

Tangata whenua participation in resource management

How can we improve tangata whenua participation in resource management in our regional plans? This is a summary of our initial ideas.

What is tangata whenua participation in resource management?

This review looks at tangata whenua participation in resource management processes. In particular:

- The aspirations of tangata whenua for their active participation in decision-making, management, and monitoring of their lands, seas and taonga.
- How these aspirations have been provided for in the regional plans.
- Practical issues for tangata whenua and the regional council.
- The extent to which council commitments in the current regional plans have been implemented, and if not why.
- Looking to the future, what it is council could/should be doing.

This review does not look at the issues tangata whenua have with particular resources. These are covered in the other topic reviews.

Overview of the regional plans review

This is one of 10 summary reports for the review of Northland's regional plans.

Northland has three regional plans:

- Regional Air Quality
- Regional Coastal Plan
- Regional Water and Soil Plan

We are required to review the regional plans every 10 years. We have reviewed all three regional plans at the same time.

The review is the first step to prepare a new regional plan. The review looks at:

- What we know about our resources and their use;
- Lessons learnt from administering the regional plans
- Current legal and policy drivers; and
- Feedback from key stakeholders and tangata whenua

The review concludes with options or recommendations for the new regional plan.

We've split the review up into 10 topics:

- Water quality
- Water quantity
- Marine ecosystems and biodiversity
- Coastal water space
- Air quality
- Significant natural heritage values
- Māori participation in resource management
- Natural hazards
- Infrastructure and mineral extraction
- Hazardous substances

For more information go to - nrc.govt.nz/newregionalplan

What do tangata whenua want?

All natural and physical resources and the management of them are of significance to tangata whenua and while this may vary from iwi to iwi and within iwi, there are a number of generic cultural issues that can be considered across the region. The following have been derived from iwi and hapū management plans held by council:

- Involvement of tangata whenua in decision-making not as a stakeholder holder, interested party or other; but as a joint partner in making the decision on all activities, proposals and consents within their areas of interest.
- Consultation with tangata whenua at all levels of Māoridom including hapū and iwi authorities. In particular, regarding resource consents, plans, policies and strategies that affect their relationship with natural and physical resources.
- Iwi and hapū management plans are 'recognised and provided' for in all regional plans.
- Tangata whenua are involved in monitoring resource consents and their involvement is resourced by resource consent holders. Of particular interest to tangata whenua is any discharge to, development in or near, waterways, water bodies and the coastal marine area.
- Relationships are important to tangata whenua who view any council relationship to be a partnership under Te Tiriti o Waitangi¹.

What's the relevant law and policy?

There are a range of laws and policy documents that regional plans must implement. The most relevant are:

- Resource Management Act 1991.
- New Zealand Coastal Policy Statement.
- National Policy Statement on Freshwater Management 2014.
- The Proposed Regional Policy Statement.
- Treaty settlement legislation.

1 Resource Management Act 1991

There are many references to Māori interests the RMA including:

- 'The relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, and other taonga' is a matter of national importance which must be recognised and provided for by decision makers (section 6(e)).
- 'The protection of historic heritage' which includes 'sites of significance to Māori, including wāhi tapu' from inappropriate subdivision, use, and development is a matter of national importance which must be recognised and provided for by decision makers (section 6(f)).
- The protection of recognised customary activities is a matter of national importance which must be recognised and provided for by decision makers (section 6(g)).
- 'Kaitiakitanga' is a matter which decision makers must have particular regard to (section 7(a)). It is defined in section 2 as meaning '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'.

¹ The Treaty of Waitangi

- All persons exercising functions and powers under the Act must 'take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)' (section 8).
- Local authorities must keep and maintain for each iwi and hapū within the region a record of the contact details of any group within the region that represent hapū for the purpose of this Act, planning documents recognised by each iwi authority and lodged with the local authority, and any area over which one or more iwi or hapū exercise kaitiakitanga (section 35A).
- If the Minister for the Environment is considering preparing a national policy statement he or she must seek and consider comments from relevant iwi authorities (section 46(a)).
- During the preparation of a proposed policy statement or plan, the local authority is required to consult with 'the tangata whenua of the area who may be so affected, through iwi authorities' and any customary marine title group in the area (First Schedule, clause 3(1)(d)-(e)). Such consultation is not required where the matter has been the subject of consultation with the same party under another statute within the 36 months preceding the public notification of the proposed policy statement or plan (First Schedule, clause 3C). Clause 3B of the First Schedule sets out the requirements for consultation with iwi authorities. These include considering ways in which the local authority may foster increased capacity of iwi authorities to respond to an invitation to consult, the establishment and maintenance of processes to provide opportunities for iwi authorities to consult, enabling iwi authorities to identify resource management issues of concern to them and indicating how those issues have been or are to be addressed.
- When preparing a regional policy statement, regional plan or district plan, regional councils and territorial authorities are required to take into account any relevant planning document recognised by an iwi authority and lodged with the council, to the extent that its content has a bearing on resource management issues of the region (sections 61(2A), 66(2A) and 74 (2A)).
- In relation to a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the council must when preparing or changing a regional policy statement or regional plan recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area and take into account other matters in that document.
- A local authority or applicant does not have a duty to consult with any person, including tangata whenua, about a resource consent application unless this is required by other legislation (section 36A).
- Where a protected customary right is likely to be adversely affected by a proposed activity, the assessment of effects accompanying the resource consent application must include a description of possible alternative locations or methods (First Schedule, clause 1A).

