

Review of the Regional Plans – Tangata Whenua Issues and Options

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PART 1. PURPOSE OF THE REPORT

1.1. INTRODUCTION

This report was commissioned by the Northland Regional Council (NRC) as part of the review of the three regional plans – Air Quality, Water and Soil and Coastal. The objective was to identify tangata whenua resource management issues and options to address these issues. Iwi/hapū management plans, NRC hosted workshops on specific resource issues, and three regional hui (with the district councils) were key sources of information for this report.¹

1.2. BACKGROUND

The Resource Management Act (1991) RMA requires that councils review their RMA plans every ten years.² Reviews will identify need for change, and scope and extent of that change. Although there is no RMA requirement for consultation at this preparation stage, the NRC are series of workshops on specific resource issues, and the three hui with district councils have provided further information which has assisted the review process. The results of the review will need to be implemented through the formal RMA plan change process, including full consultation as set out in Schedule 1 of the RMA.

The current regional plans – Air Quality, Coastal, Land and Water – were developed following the enactment of the RMA in 1991. In the last ten years since they became operative there have been many changes to which the review must be responsive. These include amendments to the RMA, new or reviewed national policy statements, the review over the last two years of the NRC's Regional Policy Statement (RPS), and development of new case law. Many of these changes have implications for the recognition of and provision for tangata whenua values in formal RMA planning documents. The review of the old RPS was preceded by a report commissioned from

¹ See Appendix B for the process of the development of this report.

² In s79 of the RMA

tangata whenua³ to identify resource management issues of significance to tangata whenua. Those issues have been included in the new RPS; with objectives, policies and methods to address them.⁴

The RMA requires that higher order plans, i.e. national and regional policy statements, are given effect in lower order plans, i.e. regional and district plans⁵. “Give effect” means implement⁶, which means that the tangata whenua provisions of the RPS must be implemented in the regional plan reviews. Included in this report is some analysis of those issues of significance and the policies, with suggestions for responses to them.

While there is a legal obligation to give effect to the RPS, other issues which lack regional significance but which have local or resource specific importance for tangata whenua can also be regulated through the regional plans. In part these issues can be found in the relevant “iwi planning documents”⁷ lodged with the NRC. The RMA requires that these iwi planning documents are “taken into account” in the regional plan change process.⁸ Taking into account requires that the iwi planning document is properly considered, and its proposals adopted unless a defensible reason for not doing so can be established. Reasons for rejection can include, for instance, that the RMA does not have the jurisdiction to address the matter.

This is the stage of early engagement on the need for changes in the regional plans. That will be followed by the normal RMA processes which provide for written submission, oral submission, further submission and appeal.

1.3. IDENTIFICATION OF ISSUES

Māori concerns with RMA planning can arise from a number of origins including:

- Issues based on tikanga, kaitiakitanga or mātauranga which do not have a direct mainstream equivalent, such as the maintenance of mauri.

³ *Proposed 2nd Generation Regional Policy Statement for Northland – Resource Management Issues of Significance to Tangata Whenua – Final Report July 2011*

⁴ None of the RPS tangata whenua policies are the subject of appeal. While resolution of details of the appeals will delay the RPS becoming operative, the tangata whenua policies have effective force now. One of the issues of significance to iwi in the new RPS has been subject to an appeal. This is the identification of genetically modified organisms (GMOs) as being of significance to tangata whenua. No other issue of significance to tangata whenua has been appealed.

⁵ In s65(6) of the RMA

⁶ Confirmed in the decision of the Supreme Court on the King Salmon case.

⁷ This is based on the language of the RMA (“any relevant planning document recognised by an iwi”), but it does not in practice preclude consideration of hapū, marae or other tangata whenua planning documents.

⁸ In s66(2)(a) of the RMA.

- Impacts on a specific resource with cultural value for Māori, such as weaving materials.
- General issues which have more direct impact on the Māori community or sections of the Māori community, such as the road dust problems in Pipiwai.
- General issues for which Māori want to ensure they contribute to any relevant debate, such as large scale mining or climate change.
- Issues which relate to Māori specific legislation, such as for Treaty settlement land, aquaculture settlement space, or for Māori land subject Te Ture Whenua Māori Act.

The nature of the concern, as categorised above, can direct the way in which it should be addressed. Some will need to be addressed by provisions specifically for Māori; some will be able to be addressed by general provisions, but may need the wording adjusted to ensure that Māori needs are met; and others may not need specific Māori reference, but only require that their provisions in the plans are effective in addressing general concerns.

NRC has three regional plans, but it is recognised that there are overlapping issues which may be better managed by a single comprehensive regional plan. For example, an estuarine environment is affected by water quality in catchments, and estuary ecology can cross from the coastal environment to the terrestrial. There are examples in other regions of a single regional plan, such as the Horizons Regional Council One Plan⁹, or the Auckland Unitary Plan¹⁰.

Kaitiakitanga is often described as being a holistic and integrated. The purpose of integrated management may be served better by a single regional plan, which addresses all resource issues in a single document, and hence may be more consistent with kaitiakitanga.

1.4. CONTENT AND STRUCTURE OF THIS REPORT

The purpose of this report is to identify tangata whenua issues relevant to the regional plan reviews, to identify the where within regional planning the issues should be addressed, and to then propose relevant planning provisions in response.

