Mana Whakahono ā Rohe guidance

Ministry for the Environment
Manatū Mō Te Taiao

New Zealand Government

Pou Taiao
Iwi Leaders Group

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Ministry for the Environment
Manatū Mō Te Taiao

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We also acknowledge the feedback given on the draft guidance and suggestions for how the Ministry for the Environment could further support the implementation of Mana Whakahono ā Rohe.

He karere ki ngā kaipānui

Kei raro i ngā tarutaru, ko ngā tuhinga a ngā tūpuna
Beneath the herbs and plants are the writings of the ancestors

I te whakamanatanga o te Ture mō te Whakahaere Rawa (te RMA) i te tau 1991, he wāhanga hei manaaki i te tangata whenua kia whai wāhi ki ngā tukanga o te RMA. I whakamana te RMA i Te Tiriti o Waitangi me te kaitiakitanga. Ā, e tautuhi ana, hei take hiranga ā-motu, i te hononga o te Māori me tō rātau ahurea me ngā tikanga e pā ana ki ō rātau whenua tuku iho, wai, wāhi, wāhi tapu me ētahi atu taonga, me te tiaki i ngā tika tuku iho. Ko ēnei āhuatanga o te RMA i whakanuihia i te mea he māia, he auaha hoki i taua wā.

Kāore i whakaūtia aua paiherenga i ngā wā katoa e te hunga whakatinana i te RMA, nā tēnei i pā mai ngā raruraru nui ki te tangata whenua, me te whakaawe i tō rātau tūranga hei kaitiaki. Otirā, he maha ngā hapori kāore i whai wāhi atu ki ngā whai wāhitanga whānui e wātea ana ki te tiaki me te whakahaere i te taiao tūturu i roto i tō rātau rohe.

He anga whakamua te whakaurunga o ngā wāhanga Mana Whakahono ā-Rohe i roto i ngā menemana 2017 ki te RMA mō te whakatika i tēnei, mā te whakanui ake i te wāhanga ki te tangata whenua kia whai wāhi mai ki ngā tukanga me ngā whakataunga RMA. He āhuatanga te Mana Whakahono ā-Rohe e taea ai e te tangata whenua me ngā kaunihera te whakamahi ki te matapaki me te whakaae tahi me pēhea tā rātau mahi tahi i raro i te RMA, mā tētahi āhuatanga e hāngai ana ki a rātau ake. Ko te tūmanako mā te Mana Whakahono ā-Rohe e tuitui ngā taura here me te waihanga tukanga e paneke whakamua ai tātau kia puta ai ngā hua pai rawa mō te taiao me te iwi whānui.

Kāore pea te Mana Whakahono ā-Rohe e tika ana ki ngā hiahia o ngā tāngata whenua katoa. Engari, he wāhanga tēnei hei kukume mai i ngā kaunihera ki te kōrerorero. He rerekē tēnei aronga kaupapahere mai i ngā whakaritenga onāianei i te mea ka herea te kaunihera e tonoa ana e tētahi mana ā-iwi ki te whakauru ki tētahi Mana Whakahono ā-Rohe kia whakaūhia tētahi whakaaetanga me taua iwi. Ka taea hoki tētahi Mana Whakahono ā-Rohe te whakatū i waenga i tētahi hapū me tētahi kaunihera ina tika ana. Ka noho ngāwari te pou tarāwaho mō ngā whakaaetanga, kia taea ai te whakahāngai ki ngā hiahia paetata.

I mahi tahi te Manatū Mō Te Taiao me te Rōpū Wai Māori o Ngā Rangatira ā-Iwi me ā rātau kaitohutohu ki te waihanga i tēnei kaupapahere. I whakahaerehia e mātau ngā awheawhe me ngā tāngata whenua maha me ngā kaunihera hoki ki te matapaki i ngā wāhanga me te rapu whakaaro mō tēnei. E mihi ana matau ki a rātau katoa nā rātau i tuku mai ngā tirohanga me ngā pūkenga.

Ka whakamihi atu ki ngā tāngata whenua me ngā kaunihera kua whakapau kaha ki te tuitui taura here tētahi ki tētahi. E tuku ana tēnei ārahitanga i ngā tauira o ngā tukanga kua whakatūhia, ka noho pea hei tīmatanga mō te hunga kei te wāhanga tīmatanga o te mahi tahi, e tirotiro ana rānei ki te mahi tahi mā ētahi huarahi rerekē.

Ko te kai a te rangatira he kōrero
The food of chiefs is dialogue

Opening message

Kei raro i ngā tarutaru, ko ngā tuhinga a ngā tūpuna
Beneath the herbs and plants are the writings of the ancestors

When the Resource Management Act (the RMA) was enacted in 1991, it explicitly provided for tangata whenua to participate in RMA processes. The RMA specifically recognised Te Tiriti o Waitangi and kaitiakitanga. It also identified, as matters of national importance, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga, and the protection of customary rights. These aspects of the RMA were heralded as bold and innovative at the time.

Those implementing the RMA have not always met those commitments, which has caused significant issues for tangata whenua, and impacted their ability to act as kaitiaki. In turn, many communities have missed out on the full range of opportunities available to protect and manage the natural environment in their local areas.

The introduction of the Mana Whakahono ā Rohe provisions in the 2017 amendments to the RMA is a step towards addressing this situation, by providing tangata whenua with more opportunity for meaningful participation in RMA processes and decisions. Mana Whakahono ā Rohe is a tool that tangata whenua and local authorities can use to discuss and agree on how they will work together under the RMA, in a way best suiting their local circumstances. We hope that Mana Whakahono ā Rohe will build relationships and processes which move us all towards better outcomes for the environment and society.

Mana Whakahono ā Rohe may not suit the needs of all tangata whenua. However, they provide a forum to bring local authorities to the table. It is a deliberate policy shift from the *status quo*, because it requires any local authority invited by an iwi authority to enter a Mana Whakahono ā Rohe to conclude an agreement with that iwi authority. A Mana Whakahono ā Rohe may also be established between a hapū and a local authority where appropriate. The framework for arrangements remains flexible, so they can be tailored to suit local needs.

The Ministry for the Environment worked closely with the Freshwater Iwi Leaders Group and their advisors on the development of this policy. We held workshops with many tangata whenua and local authorities to discuss the provisions and seek feedback for this guidance. We express our gratitude to all those who have provided their insights and expertise.

We applaud those tangata whenua and local authorities who have already invested in their relationships with one another. This guidance provides examples of processes that have been established, which may provide a starting point for those in the early stages of working together, or looking to work together in different ways.

Ko te kai a te rangatira he kōrero
The food of chiefs is dialogue

Cover design

The cover design is a stylised view looking into a kete. The green, blue and orange represent the three baskets of knowledge – kete-aronui, kete-tuauri and kete-tuatea. The different weave strands also represent the strands of tangata whenua and local authorities who will establish a Mana Whakahono ā Rohe.

The central area of the kete represents the environment; protected and nurtured within the basket. The weave comes together representing strength of collaboration and shared knowledge between the parties to create an outcome with the environment and the parties' on-going relationship at its heart.

Contents

How to read this guidance

This guidance is for everyone – including local authority staff, tangata whenua, and their respective elected representatives. As such, it provides information which may not be relevant for everyone. However, so different parties can access and discuss all parts of the policy, we've ensured everyone has the same information.

The document has been broken into six parts. The parts flow roughly in the same order as the legislation and the process likely to be followed by parties initiating and negotiating a Mana Whakahono ā Rohe.

Within the guidance you will find:

Whakatauki (proverbs) sourced from Mauri Ora – Wisdom from the Maori World (Peter Alsop & Te Rau Kupenga *Mauri Ora, Wisdom from the Māori World* (1st Ed, Potton & Burton, Nelson, 2016)) and Waitangi Tribunal *Ko Aotearoa Tēnei: A report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Indentity* (Wai 262, 2011).

Kupenga and Aslop describe whakatauki as "[P]earls of wisdom… [that] have been gifted from generation to generation as an intrinsic part of the Māori world. As powerful metaphors, they combine analogy and cultural history in the most economical of words."

The whakatauki are intended to help frame the whakaaro (thoughts) in the different sections of the guide.

We have included the Mana Whakahono ā Rohe provisions from the Resource Management Act 1991. We have also included some other sections and defined terms from the interpretation section of the RMA.

Text from legislation is in a shaded green box.

To see the whole Resource Management Act, visit the New Zealand Legislation website.

We have included examples to provide ideas about what you may or may not want to include in your Mana Whakahono.

Examples are in a shaded blue box.

Part 1.

About Mana Whakahono ā Rohe

E hara taku toa i te toa takitahi, he toa takitini

My strength is not as an individual, but as a collective

What are Mana Whakahono ā Rohe? A snapshot

Mana Whakahono ā Rohe provide an opportunity for tangata whenua and local authorities to work together on environmental issues under the Resource Management Act 1991 (RMA).

While the RMA has had some successes in tangata whenua participation, many previous efforts to engage tangata whenua in environmental management have not achieved the anticipated outcomes. Some previous efforts have created frustration among tangata whenua, local authorities, and stakeholders.

People are often confused about what is expected and required of parties. This confusion can result in parties using resources without achieving the desired outcomes.

Setting clear performance expectations, through a Mana Whakahono ā Rohe (Mana Whakahono), for both tangata whenua and local authorities, will help resolve common complaints (such as local authorities failing to consult tangata whenua adequately, and a lack of responsiveness from tangata whenua).

A Mana Whakahono is a binding statutory arrangement that provides for a more structured relationship under the RMA between:

- an iwi authority and a local authority / local authorities
- a combination of iwi authorities and a local authority / local authorities
- a combination of an iwi authority / iwi authorities and hapū, and a local authority or local authorities
- a hapū and a local authority (if initiated by the local authority)
- a combination of hapū and local authorities (if initiated by the local authorities).

The intent of Mana Whakahono is to improve working relationships between tangata whenua (through their iwi authority or hapū) and local authorities. The intent of Mana Whakahono is also to enhance Māori participation in RMA resource management and decision-making processes.

Mana Whakahono provide an opportunity for local authorities and tangata whenua (through their iwi authority or hapū) to have a meaningful dialogue about their respective visions and objectives for an area. Parties can record in their Mana Whakahono how they could work together to achieve identified outcomes. This could be done in a range of ways; from participation in the planning process, to consideration of joint decision-making and/or recommendations about transfer of powers, functions, and/or duties.

Where there are existing relationships, Mana Whakahono are intended to support or build on those relationships, creating efficiencies and removing duplication of process. Where there is no existing relationship, Mana Whakahono give an opportunity for a formal relationship to be developed.

While the Mana Whakahono policy is about the RMA, the parties will need to think about how a Mana Whakahono fits with other arrangements between the participating authorities under other legislation (eg, the Local Government Act 2002 and iwi participation legislation).

A Mana Whakahono could be a detailed document, or a simple umbrella document under which other documents, such as existing or new agreements (eg, a memorandum of understanding), could sit. The design is up to local authorities and tangata whenua (through their iwi authority or hapū) and will vary, as each local context is different.

A successful, enduring Mana Whakahono will require ongoing communication – and effort by all parties to understand the perspectives of the other. A Mana Whakahono must be regularly reviewed. It may be amended to reflect changes in the relationship or to address different kaupapa (topics).

Unless agreed by the parties, a Mana Whakahono cannot be amended or terminated.

Policy intent, statutory purpose and principles

The RMA recognises the role of tangata whenua in resource management. Mana Whakahono provide a practical framework for tangata whenua to exercise that role.

Section 58M: Purpose of Mana Whakahono a Rohe

The purpose of a Mana Whakahono is –

(a) to provide a mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through their iwi authorities, participate in resource management and decision-making processes under this Act; and

(b) to assist local authorities to comply with their statutory duties under this Act, including through the implementation of sections 6(e), 7(a), and 8.

Tangata whenua expectations about how the RMA would work to protect and enable them to exercise their kaitiaki responsibilities have not always been realised, despite opportunities for iwi involvement in the RMA. Tangata whenua have at times been disappointed and frustrated at their inability to meaningfully engage in RMA processes and have influence over how resources are managed.

While Treaty of Waitangi settlements are, in some cases, providing for joint management agreements or joint governance between iwi and local authorities over areas of significance, some iwi and hapū do not have such agreements. Where agreements are in place, tangata whenua may have wider aspirations requiring discussion with local authorities.

