES/NO	
Operational Level MOU	YES/NO	
Project Specific MOU	YES/NO	

Details

4.s How often has HPT refused authority to modify or destroy sites in support of tangata whenua opposition?
YES/NO

Details

- 4.t Has your organisation sought to have significant sites or areas registered with HPT. If so, have applications been successful and processed in a timely manner?

YES/NO

Details

Parliamentary Commissioner for the Environment

- 4.u Has your organisation asked the PCE to investigate issues within your rohe?

YES/NO

Details

- 4.v Did the PCE agree to investigate, and if so were you satisfied with the extent of its investigation, and any treatment of your issues in the resulting report?

YES/NO

Details

5. Council Plans

Note. We developed a framework for evaluating council plans and performance from a Māori perspective in the PUCM research. These methods can be downloaded from the PUCM website, or by emailing me.

Local Council

- 5.a What is your overall impression about the quality of your local council's District Plan(s)

Very poor / Poor / Average / Good / Excellent

Details

- 5.b How would you describe the quality of your local council's District Plan(s) Māori provisions

Very poor / Poor / Average / Good / Excellent

Details

- 5.c How often and how well does your local council implement the Māori provisions within its Plan?

Never / Rarely / Sometimes / Most of the time / Always

Details

Regional Council

- 5.d What is your overall impression about the quality of your regional council's Regional Policy Statement

Very poor / Poor / Average / Good / Excellent

Details

- 5.e What is your overall impression about the quality of your regional council's Regional Plans

Very poor / Poor / Average / Good / Excellent

Details

- 5.f How would you describe the quality of your regional council's Regional Policy Statement's Māori provisions

Very poor / Poor / Average / Good / Excellent

Details

5.g How would you describe the quality of your regional council's Regional Plans' Māori provisions
Very poor / Poor / Average / Good / Excellent
Details

5.h How often and how well does your regional council implement the Māori provisions within its Plans?
Never / Rarely / Sometimes / Most of the time / Always
Details

6. Council Planning Decisions

6.a What number and/or proportion of consent decisions returned the outcomes you sought?
None / Some of the time / Most of the time / Always
Details

6.b What number and/or proportion of planning decisions included specific recognition of Maori values? If so have the committee's descriptions of Maori values been consistent with your tribal understanding of these.
None / Some of the time / Most of the time / Always
Details

6.c What number and/or proportion of planning decisions included meaningful provision for Maori values?
None / Some of the time / Most of the time / Always
Details

6.d Has the applicant / respondent hired a Maori consultant for any of these hearings, and if so, do you feel this has altered the outcome?
Never / Some of the time / Most of the time / Always
Details

7. Court Decisions

Note – Please provide case names/details where known.

7.a How often has your organisation taken cases to the Environment Court?
(i) No. Where Iwi takes case
(ii) No. Where Iwi joins as an interested party
Details

7.b How often has your organisation taken cases to the higher courts?
Details

7.c What number and/or proportion of Environment Court (or higher court) decisions returned the outcomes you sought?
None / Some of the time / Most of the time / Always
Details

7.d What number and/or proportion of decisions included specific recognition of Maori values?
None / Some of the time / Most of the time / Always
Details

If so have the Court's descriptions of Maori values been consistent with your tribal understanding of these.

Details

7.e What number and/or proportion of Environment Court decisions included meaningful provision for Maori values?

None / Some of the time / Most of the time / Always

Details

7.f Has the applicant / respondent hired a Maori consultant for any of these hearings, and if so, do you feel this has altered the outcome?

Never / Some of the time / Most of the time / Always

Details

Other comments

Please provide any additional comments you wish. These can be either about your experiences under the RMA and other Local Government and environmental Acts, or about this survey – if you feel that additional or different questions should be included.

Appendix D: List of RMA-related Statutes

29 contemporary statutes particularly relevant to Māori participation in environmental and heritage management.