2 Treaty settlement legislation

Legislation is needed to implement Deeds of Settlement (negotiated treaty settlement). Treaty settlement legislation ensures the finality of the settlement by removing the ability of the courts and Waitangi Tribunal to re-open historical claims. Once the Bill is passed through parliament and signed by the Governor-General, the legislation then allows the negotiated mechanisms within settlements to be implemented.

Statutory acknowledgements are used in Treaty settlement legislation as a means by which the Crown formally acknowledges statements made by an iwi of their cultural, spiritual,

historical and traditional association with a statutory area. The intention being to recognise the mana of settlement groups in relation to identified sites or areas.

For local authorities the purpose of statutory acknowledgements is to ensure that consenting authorities; have regard to such areas, forward summaries of all relevant resource consent applications to the relevant claimant group governance entity and to enable that entity or member of the relevant iwi to cite a statutory acknowledgement as evidence of the association of the iwi with the areas to which the statutory acknowledgement relates.

Council must also 'have regard' to statutory acknowledgements when forming an opinion (section 95E(c)) as to whether an entity may be adversely affected by the granting of a resource consent for activities which may impact on a statutory area.

Local authorities are also required to attach information recording statutory acknowledgements to all statutory plans that either wholly or in part, cover the statutory area.

3 National Policy Statement Freshwater Management 2014

Objective D1 of the NPS for freshwater management states that:

“To provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to”.

4 New Zealand Coastal Policy Statement 2010

Policy 2 of the New Zealand Coastal Policy statement 2010 concerns the Treaty of Waitangi and the connection and relationships that tangata whenua have with the coastal environment, promotes tangata whenua involvement in coastal decision-making, and recognises the importance of Māori cultural and heritage values.

Māori have strong traditional and cultural associations with the coast. Policy 2 focuses on ways in which local authorities can actively involve tangata whenua in their planning processes and decision-making to enable tangata whenua to be active participants in coastal planning and management.

5 The Proposed Regional Policy Statement for Northland

The Proposed Regional Policy Statement provides for a protocol to be developed between regional council and Iwi Authorities to determine when the council will²:

- Require an assessment of environmental effects and what it should include, and how council will use and take into account any cultural impact assessment;
- Appoint and use independent commissioners for resource consent applications and plans changes;
- Hold hearings on marae and provide translation services;
- Notify tangata whenua of resource consent applications and confer affected party status; and
- Determine common meanings and methodologies for key Māori concepts, values and practises and a process for updating them.

² Northland Regional Council (2014) Proposed Regional Policy Statement, Section 8.1.6.

What we said we would do

This section outlines the provisions in the current regional plans in respect to tangata whenua participation in resource management processes.

1 Regional Air Quality Plan

The Regional Air Quality Plan has little in the way of policies or methods guiding processes for tangata whenua participation for air quality management. This is partly a reflection of air quality not being a significant issue for tangata whenua generally³. Specific provisions are:

- A method committing to the setting up of an air quality liaison group for the Marsden Point airshed and for it to include local iwi⁴.
- Information requirements for air discharge permit applications include a report of any consultation undertaken with local iwi⁵.
- Acknowledgment of the ability to transfer powers to iwi and others (though no commitment to)⁶.