This report contains the following:

- Giving effect to tangata whenua provisions in national policy statements

⁹ Horizons includes Tararua, Manawatu, Horowhenua, Rangitikei, Wanganui and Ruapehu districts; and Palmerston North City

¹⁰ The Auckland Unitary Plan includes also the RPS and district planning.

- Giving effect to the tangata whenua provisions of the RPS
- Issues to be taken into account in iwi planning documents
- Grouping of issues with discussion of possible types of responses
- Best practice and examples from other regional councils
- Provisions for regional plans
- Conclusions

PART 2. GIVING EFFECT TO NATIONAL POLICY STATEMENTS

2.1. NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

The Freshwater Policy Statement has been given effect in the RPS. There are specific water issues of importance to Māori which can be addressed in the regional plans. These are identified in Part 3 below.

2.2. NEW ZEALAND COASTAL POLICY STATEMENT

Most provisions of the NZ Coastal Policy have been given effect in the RPS. There are some details of the NZCPS which may have insufficient response in the RPS. These include:

- NZCPS Policy 2(f)(iii) supporting taipure, mataitai and customary fishing
- NZCPS Policy 2(g) recognising cultural landscape assessment
- NZCPS Policy 4(a)(iii) integrating management across hapū and iwi boundaries
- NZCPS Policy 15 requiring the identification of cultural landscapes

2.3. NATIONAL POLICY STATEMENT FOR RENEWABLE ELECTRICITY GENERATION

This NPS has been given effect in the RPS, and there may be details of renewable generation of importance for Māori communities. This is discussed in Part 3 below.

2.4. PROPOSED NATIONAL POLICY STATEMENT ON INDIGENOUS BIODIVERSITY

This NPS has no legal status, but it has content which may be useful for guidance in developing specific provisions for regional plans. For instance, the NPS contains a definition of customary use which could be relevant to provisions for cultural harvest.

PART 3. GIVING EFFECT TO THE NRC RPS

3.1. TANGATA WHENUA ISSUES OF SIGNIFICANCE IN THE RPS

There are two sets of issues of significance to tangata whenua in the RPS.

Issues relating to participation in resource management are:

- There is inadequate provision for the early and effective participation of tangata whenua as partners in regional council resource management decision-making processes affecting natural and physical resources
- The lack of recognition and provision for the sustainable management of Māori land and returned Treaty settlement assets by tangata whenua
- Current use of Māori land may not provide for the sustainable social, cultural, economic and environmental wellbeing of tangata whenua. In particular, the importance and role of marae and papakāinga has not been acknowledged in the past by the regional and district councils
- Mātauranga Māori is not sufficiently recognised and used in the ongoing management and monitoring of natural and physical resources
- The inclusion of Māori concepts, values and practices within resource management processes is frequently limited and ineffective.

Issues relating to natural and physical resources are:

- The decline of the mauri of natural resources (in particular water and land)
- The decline of mahinga kai, particularly kai moana harvesting sites, is impacting on the ability of tangata whenua to feed their whanau and manāki manuhiri
- Some tangata whenua in rural areas are drinking untreated water from streams and rivers.
- Land use and development can lead to damage, destruction and loss of access to wāhi tapu, sites of customary value and other ancestral sites and taonga which Māori have a special relationship with.
- The loss of indigenous biodiversity, particularly where it negatively impacts on the ability of tangata whenua to carry out cultural and traditional activities.
- The impacts of climate change.
- The use of genetic engineering and the release of genetically modified organisms to the environment

Giving effect to some of these RPS issues in regional planning will need further information. For instance, impacts on mahinga kai and problems of drinking untreated water need greater detail. This may be in terms of locations, scope of problems, details

of impacts, etc. Provisions in regional plans can then be developed specific to those identified impacts.

Giving effect to the other issues listed above can be achieved through the implementation in regional plans of the relevant policies and methods of the RPS.

3.2. POLICIES AND METHODS IN THE RPS

- a.** Policy 8.1.1 promotes tangata whenua participation in planning and consent processes. This policy could be simply duplicated in regional plans, or be given more prescriptive provisions for specific resources or for specific tangata whenua values.
- b.** Policy 8.1.2 essentially repeats the wording from sections 6 to 8 of the RMA. This could be duplicated in the regional plans.
- c.** Policy 8.1.3 promotes the use of mātauranga Māori, and Policy 8.1.4 requires the development of understanding of Māori concepts, values and practices. These policies also could be simply duplicated in regional plans, or details of their application to specific resources could be provided.
- d.** Policy 8.2.1 supports development of iwi and hapū plans. This would not appear to need specific provision in regional plans.
- e.** Policy 8.3.1 supports the kaitiaki role. Regional plans could specify details of where this support is required or has priority.
- f.** Policy 8.3.2 recognises the value of marae and papakāinga development. This policy needs to be given effect in district planning, and is less likely to have relevance to regional planning.
- g.** Method 8.1.5 requires the regional plans to provide for early engagement with tangata whenua, and for the inclusion of analysis of impacts on Māori values in consent processing. The Explanation to the Method refers full recording of how those impacts have been managed in consent processes. The regional plans need to include these provisions, which again could be as a duplication of the RPS wording, or could be applied in a more prescriptive or resource specific form.
- h.** Method 8.1.6 requires NRC to develop a protocol with iwi authorities for a range of processes. While this protocol will have relevance for regional plans, there may not be a need for separate inclusion in regional plans unless specific resources or values can be identified as needing specific management.
- i.** Similar responses (i.e. duplication or more specification) can be considered for other Methods: 8.1.7 and 8.2.3 for advocacy and education; 8.1.8 for funding and assistance; 8.2.2 for taking into account iwi and hapū planning documents.