Biosecurity Act 1993
Conservation Act 1987
Crown Minerals Act 1991
Environment Act 1986
Fisheries Act 1996
Forests Act 1949
Hauraki Gulf Marine Park Act 2000
Hazardous Substances and New Organisms Act 1996
Health Act 1956
Heritage New Zealand Pouhere Taonga Act 2014 (replaced the Historic Places Act 1993)
The Local Electoral Act 2001
Local Government Act 2002
Maori Fisheries Act 1989
Maori Fisheries Act 2004
Marine and Coastal Area (Takutai Moana) Act 2011 (replaced the Foreshore and Seabed Act 2004)
Marine Mammals Protection Act 1978
National Parks Act 1980
Native Plants Protection Act 1934
New Zealand Geographic Board Act 1946
Plant Variety Rights Act 1987
Protected Objects Act 1975 (formerly known as the Antiquities Act)
Queen Elizabeth the Second National Trust Act 1977
Reserves Act 1977
Resource Management Act 1991
Te Ture Whenua Maori Act 1993
Treaty of Waitangi Act 1975
Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010
Wildlife Act 1953

Appendix E. PUCM Plan evaluations score tables for district plans and regional policy statements

Averages of PUCM district plan evaluation scores (presented as %) for overall plan quality and Māori interests.			
District Plan	Overall % (Mean 44.21)	Māori interests % (Mean 48.23)	Average (Mean 46.22)
Stratford	28.38	12.5	20.44
South Waikato	29.13	17.5	23.32
Lower Hutt	31.25	16.8	24.03
Waimate	24.75	25.8	25.28
Papakura	28.88	39.5	34.19
Kawerau	29	40.5	34.75
Western Bay of Plenty	36.38	35.8	36.09
Kaipara	31	41.3	36.15
Timaru	38.38	35	36.69
Kapiti Coast	36.13	41.8	38.97
Dunedin	41.63	42	41.82
South Taranaki	41.75	42.5	42.13
Waikato	39.88	44.5	42.19
Otorohanga	40.25	45	42.63
Horowhenua	40.75	45	42.88
Gore	51	35	43
Clutha	40.13	46.8	43.47
Hurunui	41.63	50	45.82
Rotorua	42.88	52.5	47.69
Matamata-Piako	47.88	51.8	49.84
Marlborough Sounds	55.13	45	50.07
Southland	37.63	62.5	50.07
Palmerston North	50.13	52	51.07
Wellington	45.25	61.8	53.53
Tararua	44	65.8	54.9
Tasman	60.13	52.5	56.32
Far North	56.13	58.3	57.21
Queenstown-Lakes	62.63	54.5	58.57
Rangitikei	48.38	69.5	58.94
Masterton	56.38	63.3	59.84
Christchurch	66.13	57	61.57
Manukau	50	74.3	62.15
Tauranga	68.5	72.5	70.5
Waitakere	61.88	89.3	75.59

Note - All values are rounded to two decimal places.

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Averages of PUCM regional policy statement evaluation scores (presented as %) for overall plan quality and Māori interests.			
Regional Policy Statement	Overall % (Mean = 46.53)	Māori interests % (Mean = 52.24)	Average (Mean 49.39)
Marlborough	26.5	10	18.25
Northland	28.5	15	21.75
Nelson City	44.9	27.5	36.2
West Coast	42.9	34.3	38.6
Wellington	44.4	42	43.2
Waikato	41.1	57.5	49.3
Manawatu-Whanganui	48	52.5	50.25
Gisbourne	47.4	55	51.2
Hawke's Bay	40.4	62.5	51.45
Tasman	58.8	47.5	53.15
Southland	46.4	65.8	56.1
Bay of Plenty	47.2	69.5	58.35
Otago	52	72.3	62.15
Taranaki	57.1	72	64.55
Auckland	57.6	72	64.8
Canterbury	61.4	80.5	70.95

Note - All values are rounded to two decimal places.

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