In 2011, the Waitangi Tribunal, as reported in *Ko Aotearoa Tēnei*, found:[1]

> 'The RMA, and the reform process that led to it, was a beacon of hope for Māori. For the first time, it seemed that they might be able to take more positive and proactive roles in environmental decision-making than those they had become accustomed to under earlier legislation. The Act's principles and purpose gave legal recognition to Māori interests in ancestral land, water, and other resources, and required local authorities and others with powers to 'have particular regard to' both the Treaty and the concept of kaitiakitanga. Moreover, the Act contained mechanisms whereby kaitiaki interests could be expressed. Section 33 made it possible for local authorities to transfer powers to iwi authorities, section 36B (added nearly 15 years after the RMA was enacted) provided for joint management agreements between the same parties, and section 188 provided for iwi authorities to become HPAs [Heritage Protection Authorities] over specific sites in which they had an interest.
>
> Nearly 20 years after the RMA was enacted, it is fair to say that the legislation has delivered Māori scarcely a shadow of its original promise...'

Mana Whakahono is an optional tool for tangata whenua, primarily through their iwi authorities (noting only iwi authorities can initiate), to use to help rectify what the Tribunal identified in *Ko Aotearoa Tēnei*. Among other matters, it provides an opportunity for iwi authorities and local authorities to begin discussions about any areas special to iwi, the state are they in, what is affecting or threatening them, and the future vision for these areas. Mana Whakahono may lead to the development of shared objectives between the iwi authority and the local authority about how these areas could be managed, and an understanding about how these objectives can be achieved under the RMA.

Within the Mana Whakahono, kaitiaki responsibility may be exercised through a range of ways, including (but not limited to):

- agreements about the involvement of iwi authorities in developing a proposed plan change
- commenting on new proposed plans covering areas of significance to tangata whenua
- consultation on certain resource consent applications
- freshwater monitoring.

Kaitiaki responsibility could extend further into involvement in decision-making, through the appointment of iwi commissioners on hearing panels, establishing joint management agreements or other mechanisms, and involvement in state of the environment monitoring.

Mana Whakahono are also intended to help local authorities comply with their statutory duties under the RMA, including Part 2: Purpose and principles. The application of Part 2 is important and has recently been the subject of judicial consideration (in particular see the decision of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38). The hierarchy and importance of planning documents is emphasised in the King Salmon decision (with specific reference to the New Zealand Coastal Policy Statement 2010).

He waka eke noa

A vehicle upon which everyone may embark.

1 Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) vol 1, p.285.

The King Salmon decision is particularly relevant for Mana Whakahono when participating authorities are discussing the involvement iwi authority / authorities will have in plan-making processes and, more generally, in the interpretation of Part 2 of the RMA. Sections 6(e), 7(a) and 8 are also important in this context.

- Section 6(e) declares the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga as a matter of national importance, and requires all persons exercising functions and powers under the RMA to recognise and provide for it, as a matter of national importance.
- Section 7(a) requires all persons exercising functions and powers under the RMA, when managing the use, development, and protection of natural and physical resources, to have particular regard to kaitiakitanga.
- Section 8 imported the principles of the Treaty of Waitangi and provides that "[I]n achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."

Williams J has noted that these Part 2 provisions of the RMA were "the first genuine attempt to import tikanga in a holistic way into any category of the general law".[2] The Privy Council, in *McGuire v Hastings District local authority* ([2002] 2 NZLR 577 at 21), held that "[T]hese are strong directions, to be borne in mind at every stage of the planning process."

Generally, local authorities have struggled to respond to these Part 2 statutory requirements and tangata whenua have been disappointed that the RMA has not delivered more on the ground. Sometimes this had led to challenges in the courts. Mana Whakahono can provide real help to local authorities, by giving more clarity about priority areas of concern for iwi – and how these can be properly identified and provided for in planning documents. Mana Whakahono can also show how any broader aspirations (such as joint decision-making and/or transfer of powers) can be discussed and agreed. Some matters must be included in a Mana Whakahono, but there are other matters for tangata whenua and local authorities to discuss and agree amongst themselves.

The Mana Whakahono legislative amendments were designed to be broad enough to ensure enough flexibility for parties to frame the Mana Whakahono to best suit the parties' respective objectives; while ensuring the Mana Whakahono will be regularly reviewed and amended to accurately reflect the parties' evolving positions.

Mana Whakahono provisions are designed for iwi authorities to start (through the initiation process) an arrangement with local authorities. However, there are opportunities within the policy for hapū engagement; either directly with hapū (through a local authority initiation) or through the iwi authority. The policy is not intended to unsettle existing relationships between a local authority and an iwi authority; and/or a local authority and a hapū.

Mana Whakahono provisions also include a set of guiding principles. These principles apply to the initiation, development and implementation of the Mana Whakahono. The guiding principles are relevant through all phases of a Mana Whakahono and provide a useful touchstone for parties to refer back to through those phases.

2 Justice Joseph Williams "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 Waikato Law Review 1 at 18.

Section 58N Guiding principles

In initiating, developing, and implementing a Mana Whakahono a Rohe, the participating authorities must use their best endeavours –

(a) to achieve the purpose of the Mana Whakahono a Rohe in an enduring manner:

(b) to enhance the opportunities for collaboration amongst the participating authorities, including by promoting -

  (i) the use of integrated processes:

  (ii) co-ordination of the resources required to undertake the obligations and responsibilities of the parties to the Mana Whakahono a Rohe:

(c) in determining whether to proceed to negotiate a joint or multi-party Mana Whakahono a Rohe, to achieve the most effective and efficient means of meeting the statutory obligations of the participating authorities:

(d) to work together in good faith and in a spirit of co-operation:

(e) to communicate with each other in an open, transparent, and honest manner:

(f) to recognise and acknowledge the benefit of working together by sharing their respective vision and expertise:

(g) to commit to meeting statutory time frames and minimise delays and costs associated with the statutory processes:

(h) to recognise that a Mana Whakahono a Rohe under this subpart does not limit the requirements of any relevant iwi participation legislation or the agreements associated with that legislation.

Part 2.

Developing a Mana Whakahono ā Rohe

Ko te kai a te rangatira he kōrero

The food of the chiefs is dialogue

How should we prepare for an initiation?

While Mana Whakahono provisions give certainty an arrangement will be established, its success relies on positive working relationships. When you, as an iwi authority, initiate a Mana Whakahono, or as a local authority receive an initiation, you will want to put your best foot forward.

There are many opportunities for parties to prepare themselves, which are not part of the legislative process. We recommend and discuss these opportunities below, to help:

- tangata whenua decide if a Mana Whakahono will help them achieve their aspirations and, if they think it will, give all the participating authorities the best chance for negotiating the content of the Mana Whakahono
- local authorities determine how they may manage a Mana Whakahono process and have clarity on the opportunities and risks, before receiving or giving a Mana Whakahono initiation.

Many parties who enter into Mana Whakahono will have interacted with each other before and may have established working relationships (including through Treaty settlements). It is important the parties acknowledge what has been achieved and identify how a Mana Whakahono could further develop (rather than duplicate or replace) successful relationships. Therefore, the extent the parties need to prepare for an initiation will vary.

The following recommendations are practical steps to help both tangata whenua and local authorities prepare for an initiation.

Stocktake

Many iwi authorities and local authorities are working together across the country, through both formal and informal relationships, in different processes and on different kaupapa (topics). There are also many inter-iwi authority and inter-local authority relationships and processes underway to achieve resource management outcomes. We recommend you undertake a stocktake of your existing relationships, including:

- the parties you are engaging with
- the processes being used
- the types and range of processes and relationships
- any iwi environmental management plans lodged with you
- non-operational/redundant arrangements.

A stocktake will give you a clear understanding of the existing commitments and relationships you have across your authority – and help you create efficiencies and build new processes in your Mana Whakahono only where they are required. It may also be valuable to consider the

relationships maintained by wider branches of your authority (ie, between council controlled organisations and tangata whenua).

Analysis of stocktake

To understand which processes and relationships fit with and are achieving your aspirations and obligations, we recommend you take time to reflect on information gathered through your stocktake.

Acknowledge your successes

Acknowledge achievements and the other parties who have contributed to this success.

A Mana Whakahono SWOT analysis

Mana Whakahono provide some exciting opportunities for iwi authorities and local authorities. However, Mana Whakahono will take time and resources and will likely not be a silver bullet for all resource management and engagement challenges.

We recommend doing a Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis of what the Mana Whakahono policy means for you. The analysis will help tangata whenua decide if Mana Whakahono is a tool that will help achieve their aspirations.

For local authorities, a SWOT analysis may indicate which iwi authority is likely to initiate with you, and the areas you may need to do preparatory work (such as establishing a process for receiving and managing an initiation and establishing necessary delegations).

To ensure a robust analysis, representatives from across your organisation should participate in the SWOT process. Local authorities should include experienced staff from across the organisation, including (but not limited to) staff from statutory and strategic planning, consents and consent compliance monitoring and enforcement, finance, risk, and tangata whenua liaison teams. Iwi authorities may consider engaging with whānau, hapū, Māori land owners (including Māori land entities) and with other iwi authorities.

After completing a SWOT analysis, iwi authorities may choose not to initiate for a variety of reasons. For example, they may have an existing arrangement with the local authority that is functioning well, or they may be focusing their efforts on other opportunities (such as implementing a Treaty settlement).

Establishing a relationship and knowledge exchange

To help the parties work together and have a constructive conversation about the content of a Mana Whakahono, it is important the parties understand each other's aspirations, values, duties, responsibilities, and confidentiality requirements. This includes an understanding of the iwi and hapū environmental management plans, the RMA, and the Local Government Act 2002.

We recommend discussing, with relevant authorities, the opportunities for cross-party education on these matters. If this is done well, it will help parties to focus negotiations on the outcomes they are seeking, rather than spending time upskilling each other. It will likely help to build your relationship and help you to find meaningful ways to work together and to operate on a 'no surprises' basis.

It is critical that these relationships are established and maintained at each level of the authorities – between elected representatives of each authority, between management in each authority, and between operational staff in each authority.

An opportunity to consider when preparing for an initiation

Where tangata whenua are already collaborating in their kaitiaki responsibilities, they may wish to reflect this in their Mana Whakahono. This may include iwi authorities jointly initiating a Mana Whakahono with a local authority. Similarly, if a local authority initiates with iwi and/or hapū, existing working relationships should be considered. Additional iwi authorities and/or hapū should be invited to join the negotiations where this will support existing relationships.

Selecting key staff

Consistency of staff is important throughout the negotiation and operation of a Mana Whakahono. Parties should consider providing consistency when selecting staff to be involved to set a scene of good faith and commitment to the Mana Whakahono principles.

It is also important to ensure staff at all levels of the organisation are available to engage at relevant stages of the process, or when relevant content is part of a meeting agenda.

Resourcing

Iwi authorities and hapū are often less resourced than local authorities. Resourcing should be recognised at the outset and discussed between the participating parties. This could include pre-initiation discussions about resourcing for the negotiations to help with planning on both sides.

Get in touch

Preparations for Mana Whakahono will take time and resources. To help parties establish a Mana Whakahono best suiting their needs, we recommend parties have conversations as early in the process as possible.

Early conversations with your elected representatives (including councillors and iwi board members) will help them understand the opportunities and obligations presented by Mana Whakahono, the conclusions of your SWOT analysis, and engagement to date with potential participating authorities.

Parties considering initiating should let the relevant iwi authorities and local authorities know.

If you are wondering if a relevant iwi or local authority is considering initiating with you, we recommend getting in touch to ask. They might be wondering about your intentions too. Be prepared to respond with what progress has been made in your authority to consider or prepare for an initiation.

These early conversations will allow parties to be prepared for the initiation. It may also be a chance to discuss the opportunities for the pre-initiation knowledge exchange recommended above. We recommend the parties clearly acknowledge that these are preliminary discussions (to not inadvertently trigger a statutory timeframe).

Initiation

Mana Whakahono give an iwi authority certainty that when they initiate an arrangement with a local authority, the local authority must respond, start negotiations, and conclude a Mana Whakahono within 18 months (unless the parties mutually agree otherwise).