- j. Methods 8.3.3 and 8.4.4 for marae and papakāinga, may not be relevant to regional planning but can be implemented in district planning.

PART 4. TAKING INTO ACCOUNT IWI PLANNING DOCUMENTS

- 4.1.** Eleven iwi planning documents have been lodged with NRC, and the relevant content of them must be taken into account in the regional plan changes. These documents are listed in Appendix 1. There is a lot of variation in the scope of these planning documents. Many have a common approach and identify similar issues and resources.

In this report the relevant content of the documents that needs to be taken into account is identified, but this will need to be repeatedly reviewed as the plan change process progresses. The iwi and hapū who have lodged these plans will need to check whether their documents have been appropriately taken into account. Some of the documents have high level provisions, and how they intend that they should be taken into account in RMA may need further clarification. The tangata whenua entities which developed the plans should check that their concerns have been included in the list in 4.2 below.

In the review of the RPS the iwi and hapū planning documents were taken into account. That process contributed to the tangata whenua issues of significance, policies and methods presented above. However the RPS does not address the resource specific issues of regional planning.

- 4.2.** Following are matters which can be considered in regional planning. (These issues are presented with no order of priority). Many are sourced from the eleven iwi and hapū planning documents lodged with the council. Other matters were identified in the workshop and hui processes. With each of these items there are suggestions (*in italics*) of how regional planning may respond, or alternatively why the issue is not a relevant one for regional planning. The names of the operative regional plans have been used here. It is assumed that in a single regional plan sections or chapters with similar names would be retained.

- Engagement / participation: *provided for in Method 8.1.5(a) of the RPS.*
- Use of mātauranga Māori: *provided for in Policy 8.1.3 of the RPS.*
- Impacts on the mauri of resources: *implementation of RPS protocols may result in definition of terms such as mauri. For regional planning mauri with respect to specific resources could be determined on a case by case basis (e.g.*

for fresh water, estuaries, etc). Alternatively the term mauri could be retained without further clarification, and could rely on the later RPS process for its definition. Also the elements of management of resources that would contribute to the maintenance or restoration of mauri could be addressed without specific definition or reference to the term.

- *Use of rahui: use of rahui, as a temporary, long term, or permanent constraint on use of a resource or an area, can be considered in regional plans. Prohibition is a tool available in RMA planning, and this may be able to be used for some instances of permanent or long term rahui. Short term rahui are more difficult to provide for in RMA planning. No examples of the need for specific rahui were identified in the hui or through feedback.*
- *Drainage of wetlands: historically for Māori wetlands resources had high value, and several iwi plans confirm their current value. Specific wetlands may require provisions for their maintenance and enhancement. This can be considered in the Water and Soil Plan.*
- *Impacts on tuna and other indigenous fresh water species and their habitats: can be addressed in water quality management provisions in the Water and Soil Plan.*
- *Disposal of waste water to land: can be addressed in waste water management provisions in the Water and Soil Plan. This is an issue which can be addressed by general provisions, and no tangata whenua specific examples were identified in the hui.*
- *Restrictions on disposal of cremation / human ashes: this has been addressed by other councils, such as Auckland Council. It would appear that the RMA is not able to regulate this activity, but non-statutory responses have had some effect. This includes education and advocacy with funeral directors and crematoria. While most concern has been with scattering of ashes at sea, the concerns are not restricted to the marine environment.*
- *Discharges from crematoria and mortuaries: the discharges cannot be defined as “contaminants” under the RMA, hence regional planning cannot be used for their regulation.*
- *Public access to wāhi tapu, mahinga kai etc. Where in the past access has been able to be arranged across farm land, creation of a subdivision can result in access being restricted: where limitation of access is through subdivision, this would need to be addressed in mainly district planning. Ensuring adequate access esplanade areas in the coastal environment can be addressed in the Coastal and Water and Soil Plans. This is a subdivision issue to be regulated by district and not regional planning.*