2 Regional Coastal Plan

The Regional Coastal Plan makes a range of commitments to include iwi and/or tangata whenua in resource management processes⁷:

2.1 Consultation

The Regional Coastal Plan requires consultation with:

- tangata whenua over development proposals within the coastal marine area which may affect resources of significance to tangata whenua⁸;
- iwi authorities over the traditional and cultural relationships of Māori with natural and physical resources within the coastal marine area of their rohe⁹;
- iwi authorities on the type and extent of available information on heritage value within the coastal marine area¹⁰;
- tangata whenua regarding possible means of protecting wāhi tapu and other sites of cultural significance¹¹; and
- Māori to identify areas where restriction of public access to and along the coastal marine area is sought to protect areas of traditional, spiritual or cultural significance¹².

The Regional Coastal Plan encourages applicants to consult with tangata whenua over development proposals within the coastal marine area which include a discharge of contaminants to coastal waters¹³.

³ See for example the proposed Regional Policy Statement Issue 2.6, which does not identify air quality as regionally significant. However there are general references to air quality in some hapū and iwi planning documents with the most prominent air quality issue for tangata whenua being dust from unsealed roads – see the “Air quality” topic review for discussions on this.

⁴ Method 6.18(2)

⁵ Information Requirements, Section 11.1(m)

⁶ Other Matters, Section 14.3

⁷ These are mainly dealt with in Section 11 (Recognition of and Provision for Māori and Their Culture and Traditions).

⁸ Method 11.5.1

⁹ Method 11.5.2

¹⁰ Method 12.5.1

¹¹ Method 12.5.6

¹² Method 10.5.10

2.2 Decision-making

The Regional Coastal Plan states that a tangata whenua representative will be included on hearing committees (where appropriate) for resource consents in taiapure and maataitai reserves and waters classified for cultural purposes¹⁴.

2.3 Advice and information sharing

The plan states that the council will provide information/advice to:

- Iwi authorities, on coastal resource management structures¹⁵, and land and water information generally¹⁶.
- Tangata whenua regarding possible means of protecting wāhi tapu and other sites of cultural significance.
- Tangata whenua for their applications for taiapure or maataitai reserves¹⁷.

2.4 Monitoring

The Regional Coastal Plan commits to investigating options for tangata whenua involvement in monitoring use, development and protection of resources within the coastal marine area¹⁸.

2.5 Management plans

The Regional Coastal Plan says that the council will assist iwi authorities in the development of iwi management plans for resources within the coastal marine area of their rohe¹⁹.

3 Regional Water and Soil Plan

The Regional Water and Soil Plan makes a range of commitments to include iwi and/or tangata whenua in resource management processes²⁰:

3.1 Consultation

The Regional Water and Soil Plan encourages applicants for resource consent for activities that may have an adverse effect on the taonga of tangata whenua to consult with tangata whenua prior to their application being processed²¹.

In consultation with tangata whenua council will²²:

- Assess the most efficient and effective means of monitoring any adverse effects of resource use and developments, with particular reference involving tangata whenua.
- Subject to Section 33 of the Resource Management Act 1991, consider transfer of power where iwi represents the appropriate community of interest²³.

¹³ Method 11.5.4

¹⁴ Policy 11.4.4 and Method 11.5.6

¹⁵ Method 10.5.8

¹⁶ Method 12.5.9

¹⁷ Policy 37.3.1 and Method 37.4

¹⁸ Policy 11.4.4

¹⁹ Policy 11.4.5

²⁰ These are mainly dealt with in Section 6 (Recognition of and Provision for Māori and Their Culture and Traditions).

²¹ Methods of Implementation, Section 6.5

²² Method 6.5.4

²³ Method 6.5.4 (b)

3.2 Advice and information sharing

Council will:

- Where requested by an iwi authority, provide appropriate land and water resource information held by the council²⁴.
- Develop guidelines for when and how resource consent applicants should ask tangata whenua about the cultural effects of certain activities²⁵.
- Facilitate a land management working group (to include iwi) who will review best land management practices²⁶.
- Liaise with community agencies and groups (including iwi), and hold public meetings to collect and disseminate information about the results of monitoring within catchments²⁷.

Practical issues

The following is a brief description of the main practical issues that affect and/or constrain tangata whenua participation:

- A lack of understanding by tangata whenua of council's RMA planning documents and how to use them effectively.
- A lack of detail provided by tangata whenua on what exactly their cultural issues are when they provide comments or submissions on applications, for example, wāhi tapu.
- Lack of clear guidance to, and understanding by, council staff of what are considered to be "cultural issues".
- Large amount of effort required by staff in dealing with matters raised by some tangata whenua which cannot be dealt with through a consent process.
- Overlapping interests of tangata whenua often leads to confusion on who is the appropriate tangata whenua group or grouping to talk to.
- Tangata whenua views of kaitiakitanga differ to the legal description in the RMA.
- A lack of understanding by tangata whenua of what the limits and parameters of council staff are regarding cultural impacts for consent applications.
- Popular belief by tangata whenua that tangata whenua consultation under the RMA is mandatory.
- The resource consent decision does not provide for effective kaitiakitanga.