The legislation includes process steps that must be followed on the path to establishing an iwi authority initiated Mana Whakahono.

The initiation process set out in the legislation does not apply when local authorities initiate a Mana Whakahono with an iwi authority or hapū.

If an iwi authority or hapū choose to accept the local authority initiation, it is up to the parties to determine the negotiation process. If an iwi authority prefers the certainty and obligations contained in section 58O of the RMA, the iwi authority should decline the local authority initiation – and initiate a Mana Whakahono themselves.

RMA defined terms

Iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

Tangata whenua, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area.

Mana whenua means customary authority exercised by an iwi or hapu in an identified area.

Participating iwi authorities means the iwi authorities that –

(a) have agreed to participate in a Mana Whakahono a Rohe; and

(b) have agreed the order in which negotiations are to be conducted.

Area of interest means the area that the iwi and hapū represented by an iwi authority identify as their traditional rohe.

Initiating iwi authority has the meaning given in section 58O(1) – 1 or more iwi authorities representing tangata whenua.

Relevant iwi authority means an iwi authority whose area of interest overlaps with, or is adjacent to, the area of interest of an initiating iwi authority.

Relevant local authority means a district or regional council whose area of interest overlaps with, or is adjacent to, the area of interest represented by the initiating iwi authority.

Mana Whakahono – process snapshot

We recommend undertaking preparation work as recommended in the How should we prepare for initiation section.

STEP 1
INITIATE

An iwi authority (or authorities jointly) may initiate a Mana Whakahono ā Rohe with a local authority or authorities any time except 90 days before a local body election.

Existing arrangements (excluding iwi participation legislation) may be deemed a Mana Whakahono if the parties agree to the extent they cover matters under the RMA.

STEP 2
RESPOND

The local authority or authorities must respond to the invitation. They may either:

- engage only with the initiating iwi authority or authorities, or
- advise other iwi authorities and/or local authorities that the initiation has been received.

STEP 3
CONVENE A HUI

The local authority or authorities must convene a hui within 60 working days of receiving the initiation with:

- the initiating iwi authority or authorities
- any other iwi authority and/or local authority that has been advised of the initiation, and wishes to participate.

STEP 4
TIMINGS & PROCESS

At the hui, the authorities determine the timing and process for negotiating a Mana Whakahono. The primary purpose of the hui is for the initiating iwi authorities and local authorities to determine the timing and process for negotiating a Mana Whakahono and how the other authorities may be part of the process. This may result in:

A Some of the other parties (ie, not the initiating iwi authority and the recipient local authority / authorities) choosing not to be part of the negotiations.

B All parties agreeing to enter into one Mana Whakahono.

C The parties choosing to have a Mana Whakahono for each iwi / local authority relationship or different subsets of parties choosing to establish Mana Whakahono (eg, three iwi authorities with one local authority or one iwi authority with a territorial and regional authority).

STEP 5
NEGOTIATION

The parties enter into negotiations.

STEP 6
CONCLUSION

- The parties must conclude a Mana Whakahono within 18 months unless otherwise agreed.
- The parties may collectively agree to not enter into a Mana Whakahono. Or some parties may choose to establish a separate a Mana Whakahono.

Section 580: Initiation of Mana Whakahono a Rohe

Invitation from 1 or more iwi authorities:

(1) At any time other than in the period that is 90 days before the date of a triennial election under the Local Electoral Act 2001, 1 or more iwi authorities representing tangata whenua (the initiating iwi authorities) may invite 1 or more relevant local authorities in writing to enter into a Mana Whakahono a Rohe with the 1 or more iwi authorities.

Obligations of local authorities that receive invitation

(2) As soon as is reasonably practicable after receiving an invitation under subsection (1), the local authorities—

- (a) may advise any relevant iwi authorities and relevant local authorities that the invitation has been received; and
- (b) must convene a hui or meeting of the initiating iwi authority and any iwi authority or local authority identified under paragraph (a) (the parties) that wishes to participate to discuss how they will work together to develop a Mana Whakahono a Rohe under this subpart.

(3) The hui or meeting required by subsection (2)(b) must be held not later than 60 working days after the invitation sent under subsection (1) is received, unless the parties agree otherwise.

(4) The purpose of the hui or meeting is to provide an opportunity for the iwi authorities and local authorities concerned to discuss and agree on—

- (a) the process for negotiation of 1 or more Mana Whakahono a Rohe; and
- (b) which parties are to be involved in the negotiations; and
- (c) the times by which specified stages of the negotiations must be concluded.

(5) The iwi authorities and local authorities that are able to agree at the hui or meeting how they will develop a Mana Whakahono a Rohe (the participating authorities) must proceed to negotiate the terms of the Mana Whakahono a Rohe in accordance with that agreement and this subpart.

(6) If 1 or more local authorities in an area are negotiating a Mana Whakahono a Rohe and a further invitation is received under subsection (1), the participating iwi authorities and relevant local authorities may agree on the order in which they negotiate the Mana Whakahono a Rohe.

Other matters relevant to Mana Whakahono a Rohe

(7) If an iwi authority and a local authority have at any time entered into a relationship agreement, to the extent that the agreement relates to resource management matters, the parties to that agreement may, by written agreement, treat that agreement as if it were a Mana Whakahono a Rohe entered into under this subpart.

(8) The participating authorities must take account of the extent to which resource management matters are included in any iwi participation legislation and seek to minimise duplication between the functions of the participating authorities under that legislation and those arising under the Mana Whakahono a Rohe.

(9) Nothing in this subpart prevents a local authority from commencing, continuing, or completing any process under the Act while waiting for a response from, or negotiating a Mana Whakahono a Rohe with, 1 or more iwi authorities.

When to initiate

Parties should carefully consider the timing of the initiation, as both iwi and local authority initiation triggers an 18-month timeframe, within which the parties must conclude their Mana Whakahono (unless all participating authorities mutually agree otherwise).

When an iwi authority has determined a Mana Whakahono will help them achieve their resource management aspirations and obligations, the legislation gives broad discretion for when they may initiate. The flexibility is there to help the iwi authority plan around internal capacity and commitments – and be in the best position possible for engaging in Mana Whakahono discussions when they do initiate.

The iwi authority may also consider the statutory process cycles and timing of local authorities. This could include ensuring a Mana Whakahono is established before important policy statement or plan reviews. It may also include consideration of long-term plan or annual plan review cycles with the local authority so funding could be sought for Mana Whakahono implementation.

An iwi authority may initiate at any time, except for 90 days before a local body election (these generally occur every three years). This exclusion period is intended to protect the parties from investing in relationships and negotiations that may not be continued through the elections.

The 90-day exclusion period for initiating does not apply to local authority initiations. Therefore, in situations where the negotiation process is likely to be short, the local authority could initiate that process with the relevant iwi authority or hapū immediately before local authority elections. Local authority initiation is discussed in the Other opportunities to initiate a Mana Whakahono ā Rohe section of this guidance.

One situation where the negotiations are likely to be short is when the parties deem an existing relationship arrangement a Mana Whakahono. This is provided for in section 58O(7). The intent is to enable existing relationship agreements to have legal certainty, without the parties needing to renegotiate, in situations where that agreement is working well. When parties use this provision, they are not required to address all of the content matters in section 58R, so they may wish to include an initial review period which is less than the 6 years provided for in section 58T(3), depending on when the original arrangement was established.

How to initiate

The RMA requires Mana Whakahono are initiated in writing. We recommend the initiation:

- clearly states it is a Mana Whakahono initiation
- is sent to the head of the authorities you are initiating with (the Mayor or Chair, Chief Executive, Pou Ariki)
- is copied to your key contacts within those authorities.

The initiation letter is the opportunity for the initiating authority to set the tone of the negotiations. The principles of Mana Whakahono, as discussed in the Policy intent, statutory purpose and principles section of this guidance, should be used to guide the engagement. The initiation process requires an initial hui (described in more detail in the Hui section of this guidance). In addition to the matters noted above, some useful information to include in the initiation is:

- the preferred timing and location of the initial hui
- any other relevant authority you would like to invite
- a suggested agenda for the hui
- your expectations about who from the participating authorities will attend
- key kaupapa you would like to include in the Mana Whakahono.

It is best practice for the initiating authority to notify the Ministry for the Environment, as administrator of the RMA, of the initiation (by emailing manawhakahono@mfe.govt.nz).

We will record the initiation on our website www.mfe.govt.nz/rma/manawhakahono to help with transparency of process and information sharing.

Joint initiation

Iwi authorities may jointly establish a Mana Whakahono with one or more local authorities. Joint initiation brings benefits, such as collaboration on shared objectives, sharing of costs and resources (including expertise and experience), assisting with advocacy with the local authority, and achieving consistency and efficiency of process. Working collectively may, therefore, be an optimal way for an iwi authority to achieve its resource management goals.

Working collectively under the umbrella of an existing iwi authority may also be the most effective way for hapū to establish a Mana Whakahono. The iwi authority may initiate and support a Mana Whakahono through coordination and/or monitoring, with the hapū leading the engagement on certain kaupapa as provided for by section 58(R)(4)(b).

The Mana Whakahono could then link directly into the sections of the Act which reference iwi authorities, but not hapū (ie, section 34A(1)(a)). Local authority initiation with hapū is discussed further in the Other opportunities to initiate a Mana Whakahono ā Rohe section of this guidance.

If iwi authorities jointly initiate with a local authority, all those iwi authorities will be deemed initiating iwi authorities. The local authority is required to negotiate with all those iwi authorities, to either collectively or individually complete a Mana Whakahono.

A Mana Whakahono with multiple parties does not need to be a 'one size fits all'. It is up to the parties to work out how a Mana Whakahono can best reflect and suit the needs of all parties. One option is to include specific processes or matters relevant to the parties at the front of the Mana Whakhono, with matters relevant to specific parties sitting later in the Mana Whakahono.

When multiple iwi authorities enter into a Mana Whakahono, section 58R(4)(d) of the RMA provides for the parties to record how they will work together. This is discussed in the Other matters you may want to include section of this guidance.

Other opportunities to initiate Mana Whakahono ā Rohe

Mahia i runga i te rangimārie me te ngākau māhaki

With a peaceful mind and respectful heart, we will always get the best results

Section 58P: Other opportunities to initiate Mana Whakahono a Rohe

Later initiation by iwi authority

(1) An iwi authority that, at the time of receiving an invitation to a meeting or hui under section 58O(2)(b), does not wish to participate in negotiating a Mana Whakahono a Rohe, or withdraws from negotiations before a Mana Whakahono a Rohe is agreed, may participate in, or initiate, a Mana Whakahono a Rohe at any later time (other than within the period that is 90 days before a triennial election under the Local Electoral Act 2001).

(2) If a Mana Whakahono a Rohe exists and another iwi authority in the same area as the initiating iwi wishes to initiate a Mana Whakahono a Rohe under section 58O(1), that iwi authority must first consider joining the existing Mana Whakahono a Rohe.

(3) The provisions of this subpart apply to any initiation under subsection (1).

Initiation by local authority

(4) A local authority may initiate a Mana Whakahono a Rohe with an iwi authority or with hapu.

(5) The local authority and iwi authority or hapu concerned must agree on—

- (a) the process to be adopted; and
- (b) the time period within which the negotiations are to be concluded; and
- (c) how the Mana Whakahono a Rohe is to be implemented after negotiations are concluded.

(6) If 1 or more hapu are invited to enter a Mana Whakahono a Rohe under subsection (4), the provisions of this subpart apply as if the references to an iwi authority were references to 1 or more hapu, to the extent that the provisions relate to the contents of a Mana Whakahono a Rohe (see sections 58M, 58N, 58R, 58T, and 58U).

Section 58R: Contents of Mana Whakahono a Rohe

(6) If 2 or more iwi authorities collectively have entered into a Mana Whakahono a Rohe with a local authority, any 1 of the iwi authorities, if seeking to amend the contents of the Mana Whakahono a Rohe, must negotiate with the local authority for that purpose rather than seek to enter into a new Mana Whakahono a Rohe.

Joining an existing arrangement

Section 58P(2) of the RMA provides that when an iwi authority initiates a Mana Whakahono with a local authority, the option of joining an existing Mana Whakahono (if one exists) must be considered by the iwi authority. Iwi authorities should document their decision to either join or not join an existing Mana Whakahono. When an iwi authority or hapū joins an existing Mana Whakahono, the participating authorities will need to amend the arrangement, to reflect the addition of the new authority, authorities or hapū (and any amendment to the content of the Mana Whakahono).