- Renewable energy: *the RPS Policies 5.4.1 and 5.4.2 address renewable energy. Method 5.4.3 directs regional plans to contain rules for renewable energy. No tangata whenua specific examples were identified in the hui.*
- Vehicles on beaches: *this is principally a district council matter. District councils now have jurisdiction for bylaws to regulate vehicles on beaches to the low tide.*
- Moorings – concern with increased pressure on infrastructure and pollution: *can address through the Coastal Plan (a plan change recently has been dealing with these issues)*
- Climate change: *emerging issues and the need for a precautionary approach are in the RPS. This is a general issue, and no tangata whenua specific examples were identified in the hui.*
- Identification and management of cultural landscapes: *in the coastal environment can be addressed pursuant to Policy 15 of the NZCPS. May be able to be addressed in the Coastal and Water and Soil Plans, but more relevant to district planning.*
- Impacts on archaeological / historic resources: *can be addressed in the earthworks provisions in the Water and Soil Plan. Possible Coastal Plan provisions could be considered. A cultural heritage inventory similar to that developed by the Auckland Regional Council could be considered.*
- Water take consents, and period of consent when tangata whenua water rights may be affected: *tangata whenua property rights in fresh water is an emerging issue.*
- Mining in areas of significance to tangata whenua: *identification of areas and criteria for prohibition can be addressed in the Water and Soil plan where they are related to discharges, landscape values, etc. More detailed regulation may be more appropriate in district plans.*
- Air quality, including dust from unsealed roads: *can be addressed in the Air Quality Plan and / or the Water and Soil Plan.*
- Genetically modified organisms: *largely a district planning issue, since GM is not classified as a discharge.*
- Monitoring by tangata whenua: *provided for in Method 8.1.8 of the RPS.*
- Sedimentation impacts: *can be addressed in the Water and Soil plan; and to an extent in the Coastal Plan. This is a general issue, but one tangata whenua specific example was identified in the hui. This was increased sedimentation over traditional kaimoana from resulting from marina operation.*

- Transfers and joint management: *provisions under s33 or s34 of the RMA can be considered for specific resources, locations or processes in all regional plans. No tangata whenua specific examples were identified in the hui.*
- Use of traditional place names: *formal legal recognition of place names is the responsibility of the NZ Geographic Board. Councils can use traditional place names, including in RMA plans. Bilingual signage can be promoted.*
- Seasonal restriction on earthworks (eg in the summer months only): *can be considered in the Water and Soil Plan.*
- Discharge of ballast water: *this is regulated by the Resource Management (Marine Pollution) Regulations 1998.*
- Integrated catchment management: *is supported in the RPS and can be implemented in the Water and Soil Plan.*
- Aquaculture Space: *identification of aquaculture space can be addressed in the Coastal Plan. Plan Change 4 for aquaculture regulation is still in appeals to the Environment Court. New RMA provisions for aquaculture regulation enacted in 2011 can be considered. Some of these (such as zoning to manage high demand) may be helpful to determining settlement space pursuant to the Māori Commercial Aquaculture Claims Act 2004.*
- Swamp kauri: *impacts of the extraction of swamp kauri from existing wetlands is regulated by the Water and Soil plan. Extraction from historic wetlands would not generally be regulated.*
- Able to swim in big rivers and drink from small rivers: *this was stated as an aspirational goal in one of the hui, and reflected in general tangata whenua feedback on fresh water management. This would require, at least for specified water bodies, standards above those in the National Objective Framework of the National Policy Statement on Fresh Water Management.*
- Provisions for Treaty Settlement land: *specific land use provisions are in district plans, but during negotiation and other processes the NRC can provide information to the Office of Treaty settlements and to the tangata whenua organisation in negotiation. This is required by Policy 8.3.3 of the RPS.*
- Notification: *provisions are needed to ensure the relevant tangata whenua are notified (or have interested party status) for consents in specific areas, or when there are potential impacts on specific resources.*
- Effect of sprays on honey bees: *provided for in principle by agricultural regulations. May need provisions specific to honey bees.*

- Waitangi Tribunal Wai 1040 Stage 1 Report: *the Tribunal's report¹¹ has determined that in 1840 Māori did not cede sovereignty in signing the Treaty. In the hui the importance of this finding to tangata whenua in Northland was noted. There has been no government policy or statutory response to the report, but it is an emerging issue.*
- Wai 262: *The Wai 262 claim was originally for indigenous flora and fauna, but was extended to include issues of intellectual property. The report¹² has not resulted in government policy or statutory response, but it contains important guidance on resource management and natural resource issues. This is an emerging issue.*
- Māori commissioners: *Method 8.1.6 develops a process for appointment and use of Māori commissioners.*
- Māori land: *only small remnants of Māori land remain, and negative impacts on that land and its development potential need to be avoided.*
- Containment of hull cleaning materials: *provisions for management exist and are being reviewed.*

¹¹ *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry Waitangi Tribunal 2014*

¹² *Ko Aotearoa Tenei Waitangi Tribunal 2011*

PART 5. GROUPING OF ISSUES WITH POSSIBLE TYPES OF RESPONSE

In 1.3 above the five origins of issues of concern to Māori are identified. In this section the issues identified in 4.2 above are grouped in these five categories.