What have we done well?

The three following matters below relate specifically to the policies and methods of the regional plans.

²⁴ Method 6.5.5

²⁵ Method 6.5.6

²⁶ Methods of Implementation, Section 12.7

²⁷ Methods of Implementation, Section 13.5

1 Consultation

The RMA no longer requires applicants for resource consent to consult with tangata whenua. However, council actively encourages resource consent applicants to consult with tangata whenua prior to lodging applications for resource consents especially for more major applications and if an applicant has contacted council before they make an application.

Council also maintains the policy of circulating all applications for resource consent to tangata whenua providing them the opportunity to comment on the activity and its likely impact on natural and physical resources.

The council supports the preparation of iwi/hapū management plans by providing advice and or funding. Groups are encouraged to identify methods of protecting sites of cultural significance, identify cultural relationships with natural and physical resources. In turn the council must consider these documents when making or changing any statutory plan.

2 Advice and information sharing

As above, council retains its policy of circulating all resource consent applications to interested groups on its database. This is over and above the requirement to circulate summaries of all notified applications to the two groups with treaty settlement legislation.

Council has also developed a series of pamphlets which outline how to apply for resource consent. Within these, provision has been made to

- reflect the provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 and
- how and who to contact when engaging tangata whenua in regards to ascertaining information in relation to the effect of a proposed activity on cultural practices.

Information is also provided to iwi, hapū and Māori groups in respect to resources within their area such as mapping, consented activities or data council might hold.

3 Monitoring

A Joint Iwi Monitoring Fund was established in 1996/1997 to provide Māori with the opportunity to undertake monitoring projects within Northland. This fund is outside the scope of the regional plans it was developed in consultation with Māori to address some of their concerns about the use and development of natural and physical resources. The fund is an annual contestable fund of \$15,000.

4 Management plans

The council supports the preparation of iwi/hapū management plans by providing advice and an annual contestable fund of \$20,000 that iwi groups can apply to for the development of the environmental component of iwi/hapū management plans.

What we have not done well?

1 Decision-making

Within the Northland Regional Council's region there is only one Taiapure (Waikare Inlet Taiapure 1997). As per the Regional Coastal Plan (RCP), hearings for the establishment and subsequent changes to consent for a marina within this area have included a tangata whenua representative.

Whilst this is in line with the RCP it isn't necessarily reflective of good practice, rather, that as a consenting authority, given the number of concerns raised by Māori council made the

decision to have an independent hearings panel which happened to include a tangata whenua person.

It does not reflect a procedure whereby addressing the method as outlined in the RPC and therefore is not embedded into best practice procedures.

2 Advice and information sharing

The approach to providing information such as holding public meetings to collect and disseminate information about results of monitoring, or the provision of information to iwi is undertaken in an adhoc manner and only if requested. There are no clear processes as to how council will achieve these targets or measure outputs.

In the past council circulated a regional panui to Māori which highlighted all such information. The panui was circulated four times a year. Aside from this, there is no set mechanism in which to achieve or monitor the effectiveness of how council engages the wider Māori community in regards to the provision of information.

3 Monitoring

Council consulted with Māori as to the best means of achieving participation of Māori in resource management. This resulted in the establishment of the monitoring and plan development funds.

Whilst technical expertise and financial support is provided for, the uptake and capacity of groups to undertake either monitoring projects and or write plans is limited.

What needs to change in the regional plans?

The simple answer is we don't know.

Tangata whenua participation in council resource management processes was analysed and addressed in some detail during the preparation and drafting of the Proposed Regional Policy Statement (for Northland).

At this time, we do not think that the plans could say anything significantly more than what the Proposed Regional Policy Statement already commits to. We think that these commitments need to be tested and implemented before we start thinking about whether the regional plans could add any value.

At the tangata whenua workshops²⁸ there was sentiment that the proposed Regional Policy Statement sets out a good set of actions for promoting tangata whenua participation in resource management and priority should be given to their implementation.

Another aspect to think about is whether regional plans are the right place to set out how council will involve tangata whenua in resource management processes. Other options could include the Long Term Plan or a stand-alone council policy.

²⁸ A series of workshops were held at Kaitiāia, Kaikohe and Whangarei in November 2014 which focussed on identifying environmental issues of concern for tangata whenua.