Initiation by a local authority

A local authority may initiate a Mana Whakahono with either a hapū or an iwi authority, pursuant to sections 58P(4)–(6) of the RMA. A local authority may be motivated to initiate a Mana Whakahono with an iwi authority or a hapū for reasons including:

- wanting to formally recognise the relationship they have with the hapū or iwi authority
- involving the iwi authority or hapū in existing Mana Whakahono discussions
- formally establishing an engagement process ahead of a plan change or other policy development work
- changing or establishing a new work programme.

The local authority may be motivated to initiate a Mana Whakahono specifically with a hapū for reasons including:

- the local authority already has a relationship with a hapū it wants to formalise
- it recognises the hapū as kaitiaki and is the appropriate group for it to establish a Mana Whakahono with
- it has a matter relating to a specific area or landform within the rohe of a specific hapū it would like to reach an agreement on
- the iwi authority does not want to engage, or has advised the local authority it should engage with the hapū.

The local authority should use its existing networks and relationships to inform this conversation and decision. Communication should be open and transparent, to avoid creating tension between different Māori entities because of poor process.

When a local authority initiates a Mana Whakahono, the iwi authority or hapū are not compelled to enter negotiations. However, best practice would see the parties talk about the reasons for the initiation (and the reasons for the iwi authority or hapū accepting the initiation, or not).

Choosing not to initiate, declining a local authority invitation, or withdrawing from negotiations does not remove any right of the iwi authority to initiate a Mana Whakahono in the future. However, a hapū cannot initiate at a later date, so hapū should carefully consider before declining an initiation from a local authority.

When negotiating a local authority-initiated Mana Whakahono, the statutory purpose, principles and content of Mana Whakahono apply. However, the process requirements in section 58O do not. The parties must therefore agree on the process to be adopted, the timeframes for concluding negotiations, and how the agreement will be implemented once it is adopted. The parties may use section 58O of the RMA to guide their negotiations if they wish.

Best practice pre-initiation checklist

- ✓ Stocktake your existing arrangements.
- ✓ Consider if a Mana Whakahono could help you achieve your vision and obligations.
- ✓ Undertake the recommended pre-initiation engagement with iwi authorities and local authorities (recommended in the Initiation section of this guidance).
- ✓ Establish a process for sending, receiving and responding to Mana Whakahono initiations.
- ✓ Set out what best practice negotiations would look like for your organisation.
- ✓ Ensure relevant delegations are in place to help you to achieve the required timeframes.
- ✓ Consider resourcing for negotiations and implementation of any Mana Whakahono arrangement content.
- ✓ Think about who will participate in negotiations and what level of decision-making ability they will need to be able to make commitments on behalf of your organisation.
- ✓ Give the other party(ies) early notification if you intend to initiate (making clear that it is not an initiation).
- ✓ Consider notifying other relevant iwi authorities (and potentially hapū) or local authorities of your intention to initiate, even if you aren't initiating with them.
- ✓ Send an initiation to the local authority Mayor or Chair and/or CEO/Pou Ariki (copied to your key contact at the local authority), including the matters recommended in the Initiation section of this guidance.

Managing initiations from parties

Many local authorities are actively engaging with tangata whenua across the motu (the country) including iwi, hapū and marae. They have a good understanding of the landscape of relationships and responsibilities – and may therefore understand who they are likely to receive a Mana Whakahono initiation from.

Local authorities also record the contact details for each iwi and hapū within their region or district and any groups that represent hapū (as required by section 35A of the RMA).

An oversight of those parties should be consolidated before the local authority receives an initiation through your SWOT analysis, as recommended in the Initiation section of this guidance.

A local authority must respond to an iwi authority initiation. If, following receipt of an initiation, a local authority is unsure if the initiating party is an iwi authority under the RMA, we recommend the local authority talks:

- with the initiating party, to understand who they are, who they represent, and the scope of what they are generally seeking to achieve through a Mana Whakahono
- through your other Treaty-based relationships, to understand where the initiating party fits into the existing relationships the local authority has established
- to the initiating party about how they relate to other iwi/hapū/whānau the local authority is already working with, including whether they would consider engaging through an existing Mana Whakahono as required by section 58P(2).

Additionally, a local authority could access Te Puni Kokiri's (TPK) website Te Kahui Mangai, which provides a directory of iwi authorities according to local authority boundary. This information is not vetted or verified by TPK, so cannot be conclusively relied on, but provides a starting point for local authorities. Local authorities may need to make enquiries with relevant iwi authorities and other tangata whenua groups to formalise their position.

If the local authority forms the view a group is not an iwi authority, it must have clear reasons for this position.

Local authorities are likely to be approached by hapū seeking to establish a Mana Whakahono. Where a local authority is already working with that hapū, best practice would see the local authority consider a distinct Mana Whakahono with that hapū. Relevant iwi authorities should be advised if the local authority and hapū are establishing a Mana Whakahono and where appropriate, the iwi authority may be included in the Mana Whakahono to support the hapū.

Where the local authority is not already working with the hapū, the local authority will need to take time to understand the relationship of the hapū in the context of their other relationships and commitments.

RMA defined terms

Relevant iwi authority means an iwi authority whose area of interest overlaps with, or is adjacent to, the area of interest of an initiating iwi authority.

Initiating iwi authority has the meaning given in section 58O(1) – 1 or more iwi authorities representing tangata whenua.

Iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

Tangata whenua, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area.

Mana whenua means customary authority exercised by an iwi or hapu in an identified area.

The hui

When an iwi authority initiates a Mana Whakahono, the local authority must convene a hui (meeting) of the initiating authorities within 60 working days. This is a mandatory obligation.

The relevant section 58O Initiation of Mana Whakahono a Rohe provisions are included in the Initiation section of this guidance.

As soon as possible after receiving the initiation, the local authority should acknowledge its receipt in writing (including details of a local authority contact person the iwi authority can liaise with to organise the hui).

The purpose of the hui is to reach consensus between all the parties about how to develop a Mana Whakahono, including:

- the process for negotiating one or more Mana Whakahono
- which parties are involved in the negotiations
- what timeframes will apply to the steps in the negotiations.

Substantive matters (ie, related to the content of a Mana Whakahono) may be raised or discussed at the initial hui. However, those matters should not act as a barrier to agreeing the process for negotiations, who is involved, and what timeframes will apply.

If multiple authorities attend the hui, the iwi authorities may choose to collectively or individually establish a Mana Whakahono with the local authority. Those choosing to enter the negotiation process are known as the participating authorities.

The initiation from the iwi authority should include the information listed in the Initiation section of this guidance. This information should guide the local authority in its organisation of the hui. If the information is not provided, or is unclear, the key contact from the local authority should discuss this with the initiating iwi authority.

Possible agenda and outline for the hui

- ✓ Appropriate opening (for the tangata whenua to determine).
- ✓ Introductions – could include key things the parties need to understand about each other – for example, whakapapa, iwi authority operations, local authority processes, and timeframes.
- ✓ Key drivers or objectives for the Mana Whakahono.
- ✓ Which parties will be involved in negotiations.
- ✓ The process for negotiating one or more agreements.
- ✓ Next steps.
- ✓ Timeframes.
- ✓ Any relationship matters.

The participating authorities must negotiate a Mana Whakahono and conclude it within 18 months, unless mutually agreed otherwise. Iwi authorities who choose not to proceed may still initiate an arrangement of their own at the same time or a later date (noting this option is not available to hapū to initiate in their own right). However, at that time, they must consider joining any existing Mana Whakahono.

There is only one hui required by the RMA (the initial hui). However, it is likely necessary (and best practice) to continue the negotiations kanohi ki te kanohi (face to face) if the parties agree that is appropriate. Developing a realistic and structured process for the negotiations with agreed milestones and timeframes will help move the negotiations forward. Developing this process will also help the parties monitor if the negotiations are on track – and work out how to get things back on track if they go awry.

Involving relevant authorities

When organising the initial hui, the local authority may advise relevant iwi authorities and relevant local authorities the initiation has been received – and must invite those who respond to that notification to the hui. There is likely to be at least one relevant local authority (the corresponding regional or territorial authority, depending on which has received the initiation). In many circumstances, there is more than one relevant local authority for the area of interest of the iwi authority.

Involving other authorities in a Mana Whakahono may be beneficial for a variety of reasons. For example, authorities may already be collaborating in a constructive manner, or it provides an opportunity for more consistent processes to be established that reflect the Mana Whakahono principles.

The local authority and initiating iwi authority should discuss and agree the approach for wider engagement and inclusion of other parties in the conversation. If other relevant authorities have been advised of the initiation, but the parties wish to work together first with just each other, the parties may agree to delay the initial hui (to provide time for their discussions). The desire to discuss the Mana Whakahono without other relevant authorities may be because of factors such as narrow scope of the proposed Mana Whakahono, or the stage of the relationship between the parties.

Best practice would see the local authority being transparent with the process and, following discussion with the initiating iwi authority/ authorities, advising other relevant authorities they have received a Mana Whakahono initiation. This includes notifying the Ministry for the Environment, so the initiation can be noted on our Mana Whakahono web page.

What is to be discussed?

The matters needing to be discussed and agreed at the hui are:

- the process for negotiating one or more Mana Whakahono
- which parties will be involved in the negotiations
- what timeframes will apply to concluding steps within the negotiations.

The parties to the initiation must agree to a negotiation process. This can be done in whatever way best suits the parties. It may be helpful to have a dedicated facilitator, responsible for keeping the process moving and recording agreements as they are made.

In negotiating the Mana Whakahono, the parties must discuss, agree and record a series of matters – and may cover others (see the Mana Whakahono ā Rohe content section of this guidance). The participating authorities should enter the negotiations with an open mind to the optional matters, despite any political constraints, rather than entering the negotiations having already taken certain things off the table. Alternative ways to approach these discussions include:

- working through matters that must be discussed first, before considering the optional matters
- focusing on the matters of most importance to the parties one by one; reaching agreement on each matter and then looking over the whole agreement once again to ensure it is consistent and meeting the legislation requirements
- discussing the best way to achieve an outcome, ensuring all the ‘must’ aspects are covered before concluding negotiations.

There will likely be constraints affecting the progress of negotiations. It is important all participating authorities are clear about expectations and design the negotiation process to align with realistic response times and internal decision-making processes. This includes iwi authority engagement with iwi/ hapū/whānau and the local authorities’ approval process with councillors.

Pre-initiation preparation will also help set expectations with those who have an interest in the policy, which is likely to help the negotiations run more smoothly. The participating authorities may also consider how they will communicate with those affected during the negotiations and implementation of the policy. For example, the participating authorities could jointly present and communicate to elected representatives to reflect the relationship of the parties working together.

Timeframes

The RMA sets out timeframes for Mana Whakahono.

The RMA requires that once a local authority has received an initiation, participating authorities must conclude a Mana Whakahono within 18 months (or any other period agreed by all participating authorities). A participating authority cannot unilaterally amend a Mana Whakahono or change the timeframe in which a Mana Whakahono must be concluded.

A Mana Whakahono also cannot be terminated, unless all participating authorities agree. If the participating authorities wish to change or terminate a Mana Whakahono, this should be done in writing (and after any relevant processes set out in the Mana Whakahono).

Once a Mana Whakahono is concluded, participating authorities should consider making it public and providing the Ministry for the Environment with a link to include our Mana Whakahono web page.

Section 58O: Initiation of Mana Whakahono a Rohe

(6) If 1 or more local authorities in an area are negotiating a Mana Whakahono a Rohe and a further invitation is received under subsection (1), the participating iwi authorities and relevant local authorities may agree on the order in which they negotiate the Mana Whakahono a Rohe.

Other matters relevant to Mana Whakahono a Rohe

...

(9) Nothing in this subpart prevents a local authority from commencing, continuing, or completing any process under the Act while waiting for a response from, or negotiating a Mana Whakahono a Rohe with, 1 or more iwi authorities.

Section 58Q: Time frame for concluding Mana Whakahono a Rohe

If an invitation is initiated under section 58O(1), the participating authorities must conclude a Mana Whakahono a Rohe within—

(a) 18 months after the date on which the invitation is received; or

(b) any other period agreed by all the participating authorities.