5.1. ISSUES BASED ON TIKANGA, KAITIAKITANGA OR MĀTAURANGA WHICH DO NOT HAVE A DIRECT MAINSTREAM EQUIVALENT

- a. Usually terms and concepts of Māori environmental management do not have simple translations into English. These include, for instance, rahui, mātauranga, kaitiakitanga, and mauri. The RPS processes allow for development of descriptions or definitions of these terms, and for identifying the type of provisions in planning that are able to implement them. That process is yet to occur. Difficulties have arisen from limitations of the statutory definitions, such as that for “kaitiakitanga”. What needs to be avoided is having an inadequate definition given status in a formal planning document. What may be preferable for the regional plan reviews is to identify provisions which will support Māori values, concepts and processes without directly using the terminology.
- b. Cultural landscape identification needs an accepted methodology, and resources for its implementation. The issue was identified in the development of the RPS. While a cultural landscape methodology was not included in the RPS, 8.1.5(b) provides for its development. Implementation of a methodology could follow through regional planning provisions where relevant. Without an accepted methodology the results would be open to challenge. A robust methodology was required for identification of outstanding landscapes which have been included in the RPS. A similarly well-established methodology for cultural landscapes is required.
- c. Heritage resources are not limited to Māori heritage. However Māori heritage is by far the most extensive and most vulnerable of heritage resources. Heritage New Zealand Pouhere Taonga Act 2004¹³ provisions are not on their own sufficient for protection and management of the resources and RMA planning is required. Historic heritage is a matter of national importance in the RMA (s6(f)). While much of the management of heritage resources is more relevant to district than to regional planning, provisions such as for earthworks in the Water and Soil Plan can be considered for regulation. Heritage resources in the coastal marine area can be managed through provisions in the Coastal Plan. Policy 4.5.3 of the RPS requires identification and recording of heritage resources. Method 4.5.4 requires a multi-

¹³ This statute replaces the former Historic Places Act.

agency process for developing maps or schedules of historic resources. The RMA s2 definition of historic heritage captures the concept of a heritage landscape, rather than the sole focus on individual sites as in earlier regulation. Therefore there is some synergy between identification of cultural landscapes and historic heritage.

- d. Monitoring by Māori, using tangata whenua indicators as well as those based on Western science, is an opportunity for greater engagement in environmental management. It will also potentially provide measures of responses to environmental issues of concern to Māori. All monitoring has a cost, and hence priority resources and processes will need to be identified.
- e. Transfers of power (s33 of the RMA) and joint management arrangements (s34) are in principle able to be achieved, but have to date had almost no implementation. These provisions need not only apply to specific resources or areas, but could include delegated planning provisions (eg for Treaty settlement land or for papakāinga development). Specific examples of types transfers relevant to regional plans need to be identified. Policy 6.1.3 of the RPS says that council should delegate functions where it would result in increased efficiencies and effectiveness (this policy has general application i.e not just transfers to iwi). Provisions relating specific to iwi¹⁴ are needed.

5.2. IMPACTS ON A SPECIFIC RESOURCE WITH CULTURAL VALUE FOR MĀORI

- a. Māori consider tuna as a food source with high cultural value. A range of environmental factors are threatening the survival of tuna. The general water quality and other provisions are relevant to reducing impacts on tuna, and could be sufficient. However a separate section in the Water and Soil Plan for tuna could be considered.
- b. While tuna stocks have been reduced significantly in recent times, other native fresh water species have been rare or absent from Northland waterways for many years. Water quality management provisions may be a sufficient response in regional planning, but more specific details may be able to be identified.
- c. The way in which human remains are disposed of can be of cultural concern to Māori. This includes scattering of human ashes in places like fishing grounds, or discharges from crematoria or mortuaries. These cannot be defined as discharges under the RMA, and hence would not be able to be regulated by regional plans. The RMA contaminant definition only includes those substances which change the physical, chemical or biological conditions of land, air or water.¹⁵

¹⁴ While the RMA refers to iwi authorities, in practice hapū, marae etc can be considered.

¹⁵ In s2 of the RMA

5.3. GENERAL ISSUES WITH SPECIFIC MĀORI CONCERNS

- a.** Wetlands historically directly provided resources such as food and weaving materials, and supported a range of species through providing nursery areas. Consequently Māori frequently place greater value on wetlands than many others do, and may seek stronger provisions for protection and restoration than is often provided.
- b.** Direct disposal of human waste to waterways and the marine area is culturally offensive to Māori. Māori will not accept the more flexible and less constraining provisions often sought by councils.
- c.** While general nature and extent tangata whenua rights to fresh water have yet to be fully determined, specific water bodies have historic and unextinguished rights. An example is Poroti Springs where ownership of the water body was recognised by the Māori Land Court. The management of water quantity, and the allocation of rights to extraction, need to be sensitive to those extant rights and any subsequent rights claimed.

5.4. GENERAL ISSUES

- a.** Potential large scale mining activities have been of concern to Māori in the region, either for their direct impact on the land or for the flow on effect of toxic discharges on fresh and marine water. Areas of concern need to be identified so that provisions for them can be developed. Prohibition of mining may be appropriate in some cases. Prohibition is the greatest type of constraint available in the RMA, and establishing a prohibition status needs to follow best practice and be consistent with relevant case law. A separate section in the Water and Soil Plan for large scale mining can be considered.
- b.** Integrated management in general, and in particular integrated catchment (ICM), is often sought by Māori. The NPS on Freshwater provides the basis for ICM in RMA planning, and the RPS provisions strongly support ICM implementation. This can be addressed in the Water and Soil Plan.

5.5. ISSUES RELEVANT TO LEGISLATION AFFECTING MĀORI

- a.** Land administered by Te Ture Whenua Māori Act 1993 is subject to many constraints. There are processes under that Act which are similar to those under the RMA, but are not aligned with it (such as partition and subdivision). Much of

this land has not been able to be developed, and hence has mature native flora on it. Provisions to preserve such flora should be flexible with respect to the development needs of the Māori owners. Māori land is frequently undeveloped because of the constraints of Māori land law, and not because past lack of development aspirations among owners. Much of this land has mature native re-growth cover, with consequent development constraints.