Section 58R: Contents of Mana Whakahono a Rohe

....

(5) Unless the participating authorities agree,—

(a) the contents of a Mana Whakahono a Rohe must not be altered; and

(b) a Mana Whakahono a Rohe must not be terminated.

What if a further initiation is received while negotiations are already underway?

If a new initiation is received during the process of an existing negotiation, the participating iwi authorities and local authorities can decide in what order to negotiate the Mana Whakahono. Another option is the new initiating iwi authority joins an existing Mana Whakahono negotiation. The participating authorities may, at this time, discuss whether an extension of timeframes is needed. Best practice would also see timeframes for Mana Whakahono negotiations with hapū considered at this time.

Effect on planning processes already underway

Nothing in the Mana Whakahono provisions stop a local authority from starting, continuing, or completing any process under the RMA while waiting for a response from (or negotiating a Mana Whakahono with) one or more iwi authorities.

Where a local authority is bound by statutory timeframes, they do not have flexibility on this matter. However, in good faith, a local authority should be transparent about its work programme, proactively engage with iwi authorities and hapū, and let the current resource management work programme shape and be shaped by the Mana Whakahono negotiations.

Part 3.

Mana Whakahono ā Rohe content

Ka whāia te wāhie mo takurua ka mahia te kai mō te tau

If you look for firewood in the winter,
you will have plenty of food all year round

What will be included in your Mana Whakahono ā Rohe

At this point, you will be preparing to discuss the content of your arrangement. This is a good time to reflect on your stocktake and SWOT analysis, where you identified your existing commitments and arrangements and what your objectives are. Reflecting on these will help you think about how your Mana Whakahono will best be structured and what you would like to include.

When starting discussions about what could be included in a Mana Whakahono, each party will have matters they particularly want to discuss and work on collaboratively. It is critical each party has the opportunity to voice those interests and aspirations. While the parties may not mutually agree on certain matters, allowing time to understand the long-term vision of each party early in the process will give important context to the negotiations.

The Mana Whakahono policy allows for the full scope of the Resource Management Act (RMA) to be considered when developing a Mana Whakahono arrangement. This Part of the guidance discusses both mandatory (under section 58R(1)) and optional content (under section 58R(4)) for a Mana Whakahono. Some opportunities and case studies have been identified to spark ideas about what you may want to include in your Mana Whakahono.

Each Mana Whakahono will be tailored to the participating authorities' objectives. The way the participating authorities could work together under each of the mandatory and optional matters varies widely. The Mana Whakahono could include joint decision-making, technical advisors, collaborative parties, or project teams. The establishment of these processes will require appropriate resourcing to ensure the contribution made by the participating authorities is valued and the process is viable.

Once the parties have agreed on the content of the Mana Whakahono, its layout is determined by the parties. It is likely to depend on factors such as:

- who is party to the Mana Whakahono
- the number of parties to the Mana Whakahono
- the scope of the Mana Whakahono, including the way funding commitments are established
- the number and type of existing agreements between the parties
- if the participating authorities want to link their Mana Whakahono to arrangements under other legislation
- how the Mana Whakahono relates to other arms of the authorities (ie, council-controlled organisations).

Mana Whakahono are not intended to be a 'one size fits all'. However, for simplicity, the parties may wish to follow the order of sections 58R(1) and 58R(4) of the RMA.

Matters that must be included in a Mana Whakahono ā Rohe

Ko te pae tāwhiti, whaia kia tata;
ko te pae tata, whakamaua kia tīna

Seek out distant horizons and cherish those you attain

The Mana Whakahono policy includes matters that must be discussed, agreed and recorded (ie, mandatory matters). While the participating authorities must record their agreement, it is up to them to decide the level of detail included.

The participating authorities, should consider the RMA statutory requirements for each of these matters and the Mana Whakahono principles when forming their arrangement.

Section 58R: Contents of Mana Whakahono a Rohe

(1) A Mana Whakahono a Rohe must—

- (a) be recorded in writing; and
- (b) identify the participating authorities; and
- (c) record the agreement of the participating authorities about—
  - (i) how an iwi authority may participate in the preparation or change of a policy statement or plan, including the use of any of the pre-notification, collaborative, or streamlined planning processes under Schedule 1; and
  - (ii) how the participating authorities will undertake consultation requirements, including the requirements of section 34A(1A) and clause 4A of Schedule 1; and
  - (iii) how the participating authorities will work together to develop and agree on methods for monitoring under this Act; and
  - (iv) how the participating authorities will give effect to the requirements of any relevant iwi participation legislation, or of any agreements associated with, or entered into under, that legislation; and
  - (v) a process for identifying and managing conflicts of interest; and
  - (vi) the process that the parties will use for resolving disputes about the implementation of the Mana Whakahono a Rohe, including the matters described in subsection (2).

Participation in plan-making processes
(Section 58R(1) (c)(i) and (ii))

The role of planning

Under the RMA, territorial authorities' main statutory functions include managing land – including subdivision, natural hazards, and noise. Regional authorities' main statutory functions are looking after the coastal marine area, the taking of water (including geothermal and groundwater), discharge of contaminants, biodiversity, and natural hazards.

Each territorial authority is required to have a city or district plan. Regional councils are required to have a regional policy statement and a regional coastal plan (signed off by the Minister of Conservation) but can choose if they want to have additional regional plans. Many have chosen to have an air plan and catchment-based water plans. Some have combined regional plans.

Plans help local authorities fulfil their statutory functions under the RMA. They describe what the local authority is trying to achieve in managing resources (objectives), what activities can be undertaken, and what standards will apply (rules). Plans determine when resource consents are required and what will be considered in deciding whether to decline or grant a resource consent for an activity.

Plans also determine what conditions should be applied to address any environmental effects of an activity. Decisions on resource consent applications will refer and give effect to rules in the plan. The objectives and policies of the plan will also be influential when consent applications are made for activities which do not comply with the plan.

Iwi may have developed their own iwi environmental management plans[3]. There is no prescribed content or format for these plans. However, once they have been lodged with the local authority, they must be taken into account in local authority plan-making processes. While local authorities are required to take into account iwi environmental management plans, to effectively influence resource management outcomes an iwi authority needs to be involved in plan development with the local authority.

It is easier to influence a plan at the early stages of its development (eg, when issues are being identified or a draft plan released) rather than later in the process, or through the resource consent process.

Developing or changing a plan under the RMA

The processes a local authority must follow in developing a plan are in Schedule 1 of the RMA. The local authority has the choice of three plan-making processes:

- the standard process (Part 1 and 2)
- a collaborative process (Part 4)
- requesting the Minister direct a streamlined planning process (Part 5).

It is worthwhile being familiar with Schedule 1 of the RMA, as it includes specific provisions for Mana Whakahono and the involvement of iwi authorities, which the local authority is required to comply with.

3 RMA s66(2A)(a) and s74(2A).

Schedule 1

Part 1 – Preparation and change of policy statements and plans by local authorities

...

1A Mana Whakahono a Rohe to be complied with

1. A proposed policy statement or plan must be prepared in accordance with any applicable Mana Whakahono a Rohe.
2. A local authority may comply with clause 3(1)(d) in any particular case by consulting relevant iwi authorities about a proposed policy statement or plan in accordance with a Mana Whakahono a Rohe.

1B Relationship with iwi participation legislation

Nothing in this schedule limits any relevant iwi participation legislation or agreement under that legislation.

...

Part 2 – Requests for changes to policy statements and plans of local authorities and requests to prepare regional plans

...

26A Mana Whakahono a Rohe

In exercising or performing any powers, functions, or duties under this Part, a local authority must comply with any Mana Whakahono a Rohe that specifically provides a role for iwi authorities in relation to any plan or change requested under this Part.

...

The choice the local authority makes about which of the three planning process to use will depend on the type and scope of the issues dealt with in the proposed plan or plan change, the people affected by it, and the urgency of the matter. Schedule 1, Part 1 and Part 2 provide that nothing in these processes can limit what is recorded in a Mana Whakahono or in iwi participation legislation.

Mana Whakahono can build on and help successfully fulfil these statutory requirements, setting out how they will be given effect to, as well as provide further initiatives both parties agree to. Iwi authorities should consider which areas or resource use issues are of greatest interest to them – and what role they want to have in developing objectives, policies and rules applying to those areas or resources.

This is an opportunity for iwi authorities and local authorities to discuss issues raised about:

- what plans are in place, if any reviews are underway – and if so the timetable for those reviews
- what compliance and state of the environment monitoring is revealing
- emerging resource management issues
- where resource management pressures are
- any national direction
- where changes to the plan may be needed in the future.

An iwi management plan (or other document) is a good place to start discussion on the alignment of the aspirations of the participating authorities for the area.

Some standard plan-making process opportunities to consider including in your Mana Whakahono

Development of a proposed policy statement or plan

- **Iwi environmental management plans (IEMP):** IEMPs are a valuable tool for iwi/hapū/whānau/marae to articulate matters of interest to them, and for local authorities and the public to understand these matters. Once lodged with a local authority, the IEMP must be taken into account in the policy statement and plan-change process. To support the plan-making process, a Mana Whakahono may outline the ways a local authority will support the development of and/or use of an IEMP. To minimise the workload and consultation fatigue of the iwi authority, the parties should consider how a local authority should draw on the iwi authority's IEMP in their work, before engaging with the iwi authority.
- **Identifying areas of significance:** Where desired by the relevant kaitiaki, plans should explicitly recognise areas and sites of traditional, cultural, historical and spiritual significance to tangata whenua, and objectives, policies and rules appropriate for these areas. Where sites of significance have not been adequately provided for, a local authority may make a commitment through a Mana Whakahono to lead (fund) a plan change to address this omission.
- **Policy statement and plan-change prioritisation:** Plan changes are an expensive, time-consuming process. A local authority has many statutory requirements and obligations to juggle and will likely need to prioritise potential policy statement and plan changes. Once they have been prioritised, the local authority must seek funding through its annual plan. Once funding is approved, the statutory process may take several years to complete. In their Mana Whakahono, parties may want to agree how the identification of potential plan-making processes and their prioritisation is done – and the criteria against which they are assessed.
- **Preparation of a proposed policy statement or plan:** A Mana Whakahono may identify how tangata whenua (through their iwi authorities) will be involved in the initial preparation of a proposed plan change. Involvement in the earliest stages of the plan development mean tangata whenua can help identify concerns and discuss possible objectives, policies and methods required to address those issues. It is important to keep in mind early engagement will give time for more meaningful engagement and more robust input. Early engagement will also help in avoiding delays later in the process. Tangata whenua may need access to local authority planning expertise and/or resources (such as GIS) to fully participate in the policy statement and plan-making process.

- **Consultation during the preparation of a proposed policy statement or plan:** The RMA requires consultation with iwi authorities under clause 3(1)(d) of Schedule 1 during the preparation of a proposed policy statement or plan. There are no timeframes in the RMA for this consultation. The Mana Whakahono may identify how the parties will fulfil these requirements, including expectations of the other party, timeframes, and key contacts for pre-notification consultation. This may be one key contact or several people, depending on the issue. Where local authorities agree to the inclusion of provisions proposed by an iwi authority, the local authority should support those provisions as part of the plan change, through the plan-making process.
- **Further pre-notification requirements:** Clause 4A of Schedule 1 requires iwi authorities to be sent a draft of the proposed policy statement or plan change for comment, before it is notified. A whole proposed plan (and even some proposed plan changes) are substantial documents that take time to work through. If iwi authorities are involved in the preparation of the plan, this requirement may be a formality. A Mana Whakahono could set out what is the adequate response time and could identify support or resources to help tangata whenua understand what is proposed and how to respond.
- **Section 32 evaluation report:** A section 32 report examines the extent to which the objectives of a proposal are the most appropriate way to achieve the purpose of the RMA and whether the provisions in the proposal are the most appropriate way to achieve the objectives. A Mana Whakahono could provide for tangata whenua to review the section 32 evaluation report, to ensure their comments have been fairly and accurately represented – and to consider the proposed response of the local authority. It is a worthwhile investment of time, giving a common understanding of the issues, before the proposed plan and section 32 are notified. Section 32AA requires any evaluation report to include a summary of all advice received from iwi authorities – and how the proposal responds to that advice. Local authorities will want to receive comments from iwi authorities as soon as possible, to minimise delay to their plan development processes.

Public involvement in the policy statement and plan-making process

- **Further submission opportunities:** Schedule 1 clause 8 of the RMA provides for certain persons to make further submissions. A Mana Whakahono could record that tangata whenua interest in an area or issue is greater than the public generally. This would allow tangata whenua an opportunity to make a further submission.
- **Mediation:** Mediation is available where submissions have been made on a proposed policy statement or plan change. A local authority may choose to invite submitters to a meeting to identify key issues and matters agreed – and to help reach agreement on other matters. The local authority, with agreement of the parties, may refer matters to an independent mediator. The mediator must report on the matters in contention, identify the nature and order of evidence to be called, and identify a proposed timeframe for a hearing. Mana Whakahono could set out expectations where mediation is to occur.

- **Hearings:** A Mana Whakahono may set out agreements about the hearing of submissions. For example:
  - situations when protocols or tikanga Māori are appropriate to include in the hearing proceedings
  - how evidence (written or spoken in Māori) should be received
  - when it would be appropriate to hold a hearing on a marae.
- **Hearing panel:** A local authority appoints hearing panels to hear submissions on and determine a policy statement or plan change. The panel may consist of independent hearing commissioners, councillors, or a combination of both. The RMA s34A(1A) requires local authorities to consult an iwi authority about the appointment of hearing commissioners with an understanding of tikanga Māori and understanding of the perspectives of local iwi or hapū. A Mana Whakahono could include the parties' agreement about how that consultation will occur, and any support the local authority may provide to support tangata whenua to meet the requirements of the Making Good Decisions hearing commissioner training. Find out more about the Making Good Decisions programme on the Ministry for the Environment website.

  It is important for iwi authorities and local authorities to consider early in the policy statement or plan-change process how the iwi authority will best be involved in the process. This will include ensuring that, if appropriate, a commissioner with an understanding of tikanga and perspectives of local iwi or hapū is available and not conflicted by their involvement in the process before the hearing.
- **Receipt of decisions:** There could be agreement about how decisions are sent to tangata whenua – for example, who should receive them and whether advance notice is required. Tangata whenua may wish to analyse a decision and lodge an appeal. Appeals must be lodged within 30 working days of a decision being released, so tangata whenua are likely to appreciate having advance notice.

Involvement in developing monitoring methodologies

(Section 58R(1)(c)(iii))

Local authorities are required to carry out two different kinds of monitoring under the RMA – state of the environment monitoring (under section 35 of the RMA) and compliance monitoring (under sections 30(1), 31(1), 35, 84 and 44A of the RMA).

The difference between these two types of monitoring is:

- **Compliance monitoring** requires local authorities to check the public adheres to the RMA, including the rules established under regional and district plans, and meeting resource consent conditions and national environmental standards. Compliance monitoring can be proactive (eg, routine auditing) or reactive (complaint and incident response) and includes local authorities' response to public complaints. Compliance monitoring, along with other compliance, monitoring and enforcement activities (such as enforcement) is used to set clear expectations for the regulated community and achieve positive behaviour change.
- **State of the environment monitoring** refers to activities carried out by local authorities to assess local environmental trends and the overall health of the environment. Compliance monitoring informs state of the environment monitoring (and vice versa) by identifying pollution incidents having a cumulative effect on the environment.

Compliance monitoring sits within the broader framework of compliance, monitoring and enforcement (CME) activities carried out by local authorities. Broadly, these activities relate to what the local authority does to make sure the requirements of the RMA are being followed and includes activities such as compliance promotion (eg, educating people about what they need to do to comply with rules or regulations) and enforcement (eg, prosecuting people who breach the conditions of a resource consent). You can find out about CME – including CME guidance for local authorities – on the Ministry for the Environment website.

Investment in good plan, policy-making, and resource consenting processes can be undermined if CME is done badly. CME is used to set clear expectations for the regulated community and achieve positive behaviour change. Achieving compliance is an iterative, systemic process, requiring a continuum of activities to reinforce each other and allow for the purpose of the legislation to be met.

A report released by the Ministry for the Environment in 2016 explains the current state of compliance, monitoring and enforcement by local authorities.

Tangata whenua may have a strong interest in participating in both kinds of monitoring as a way of carrying out their kaitiaki responsibilities. Tangata whenua may already be carrying out formal or informal state of the environment monitoring, which could complement or be supported by local authority monitoring. Grounding monitoring in te ao Māori is a way of broadening the communities' understanding of stewardship and the impact of environmental change.

The Environmental Reporting Act 2015 has recognised, at a national level, the value of monitoring within a te ao Māori framework. That legislation requires Government to produce regular reports on the state of the environment, including the impact of the state of the environment on te ao Māori.

A Mana Whakahono must record the participating authorities' agreement about how they will work together to develop and agree on methods for monitoring. This gives an opportunity to consider how the effectiveness and efficiency of monitoring activities will be measured, and to make the methodologies used more relevant to tangata whenua, including how changes to the environment impact on te ao Māori. Points for discussion could include:

- tangata whenua vision for an area
- tangata whenua priorities for monitoring
- the incorporation of Mātauranga Māori[4] into monitoring
- cultural health indicators in the monitoring methodologies established for compliance monitoring and state of the environment monitoring activities
- opportunities to share information and reporting.

4 Mātauranga Māori is described as knowledge, comprehension and understanding of things both seen and unseen. This knowledge can be used to inform the development and monitoring plans and can sit alongside scientific knowledge and data. Māori values and perspectives can be recognised in the planning documents and can supplement the policy framework and development of a plan.

Some monitoring opportunities to consider including in your Mana Whakahono

- **National Policy Statement for Freshwater Management (Freshwater NPS) requirements:** A Mana Whakahono could address how participating authorities will address the Freshwater NPS. The Freshwater NPS includes an objective and policy for involving iwi and hapū in freshwater management. The objective requires local authorities to involve iwi and hapū in managing fresh water and freshwater ecosystems, to identify iwi and hapū values and interests, and reflect these in the management and decision-making. The Freshwater NPS requires the methods for monitoring to include Mātauranga Māori.
- **Inclusion of Cultural Health Indicators (CHIs):** CHIs capture and record the cultural and biological health of waterways, catchments or sites based on local indigenous knowledge, so Māori perspectives and values can be incorporated into decisions. CHIs are developed by each iwi/hapū/whānau based on what is important to them. A CHI can include site status, mahinga kai, traditional food gathering, landing sites, travel routes, taonga (such as springs), and cultural stream health (eg, water quality, water clarity, habitat variety, and channel modification).

  The use of CHIs recognises the kaitiaki (custodial role) that tangata whenua have for their environment – and their aspiration for He Pataka Wai Ora (restoring ecosystem health). Fundamental to this is the physical and spiritual connections between people and place as the health of one affects the other. Therefore, restoring the mana and well-being of a people requires environmental restoration, health and well-being.

  Guidance for giving effect to the Freshwater NPS includes specific guidance on the use of CHI.
- **Monitoring plan effectiveness:** The parties can discuss how a local authority intends to evaluate its regional policy statement or plan. How does it know it is working? What tells a local authority its policies are effective and its rules are achieving the outcomes the local authority wants? What should the local authority focus on? The plan has hundreds of provisions – which are the most important?

  The key measure for effectiveness is how the policy is working on the ground – and are the rules achieving the desired outcomes. This involves discussion of the local authorities' programme for state of the environment, discussed above.

  Monitoring plan effectiveness also leads to a discussion about plan quality and if the plan is clear and concise (as required by section 18A of the RMA). The more specific a policy is, the easier it is to measure. Another indicator of if the rules are right is how many applications for resource consents are for non-complying activities – and for what types of activities? Does this mean these rules should be reviewed?

  The usability of the plan is also important. Tangata whenua experience in working with the plan will be important input for assessing if the plan is accessible and easily understood.

  Iwi authorities and local authorities should talk about what resources the local authority has allocated to plan for effectiveness monitoring and review over the next few years – and what the priorities for plan effectiveness are.

- **Resource consent monitoring:** Conditions are attached to consents to manage environmental effects and are a key tool for achieving a desired environmental outcome. This is a key matter for local authorities to monitor.

  Where environmental damage has occurred because of a breach of the RMA, a rule in a national environmental standard, regulation or plan, or a condition of consent – and a site of significance to iwi has been affected – Mana Whakahono could set out processes for tangata whenua to be involved in the initial inspection to help enforcement staff identify and assess environmental damage. The Mana Whakahono could also set out the requirements for consultation with tangata whenua over the remedies and restoration.

  Example – Environment Canterbury restorative justice programme
  Environment Canterbury runs a restorative justice programme through which tangata whenua are often requested to attend as community members or victims of the offender's non-compliance. Tangata whenua representatives are asked to explain how the non-compliance has impacted them and contribute to developing a remedial plan to address the con-compliance. Sometimes representatives are compensated by the offender for the time and resources required to attend the hearing.

Giving effect to iwi participation legislation and associated agreements

(Section 58R(1) (c)(iv))

Iwi participation legislation generally includes different types of cultural, financial and other forms of redress to address breaches of the Treaty of Waitangi. For example, the purchase of land, creation of new reserves, vesting of existing reserves, statutory acknowledgements, and creation of new governance or statutory bodies (such as joint management committees) with both iwi authority and local authority members.

These bodies are established through legislation and may have the purpose of restoring, protecting or enhancing the environmental, cultural or spiritual well-being of sites of significance to iwi and/or providing for iwi to exercise mana or kaitiakitanga over sites or areas of significance.

As redress is provided through legislation, Mana Whakahono does not provide the opportunity to renegotiate what has been established. However, a Mana Whakahono may build on, support and help clarify how the parties will work together to achieve the outcomes established in iwi participation legislation.

Mana Whakahono is also an opportunity to consolidate and remove areas of duplication between matters local authorities, iwi authorities, and hapū are working on – and ensure all the elements of the work fit together and complement each other. For example, the iwi participation legislation may cover a geographically discrete area but set out a process for engagement between the iwi authority and local authority. The Mana Whakahono could therefore draw on the existing process to establish an engagement process across the rest of the region. Or the Mana Whakahono may give more detail about engagement in the settlement area.

If a Mana Whakahono is agreed when a deed has been signed, but the Treaty settlement legislation has not been passed, the parties may still consider how the provisions of the deed will work with the content of the Mana Whakahono.

RMA defined term

Iwi participation legislation means legislation (other than this Act), including any legislation listed in Schedule 3 of the Treaty of Waitangi Act 1975, that provides a role for iwi or hapu in processes under this Act.

Identifying and managing conflicts of interest

(Section 58R(1)(c)(v))

When fulfilling its statutory obligations under the RMA, a local authority must comply with conflict of interest requirements under the Local Authorities (Member's Interests) Act 1978.

The parties to a Mana Whakahono should have a transparent and ongoing dialogue about these obligations and the instances where the participating iwi authorities and hapū may be subject to those conflict of interest obligations.

The Making Good Decisions hearing commissioner training includes specific information on conflicts of interest in policy statement and plan making.

The Auditor General has provided guidelines on conflicts of interest for public entities, which will help the Mana Whakahono parties understand their obligations. Of particular note:

> 2.37 Some cultures, including Māori culture, have a broad concept of who is regarded as a family member or relative. The same general principles apply. In our view, a conflict of interest issue will not often arise where the connection is simply that the other person is part of a member's or official's wider kin group descended from a common ancestor (such as an iwi or hapū). Nevertheless, care needs to be taken.[5]

In that regard, whakapapa on its own will not amount to a conflict. However, like any conflict determination process, all relevant factors need to be considered when determining whether there is in fact a conflict.

Resolving disputes during implementation of Mana Whakahono

(Section 58R(1)(c)(vi))

The strength of a Mana Whakahono will likely be based on the strength of the relationships the parties build over time and the trust they share. To support those relationships, the parties must include in their Mana Whakahono a process they will use to resolve disputes during the life of the agreement – that is, a dispute resolution scheme.

For information on resolving disputes that may arise during the negotiation of a Mana Whakahono please see Part 5: Resolving disputes during Mana Whakahono ā Rohe negotiations.

5 https://www.oag.govt.nz/2007/conflicts-public-entities/part2.htm.