- b.** Land provided as part of a Treaty settlement may have development potential. The proposed Auckland Unitary Plan has provisions for existing and future settlement land. Similar provisions could be considered for the regional plans where relevant. The RPS Policy 8.3.3 requires councils to work with iwi and the Crown during and following Treaty settlement. Impacts of infrastructure development may be relevant for regional planning.
- c.** The 2011 amendments to aquaculture regulation in the RMA included provisions for planning and zoning in the event of high demand for space. The aquaculture settlement is based on a projection of future industry growth, and settlement assets are determined by a Regional Aquaculture Agreement (RAA). Unanticipated development for new species or technologies could follow an RAA being concluded and precede its review. In general this would be difficult to provide for in an RAA review clause, but could be more easily included when the statutory provisions for high demand were used. Criteria for using the high demand provisions could be included in the Coastal Plan. These would assist NRC in determining if or when to use the high demand provisions.
- d.** Mātaitai, taipure and customary fishing are managed by fisheries regulations. The NZCPS in 2(f)(iii) requires, when taking into account the principles of the Treaty, measures including “having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taipure, mahinga mātaitai, or other non-commercial Māori customary fishing”.

PART 6. PROPOSED PROVISIONS FOR REGIONAL PLANS

In this section provisions are proposed for the issues identified by tangata whenua which are relevant for regional plans. Most of these provisions are drafted in an RMA planning format. The language is intended to guide formal planning, but is not proposed as final plan content.

6.1. PROPOSED GENERAL PLANNING PROVISIONS

These provisions are general in the sense that they apply across all or a number of resources. They are all derived from issues specifically identified by tangata whenua.

a. Mauri

Issue: Mauri for natural resources refers to their life force and vital essence. For many natural resources the mauri is degraded.

Objective: To maintain or enhance the mauri of natural resources.

Policy: Avoid impacts that would diminish the mauri of natural resources.

Explanation: Mauri is a central concept of kaitiakitanga. In general maintained or enhanced mauri is achieved through sustainable environmental management. Method 8.1.6(b) of the RPS provides a process for determining operational meanings of terms such as mauri.

b. s33 transfers of power, and s36B joint management agreements

Issue: The opportunity for a transfer of powers to iwi authorities has existed since 1991 but has not been used. The joint management provision is more recent and has been used only once

Objective: To enable s33 transfer of powers to iwi authorities and s36B joint management agreements with iwi authorities.

Policy: Transfers of powers and joint management agreements will be supported when the iwi authority can demonstrate an ancestral connection to the land or resource; the iwi authority has a formal mandate to represent the relevant iwi, hapū or whanau; and the iwi authority can demonstrate a capacity to meet the relevant RMA requirements¹⁶.

c. Impacts on Māori historic heritage resources

Issue: Much Māori historic heritage is only discovered accidentally during earthworks Heritage resources which are unknown and hence not mapped or included in schedules need a precautionary effects based approach to their

¹⁶ This policy is based on a similar provision in the Auckland Unitary Plan.

management. Unless effective management provisions protect these currently unknown resources significant modification or destruction can result.

Issue: Much Māori historic heritage is in or near the coastal environment.

Objective: Historic heritage resources of significance to Māori, including those which are not scheduled or known, are protected from impacts of earthworks activities.

Policy: Alert layers and / or criteria will be developed for guidance for determining probable location of heritage resources.

Policy: A precautionary approach which will require an assessment of effects on historic heritage will be required for consents for earthworks when they are in or near the coastal environment; when they are near a known historic heritage site; when they are within a known historic landscape; and when there is traditional knowledge of relevant historic heritage.

Policy: A protocol will be developed as a condition of earthwork consent (in relevant areas identified by criteria, alert layers or other means) with the relevant tangata whenua for managing the accidental discovery of heritage resources.

Explanation: In areas where a precautionary approach is needed standards for initial soil stripping can be developed. These could include the size and nature of the machinery, presence of observers etc.

d. Māori Land / Treaty settlement land

Issue: Remnant Māori land and Treaty settlement land is small in area, but provides the opportunity for social, cultural and economic development for Māori. Its use and development should not be subject to constraints which can be avoided.

Objective: The occupation, use and development of Māori land and Treaty settlement land is not adversely affected by the location of new infrastructure.¹⁷

Policy: Alternative routes and locations will be sought for new infrastructure that could adversely affect the occupation, use and development of Māori land and Treaty settlement land.

e. Processing of consent applications

Issue: A targeted process for engagement of tangata whenua in consent applications is needed.

Objective: To ensure tangata whenua have appropriate engagement in consent application processes.

Policy: Criteria and / or alert layers or other mechanisms are developed for specific

¹⁷ This policy is based on a similar provision in the Auckland Unitary Plan.

types of locations (or specific resources) of significance to tangata whenua.