Section 58R: Contents of Mana Whakahono a Rohe

(1) A Mana Whakahono a Rohe must -

....

(c) record the agreement of the participating authorities about –

...

(vi) the process that the parties will use for resolving disputes about the implementation of the Mana Whakahono a Rohe, including the matters described in subsection (2).

(2) The dispute resolution process recorded under subsection (1)(c)(vi) must—

(a) set out the extent to which the outcome of a dispute resolution process may constitute an agreement—

(i) to alter or terminate a Mana Whakahono a Rohe (*see* subsection (5)):

(ii) to conclude a Mana Whakahono a Rohe at a time other than that specified in section 58Q:

(iii) to complete a Mana Whakahono a Rohe at a later date (see section 58T(2)):

(iv) jointly to review the effectiveness of a Mana Whakahono a Rohe at a later date (*see* section 58T(3)):

(v) to undertake any additional reporting (*see* section 58T(5)); and

(b) require each of the participating authorities to bear its own costs for any dispute resolution process undertaken.

(3) The dispute resolution process must not require a local authority to suspend commencing, continuing, or completing any process under the Act while the dispute resolution process is in contemplation or is in progress.

....

Advice on dispute resolution schemes

The parties may not agree on all matters through the life of a Mana Whakahono, but they should try to understand the perspectives presented in discussions (along with the reasoning and underlying interests behind those perspectives). Where matters of contention arise, the parties should try early on to address the concerns, before they escalate to disputes.

The following points may be helpful to consider in the parties' discussions and ultimate agreement of an appropriate dispute resolution scheme to include in the Mana Whakahono:

- How the Mana Whakahono principles help frame the dispute resolution scheme.
- The parties will likely have or want to have a longstanding relationship that needs to be preserved in the future. There may be complex dynamics and there may be historical grievances and perceived breaches of trust and confidence to work through to strengthen the relationship.
- Most questions, concerns and issues that arise through the life of a Mana Whakahono should be able to be resolved through open and frank discussion. A few issues might escalate to disputes that may trigger a more formal dispute resolution process.
- Given the ongoing nature of the relationship, a 'consensual' process where the parties decide and agree on the outcome themselves would be preferable, at least in the first instance. This kind of process is relatively informal and inexpensive and the parties can decide how it will be conducted. The parties should discuss how tikanga or kawa can be included in this process. Consensual processes usually involve support from an independent third party and include conciliation, mediation, and facilitation. These processes are generally voluntary in the sense that both parties need to agree to participate, but it may be appropriate to compel one party to participate at the request of the other.
- The parties can agree to be bound by the outcomes of the consensual process beforehand (eg, in an agreement to mediate) or in the final agreement. How the final agreement will be recorded should also be discussed (eg, Will the parties draft it themselves, or leave it to the facilitator? Who has the authority to sign the agreement on both sides?).
- The parties might want to consider what happens if they are not able to reach agreement through the consensual process. They could agree that it will transition into a determinative process where someone else makes the decision.
- The disputes may involve a wide range of issues. Some may involve legal issues (eg, interpretation of regulations and legislation) and others could be quite technical (eg, involving expert engineering or environmental advice/reports). Rights-based and interpersonal issues may also arise.
- The parties will usually be the iwi authority and the local authority, but there may be other interested parties on each side. The parties will have shared interests (eg, the well-being and sustainable development of the environment), but also interests that differ (eg, what are appropriate uses of certain land).
- Experts may need to be called in to help the parties (eg, lawyers, scientists, engineers) resolve complex issues. The parties should discuss and agree on whether they will allow legal representation in the dispute resolution process.

- Should a third party such as a facilitator be involved, who this person is will be important. It is likely that the mana, knowledge and experience of local tikanga and te reo fluency are going to be more important than their perceived independence or technical expertise. How they are selected is likely to be discussed. As the facilitator will need to understand the interests of both sides and develop a relationship with both of them, pre-dispute resolution meetings should be available to each side.
- The location of the process will probably be important to the parties. It might be appropriate to agree that discussions will occur on the marae following marae protocols, or possibly at a neutral venue.
- Language and speaking rights may be issues for the parties and should be discussed in advance (ie, Can parties speak in te reo Māori? If so, will there be simultaneous interpretation for non-speakers and who will provide interpreters? Will there be nominated speakers?)

Resources

- The Government Centre for Dispute Resolution (GCDR), part of the Ministry of Business, Innovation and Employment, helps central and local government design appropriate dispute resolution processes. While the GCDR does not resolve disputes or provide mediators, it provides guidance and principles that parties could consider when reviewing or developing a dispute resolution scheme.
- The Arbitrators' and Mediators' Institute of New Zealand (AMINZ) and the Resolutions Institute are professional associations and have lists of practitioners in disputes resolution. AMINZ has information about the different types of alternative dispute resolution processes as well as a list of individuals who are qualified to conduct mediation, arbitration or adjudication.
- The Resolutions Institute also provide information, training for mediators, and has a directory of qualified professionals.
- Local Government New Zealand has a consultancy providing tools and professionals to help local authorities achieve best practice. This includes EQuip facilitators.
- Local authorities may have mediators they use at pre-hearing conferences to help identify matters in agreement and those in dispute. These could be independent commissioners or others specialising in mediation or facilitation.

Other matters you may want to include

He rangi tā matawhāiti,
he rangi tā matawhānui

A person with narrow vision has a restricted horizon;
a person with wide vision has plentiful opportunities

In addition to compulsory matters that must be included in a Mana Whakahono, a range of other matters may be included. As these matters are optional, it is up to the participating authorities to decide if they will be included.

Local authorities and iwi authorities, or hapū (when a local authority initiates), should be prepared to discuss all these RMA matters if one participating authority wants to discuss and include some or all these matters.

Section 58R: Contents of Mana Whakahono a Rohe

....

(4) A Mana Whakahono a Rohe may also specify –

(a) how a local authority is to consult or notify an iwi authority on resource consent matters, where the Act provides for consultation or notification:

(b) the circumstances in which an iwi authority may be given limited notification as an affected party:

(c) any arrangement relating to other functions, duties, or powers under this Act:

(d) if there are 2 or more iwi authorities participating in a Mana Whakahono a Rohe, how those iwi authorities will work collectively together to participate with local authorities:

(e) whether a participating iwi authority has delegated to a person or group of persons (including hapu) a role to participate in particular processes under this Act.

....

This list of matters in section 58R(4) is broad. Sometimes one party may like to include an optional matter in a Mana Whakahono and the other party is not able to agree to that matter. In the spirit of the Mana Whakahono, parties should limit these instances. However, if this situation arises, the parties should use their best endeavours to reach agreement in good faith. If agreement is not possible, the dispute resolution mechanism could be triggered (noting the matter is optional) or the parties could agree to 'park' a particular matter and continue to discuss later, reviewing the position at the Mana Whakahono review date (see Part Four: Review and Monitoring of a Mana Whakahono ā Rohe).

How a local authority is to consult or notify an iwi authority on resource consent matters

(Section 58R(4)(a) and (b))

Sections 58R(4)(a) and 58(4)(b) provide for similar matters and are addressed together in this sub-part under the headings of consultation and notification.

Consultation

Section 36A states there is no statutory duty under the RMA for an applicant or local authority to consult tangata whenua about resource consent applications. However, in practice, consultation can be of real assistance when fulfilling the requirements of a resource consent application.

Best practice suggests that when tangata whenua interests are triggered by an activity, consultation and engagement with those tangata whenua will help determine the effects of the activity (required by the Fourth Schedule of the RMA).

Further discussion about the Fourth Schedule and completeness of resource consent applications is discussed in the Any arrangement relating to other functions, powers or duties under the RMA section below.

Notification

A local authority must decide within 20 working days of receiving a resource consent application whether to give public or limited notification of the application.

If the application is publicly notified, any person can make a submission on it. The local authority must publicly notify the application if it has minor or more than minor adverse effects on the environment, or the applicant has requested it. Otherwise it must decide if there are any affected persons or groups who should be notified (including limited notification).

However, some preclusions apply to what can be publicly or limited notified. The public, or any person notified under limited notification has 20 working days to make a submission. The local authority could decide, however, the activity has less than minor effects and there are no affected persons. In this case, the application is a non-notified application – and there is no opportunity for submissions. More than 95 per cent of resource consent applications are non-notified and decided by local authorities without any submissions.[6]

A Mana Whakahono cannot override the notification provisions. However, it provides a further opportunity for the parties to discuss situations in which an iwi authority would be notified and/or how a local authority does an affected person assessment.

6 National Monitoring System data.

Some notification opportunities to consider including in your Mana Whakahono

- **Iwi and/or hapū environmental management plan:** These plans would likely provide relevant information for a local authority and could help a local authority planner determine who to notify as an affected party. Any iwi or hapū environmental plans could be referred to when determining if the adverse effects are minor or more than minor (but not less than minor). This also assists with a holistic approach to considering applications, rather than requiring iwi authorities to specify exactly which types of applications they will likely be interested in and where.
- **Statutory acknowledgements:** In assessing an activity's adverse effects on a person for section 95E, consent authorities must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11 of the RMA. Schedule 11 provides for a range of Treaty settlement legislation, including statutory acknowledgements. Sometimes statutory acknowledgements have not been properly considered in such an assessment. Participating authorities could discuss and agree their expectations about any statutory acknowledgements in the section 95E(2)(c) assessment.
- **Areas of significance:** If areas of significance can be identified (and they have not previously been identified) this would assist the local authorities in their affected party assessment. However, local authorities should not expect iwi authorities to provide a full list of examples of when an iwi authority expects to be notified. Mana Whakahono enables this discussion to occur and for this to be considered in a notification context (if it is not covered through the environmental plans and/or statutory acknowledgements).

Any arrangement relating to other functions, powers and duties under the RMA

(Section 58R(4)(c))

Local authorities have a range of functions, powers and duties under the RMA. A Mana Whakahono can give a forum for iwi authorities and local authorities to discuss any other potential arrangement about those functions, powers and duties.

This provision is intentionally broad to cover a range of matters the parties may wish to discuss and agree. How these matters could be provided for through (or as a part of) the Mana Whakahono will likely differ depending on the strength of the arrangement. For example, some of the examples listed below would likely trigger further RMA and Local Government Act 2002 consultation requirements. Participating authorities should consider these matters through their negotiations – and take advice if required.

Some functions, powers and duties opportunities to consider, including in your Mana Whakahono

- **Joint decision-making:** Section 36B of the RMA provides for iwi authorities and groups representing hapū to agree to make joint decisions, through a joint management agreement (JMA). Whether the Mana Whakahono would specifically include a section 36B agreement would need to be worked through between the parties (acknowledging the limitations on JMAs in sections 36C and 36D of the RMA). Also, the tests set out in section 36B would need to be met.

  Section 36B has only been triggered twice since its inclusion in the RMA in 2005; once in the Tūwharetoa rohe with Taupō District Council (over Māori Land) and once between Te Runanganui o Ngāti Porou and the Gisborne District Council over the Waiapu catchment. Other JMAs have been agreed through Treaty of Waitangi settlements.

  Example – Te Runanganui o Ngāti Porou and the Gisborne District Council
  Pursuant to the JMA between Te Runanganui o Ngāti Porou and the Gisborne District Council, the parties will make the following decisions jointly in accordance with the JMA:

  - decisions on notified resource consent applications under section 104 of the RMA within Waiapu catchment
  - decisions on RMA planning documents under clause 10(1) of Schedule 1 of the RMA that affect the Waiapu catchment, including the Waiapu Catchment Plan
  - decisions on private plan changes within or affecting the Waiapu Catchment.

  Find out more about the Joint Management Agreement on the Gisborne District Council's website.

- **Transfer of functions, powers or duties:** Section 33 of the RMA provides for local authorities to transfer any one or more of its functions, powers or duties under the RMA to an iwi authority. There are examples of inter-local authority transfers of powers under section 33 of the RMA, but this provision has not been triggered for iwi authorities, despite being in the RMA since 1991. A range of matters can be transferred to iwi authorities, including (but not limited to) compliance monitoring. If a section 33 transfer is agreed, the form and its positioning within (or alongside) the Mana Whakahono will need to be carefully considered. The parties should also have a robust conversation about the rationale for transfer and the resources required to undertake the transferred power. The statutory process and test under section 33 would be met.