Policy: When criteria or alert layers determine tangata whenua significance for a consent application, a cultural impact assessment will be required as part of the assessment of environmental effects (pursuant to Schedule 4 of the RMA). If the cultural impact assessment is not of adequate the application will be returned (pursuant to s88(3) of the RMA).

Explanation: Method 8.1.5(b) of the RPS requires councils to include an analysis of the effects of any resource consent application on tangata whenua and their taonga. For many applications there will be no effects to be managed, and a simple statement to that effect should be sufficient. However there will be circumstances in which it is unclear to those processing consents whether there are relevant issues, and if further information is required. The criteria and / or alert layers will help determine the need for a cultural impact assessment. RPS Method 8.1.6(a)(i) requires councils to determine when a cultural impact assessment is required, what it should include, and how it should be taken into account. The intent of these policies is to ensure that: appropriate measures are taken when required; neither council nor tangata whenua time is wasted when no response is needed; and decisions on responses are made within an informed context.

f. Emerging issues, Waitangi Tribunal reports:

Wai 262 report: The Waitangi Tribunal report on the Wai 262 flora and fauna claim, *Ko Aotearoa Tenei*, contains useful information for understanding tangata whenua natural resources values. There has not been a government policy or legislative response to the report.

A copy of *Ko Aotearoa Tenei* should be available for consent officers and planners for guidance and understanding working on matters of importance to Māori. In particular the sections on natural resources and the RMA should be considered. The Māori perspective on natural resources and associated property rights in the report should provide guidance for those working on natural resources issues of significance to Māori.

Wai 2358: The Tribunal has issued an interim report on freshwater property rights.¹⁸ The Tribunal has affirmed that Māori have extant property rights in freshwater. The prime focus of the interim report was the partial sale of hydroelectric generation companies. Other property rights are yet to be more fully investigated and reported on. There are water bodies in Northland for which

¹⁸ *The Interim Report on the National Freshwater and Geothermal Resource Claim* Waitangi Tribunal 2012

Māori property rights have been established in law. Further findings of the Tribunal, and potentially government policy or legislation, will determine how those findings and any recommendations are implemented.

A copy of the Tribunal's report should be made available to consent officers and planners working on water management issues for water bodies identified as having existing Māori property rights. The nature of the Māori claims to further rights in Wai 2358 should be used as guidance on Māori response to water management issues. NRC should monitor further developments and reports on the Wai 2358 claim.

Wai 1040: The report on the first stage of this claim determined that by signing the Treaty Māori did not intend to cede sovereignty. This is a finding of significance nationally, and in Northland it is the highest importance to tangata whenua. There is no government policy or legislation in response to this finding.

Any consideration of the sovereignty issues could only be implemented through constitutional change. The current government has indicated it will not have any response to the finding. However the finding is likely to influence future Treaty settlement provisions for co-management and co-governance arrangements for natural resources.

A copy of the report should be made available to staff who interface with Māori. The findings reinforce former challenges to legitimacy of the Crown and its agencies, including councils. Irrespective of there being a policy or statutory response, staff should understand the nature of the claim and the report and hence the types of questions and challenges that arise.

6.2. PROPOSED COASTAL PLANNING PROVISIONS

a. Cultural landscapes

Issue: The NZCPS relies on identification of cultural landscapes in its policies. Giving effect to the NZCPS is assisted by the identification of cultural landscapes and provisions for their management.

Objective: Cultural landscapes in the coastal environment are identified. Policy: A methodology for identification of cultural landscapes will be developed by working with tangata whenua.

Policy: Cultural landscapes in the coastal environment will be identified.

Policy: Provisions are developed for the management of cultural landscapes.

Explanation: Policy 2(g) of the NZCPS requires that when taking into account the principles of the Treaty recognition of matters including cultural values using methods including landscape identification. Policy 15 of the NZCPS includes the requirement to have regard to cultural and spiritual values of tangata whenua in their expression as cultural landscapes and features (Policy 15(c)(viii)). To be able to properly give effect to the NZCPS identification of and provisions for cultural landscapes is necessary.

b. Aquaculture space

Issue: Development of a new species for marine farming, or for new methods for existing species, can result in unanticipated high demand for aquaculture space. New species and methodologies may require new planning provisions and allocation decisions. Use of the s165ZB provisions for high demand for aquaculture space can enable more effective aquaculture settlement agreements to include new species and methodologies which become viable after finalising a regional aquaculture agreement.

Objective: High demand for aquaculture space for new species or methodologies will be effectively managed by use of s165ZB provisions where appropriate.

Policy: Criteria will be developed to determine when an application under s135ZB of the RMA for suspension of applications for aquaculture space is appropriate.

Explanation: The provisions of s165ZB were included in the RMA in the 2011 aquaculture reforms. At the same time a new method for determining the aquaculture settlement entitlement, based on projection of future space, was included in the RMA and in the Māori Commercial Aquaculture Settlement Act 2004. The settlement will be delivered to iwi on a regional basis, and a regional aquaculture agreement (RAA) will determine the regional terms of settlement. Since the settlement is based on future projected growth, it is more difficult to provide for new and unexpected development opportunities during the term of RAAs. The s165ZB provisions allow for allocations of aquaculture space which would have a 20% settlement requirement, and could be prospectively recognised in RAAs. For council the provisions of s165ZB enable a considered approach to regulating a new activity. For iwi they enable more effective review provisions in regional aquaculture agreements.

c. Mahinga mataitai and taiapure

Issue: Mahinga mataitai and taiapure provide opportunities for Māori to exercise kaitiakitanga over fisheries resources which may be affected by RMA planning provisions.

Objective: In taking into account the principles of the Treaty regard will be had to regulations of mahinga mataitai and taiapure.

Policy: NRC will liaise with mahinga mataitai and taiapure management entities to determine potential impacts of RMA planning.

Explanation: This gives effect to NZCPS in Policy 2(f)(iii)

d. Integration

Issue: Where iwi and hapū boundaries are not aligned with local body boundaries inconsistencies and lack of integration of planning can occur.

Objective: Integrated management in the coastal environment across iwi and hapū boundaries will be provided. Policy: NRC will work with relevant iwi and hapū entities to achieve integration across relevant local body boundaries.

Explanation: This gives effect to NZCPS Policy 4(a)(iii). In Northland the significant example is the management of the Kaipara Harbour across the boundary with the Auckland Council. Ngati Whatua and Te Uri o Hau have interests across this boundary.

6.3. PROPOSED WATER AND SOIL PLANNING

In 1.3 of this report categories of Māori concerns with RMA planning are identified. , These include general issues for which Māori wish to contribute to the general debate. The Māori perspective may seek different degrees of response, but not Māori specific provisions. Proposals in this section are therefore less detailed in planning terms.

a. Water quality management

Tangata whenua have proposed that it should be possible to swim in all big rivers and drink from all small rivers. This would require a far higher standard than is sought through the National Objectives Framework of the National Policy Statement on Freshwater Management. Realistically achievement of such a goal would need to be staged over time. Monitoring of stock impacts of on water quality has been spearheaded by the Māori community through the work of Milan Ruka. The demonstrated concern of the Māori community in principle and practice can be recognised by setting incrementally higher standards over an achievable time frame.

b. Mining

Tangata whenua have been concerned about the potential impacts of large scale mining, and in particular the management of tailings which contain heavy metals.

Recognition of the potential of impacts of tailings dams should inform Water and Soil provisions.

c. Drainage of wetlands

Indigenous wetlands have provisions for their protection. The definition of “indigenous wetland” is broad, and should capture all areas of concern. In the operative Water and Soil Plan 24.4 use of water from an indigenous wetland is a non-complying activity. In the same plan 27.4 allows for non-complying drainage. It appears that these provisions have either not been used or very rarely used. Deleting 27.4 from the plan would therefore have little apparent negative consequence, but could provide the extra protection that tangata whenua seek.

d. Impacts on tuna (eel) and indigenous fish

The Parliamentary Commission for the Environment has reported on the state of long fin eels.¹⁹ The report includes proposals for protection of eel habitat and fish passage. Standards for activities which can impact on the habitat of inanga (whitebait) are being considered. Similar standards can be developed for tuna and indigenous fish.

PART 7. CONCLUSIONS

This report presents a range of issues identified by tangata whenua of the region. Planning solutions for these issues are proposed. The report will be used by NRC when developing their review of the regional plans. Tangata whenua can use the report as a starting point for their response to that review in consultation, submission and potentially appeals.

¹⁹ *On a Pathway to Extinction? An investigation into the status and management of the longfin eel* PCE 2013

APPENDIX A – IWI PLANNING DOCUMENTS

The following iwi planning documents have been lodged with NRC and must be taken into account in plan changes to implement the review of the regional plans:

Kia matau, kia mohio e ora ana Te U Kai Po – Nga Hapu o Whaingaroa
Environmental Plan – Patuharakeke Te Iwi Trust
Nga Tikanga me te Taiao o Ngati Hine – Ngati Hine
Environmental management plan 2007 – Ngati Rehia
Te Iwi o Ngatiwai Iwi Environmental Policy Document – Ngatiwai
Ngatiwai Aquaculture Management Plan – Ngatiwai
Te Uri o Hau Kaitiakitanga o te Taioa – Te Uri o Hau
Nga Hapu o Mangakahia Plan – Mangakahia Maori Komiti
Working Draft Hapu Environmental Management Plan – Kororareka Marae Society
Hapu Environmental Management Plan – Nga Hapu o Te Wahapu o Te Hokianga Nui a Kupe
Whakatakoto Kaupapa mo te Hapu o Ngati Kuta – Ngati Kuta ki Te Rawhiti

APPENDIX B – PROCESS OF REPORT DEVELOPMENT

This report has been developed in two stages. The first stage was an initial scoping of tangata whenua issues that needed to be addressed in the review of the Northland Regional Council's (NRC's) regional plans. This first stage also proposed an outline of how to address those concerns in the regional plans.

The first stage of the report was made public so tangata whenua had the opportunity to respond by identifying omissions, errors and any other changes needed. NRC then held workshops on specific resource issues, and held three hui in the region (with the district councils). These processes have provided further issues, and guidance on how management responses can be developed.

In this second stage of the report additional sections propose RMA planning provisions to address the issues. The second stage of the report will also be open for comment from iwi. The final version of the report incorporating these responses will then inform the relevant sections of the plan changes needed for implementation in the plan review process.