- **Assessment of resource consent applications:** Under the Fourth Schedule of the RMA, a person applying for resource consent is required to provide an assessment of the effects the activity will have on the environment (an assessment of environmental effects (AEE)). This assessment helps a local authority reach a decision on notification – and will also help a local authority in its decision to grant a consent or not (and if so, what conditions should apply). The assessment includes any effect, where relevant, on the wider community, including any effect on natural or physical resources having spiritual or cultural value. Where the local authority relies on tangata whenua to help them understand the effects of a proposal, it is reasonable, and good practice for the local authority to formalise and resource this work.

  While the Fourth Schedule of the RMA requires the applicant to identify who is affected by its application, it does not require consultation with persons affected. There could be circumstances where the iwi authority and the local authority agree applicants should consult before completing the AEE – to ensure the AEE is complete. In this case, the applicant would still not be required to consult, but would be made aware of the status of the iwi authority (and/or other tangata whenua groups) as interested or an affected party on the application. They would also be given contact details, should they wish to talk to the relevant person/persons before making their application. This approach is best practice.

  The iwi authority and the local authority may also wish to discuss circumstances in which cultural impact assessments (CIA) would be appropriate (as part of the AEE requirements) or other consent information required. When a resource consent application needs further cultural analysis, the local authority should require this of the applicant, so the application is complete (a requirement of section 88 of the RMA). If the parties determine this should take the form of a CIA, or other substantial analysis, it is the applicant's responsibility to resource this. A local authority may be able to help the applicant, if the applicant does not have the relationships or networks to do that work.
- **Training:** The participating authorities may wish to consider discussing training opportunities, such as jointly attending the Making Good Decisions course. Another option is for the local authority to send an iwi/hapū member to training to help the local authority fulfill a particular function, power or duty.
- **Secondments:** The participating authorities may wish to consider seconding staff to one another, to help the local authority fulfill a particular function, power or duty. This may also help improve the relationship between the participating authorities.
- **Funding / resourcing:** The participating authorities may wish to consider discussing funding / resourcing arrangements. For example, where a local authority sends applications to iwi authorities for assessment, the local authority could consider remunerating the iwi authority for the time spent on this assessment. If these are agreed, it is likely that the details would sit outside of the Mana Whakahono in a parallel contractual arrangement.

Two or more iwi authorities are participating in a Mana Whakahono

(Section 58R(4)(d))

Where two or more iwi authorities have joined to have one Mana Whakahono with one or more local authorities, it may be useful to set out how these parties will work collectively. This doesn't need to be overly prescriptive, but could include matters such as:

- confirming the contact point for each iwi authority
- information sharing (and any related confidentiality requirements)
- dispute resolution (for disputes not involving the local authority).

Delegation to a person or group of persons (including hapū)

(Section 58R(4)(e))

During the negotiation of a Mana Whakahono an iwi authority may delegate to a person or group of persons (including hapū) a role to participate in a process under the RMA. The provision to delegate provides a direct way of involving other groups, such as hapū and/or marae, formally within the Mana Whakahono. In practice, it is likely this will occur by delegating a part of a Mana Whakahono to a hapū, marae, or other body.

If a delegation is made under a Mana Whakahono, it should be clearly set out in the Mana Whakahono. For example, if a geographic area within the Mana Whakahono has been delegated to a hapū, this should be depicted by a map; or if a function will be transferred to a hapū, this should be clearly set out. Using different schedules to a Mana Whakahono (if there is more than one delegation) provides a way of delineating the agreement.

The term 'delegate' is likely not a term that enhances the mana of the party receiving the delegation. The term is used in this way to mirror other uses of the term in the RMA.

Part 4.

Review and monitoring of a Mana Whakahono ā Rohe

He mate kāhu kōrako

Desire the hawk with white feathers

How will we keep our Mana Whakahono ā Rohe current?

To ensure Mana Whakahono are working effectively and remain fit for purpose throughout the life of the relationship between the parties, the RMA requires the Mana Whakahono and local authority policies and processes are reviewed and monitored as follows.

Section 58T: Review and monitoring

(1) A local authority that enters into a Mana Whakahono a Rohe under this subpart must review its policies and processes to ensure that they are consistent with the Mana Whakahono a Rohe.

(2) The review required by subsection (1) must be completed not later than 6 months after the date of the Mana Whakahono a Rohe, unless a later date is agreed by the participating authorities.

(3) Every sixth anniversary after the date of a Mana Whakahono a Rohe, or at any other time by agreement, the participating authorities must jointly review the effectiveness of the Mana Whakahono a Rohe, having regard to the purpose of a Mana Whakahono a Rohe stated in section 58M and the guiding principles set out in section 58N.

(4) The obligations under this section are in addition to the obligations of a local authority under-

  (a) section 27 (the provision of information to the Minister):

  (b) section 35 (monitoring and record keeping).

(5) Any additional reporting may be undertaken by agreement of the participating authorities.

Review of local authority policies and processes

The requirement for local authorities to review their policies and processes to ensure they are consistent with the Mana Whakahono under section 58T (1) and (2) applies to the local authorities' internal policies and processes (including how internal policies and processes apply externally).

This review requirement does not apply to policies in RMA planning documents (such as regional and district plans). However, if the participating authorities agree this should be initiated through section 58R Contents of Mana Whakahono.

The review required by section 58T(1) must be completed no later than six months after the Mana Whakahono is concluded (unless a later date is agreed by the participating authorities).

The parties may negotiate a later date to ensure the initial review is comprehensive and robust. For example, larger local authorities may request additional time. However, participating authorities need to discuss and agree if a longer period is to apply.

If the participating authorities agree to a later date to complete the review, best practice suggests this agreement should be documented in writing and signed in accordance with the respective parties internal decision-making processes. This agreement could be reflected in writing in the Mana Whakahono.

Even if a Mana Whakahono has not been initiated, local authorities could prepare now for such a review. The stocktake suggested in the Initiation section of this guidance may help with this preparation.

Review of the effectiveness of a Mana Whakahono ā Rohe

Iwi and local authorities are also required by section 58T(3) to jointly review the effectiveness of the Mana Whakahono every sixth anniversary, while considering the statutory purpose for Mana Whakahono and the guiding principles.

We suggest the parties discuss expectations for such a review through the Mana Whakahono negotiations. For example, will an independent person conduct the review? In addition to the statutory purpose and guiding principles, what measures will be used to consider and review effectiveness? It is important the parameters for the review are clear, so the outcome of the review is useful for the parties. These matters don't need to be agreed at the time of concluding the Mana Whakahono, but considering these matters before the review date may be useful to the participating authorities.

A later or earlier period may be agreed to complete the review required by section 58T(3) of the RMA. For example, either iwi or the local authority may seek a later period due to resourcing pressures. Alternatively, iwi or the local authority may wish to look at effectiveness earlier, if particular provisions will be triggered or implemented soon after concluding the Mana Whakahono.

The date for the review of effectiveness of the Mana Whakahono may also be chosen to correspond with the local authority's planning cycle. Iwi and the local authority may wish to wait, for example, until a local authority's proposed plan has gone through the development process and become operative, before they feel the effectiveness of the participation agreement can be properly assessed.

It is at the discretion of the parties whether they want to agree different timeframes for the reviews. The statutory benchmark is every sixth anniversary of the start of the Mana Whakahono.

It is best practice, following the review required by section 58T(1) of the RMA, to continue to monitor the implementation of the Mana Whakahono.

A review of the effectiveness of a Mana Whakahono may or may not lead to the parties amending the Mana Whakahono and the local authority therefore needing to review its policies and processes.

Part 5.

Resolving disputes during Mana Whakahono ā Rohe negotiations

Ka rongo i te ia o te aroha,
he ngākau māhaki

To feel genuine intentions is to understand a charitable heart

What happens if we can't agree?

The legislation provides two pathways to resolve a dispute during Mana Whakahono negotiations: non-binding or binding.

Generally, consensual processes (such as facilitation or mediation), where the parties agree the outcome themselves, are regarded as non-binding – although the parties can agree that the resolution will be enforceable.

Determinative processes, where a third party decides the outcome, are binding.

Whichever process is chosen, it is important both parties are clear in advance about what they agree on, and what issues are in dispute.

Section 58S: Resolution of disputes that arise in course of negotiating Mana Whakahono a Rohe

(1) This section applies if a dispute arises among participating authorities in the course of negotiating a Mana Whakahono a Rohe.

(2) The participating authorities—

- (a) may by agreement undertake a binding process of dispute resolution; but
- (b) if they do not reach agreement on a binding process, must undertake a non-binding process of dispute resolution.

(3) Whether the participating authorities choose a binding process or a non-binding process, each authority must—

- (a) jointly appoint an arbitrator or a mediator; and
- (b) meet its own costs of the process.

(4) If the dispute remains unresolved after a non-binding process has been undertaken, the participating authorities may individually or jointly seek the assistance of the Minister.

(5) The Minister, with a view to assisting the participating authorities to resolve the dispute and conclude a Mana Whakahono a Rohe, may—

- (a) appoint, and meet the costs of, a Crown facilitator:
- (b) direct the participating authorities to use a particular alternative dispute resolution process for that purpose.

Resolving disputes during Mana Whakahono negotiations

If alternative dispute resolution is needed during the negotiation of a Mana Whakahono, the parties:

BINDING FORM

May agree to a **binding** form of alternative dispute resolution.

The parties agree on the process and meet the costs.

NON-BINDING FORM

Or, if the parties do not agree on a binding process of dispute resolution, must undertake a **non-binding** form of alternative dispute resolution.

The parties agree on the process and meet the costs.

INTERVENTION

If no agreement is reached through the non-binding alternative dispute resolution process the parties may seek Ministerial intervention.

The Minister for the Environment may appoint a Crown facilitator or direct parties to particular alternative dispute resolution processes. There is no power for the Minister to force an agreement on the parties.

CONCLUSION

The parties must conclude a Mana Whakahono within 18 months unless otherwise agreed.

The parties may collectively agree not to conclude a Mana Whakahono. Or some parties may choose to establish a separate Mana Whakahono.

Non-binding (consensual) dispute resolution

Participating authorities may first try resolving a dispute through a non-binding process.

Mediation

Mediation is one form of non-binding dispute resolution the parties may consider. It is a process where the parties, with external help, create a safe environment where they can address their issues and resolve them if they wish. Mediation is based on the principles of voluntariness, confidentiality, impartiality, and self-empowerment.

The mediator is a dispute resolution practitioner who helps the parties reach their own resolution in mediation, but does not decide the outcome. The mediator's role is to guide the process so the issues can be defined, the relevant information produced, and options explored without undue delay or legalistic procedures.

The mediator must be impartial and independent, fairly and objectively listen to the areas of disagreement and help the parties to identify common ground and areas where agreement can be reached.

Choosing a mediator will be a key step in the process of resolving a dispute. Finding a mediator that has experience in tikanga, cultural understanding or working with the RMA will be preferable.

For mediation to work, the parties must enter in good faith and with the intention of resolving the matter. At least one member of the iwi authority and the local authority that participates in the mediation process must have authority to a make decisions and agreements.

The parties should agree whether the discussion that takes place in mediation will be confidential.

Neither the parties nor the mediator are limited by rules of evidence.

Binding (determinative) dispute resolution

The parties must otherwise resolve a dispute through a binding process.

A binding or determinative process may be favoured as it provides more certainty in reaching an outcome, timeframes and costs when compared to a non-binding process. A determinative process means that an external party, after working with the participating authorities, would make a decision that all parties would be bound to follow.

The potential costs and formality of these processes are likely to be higher than for a consensual process.

The parties involved must meet their own costs of a determinative process and it is in the interests of everyone to ensure the process is run efficiently. Involving qualified and experienced professionals is essential to ensure the process is robust and durable outcomes are achieved. Contacts for professional bodies and lists of practitioners are set out in the Resolving disputes during the implementation of Mana Whakahono section.

Asking the Minister to appoint a Crown facilitator

If a non-binding process fails to resolve the matter, the legislation provides for the parties to individually or jointly seek the Minister for the Environment to direct the use of a process to conclude a Mana Whakahono. Before seeking assistance from the Minister, the parties must have made a genuine attempt to resolve the dispute themselves.

The Minister may appoint a Crown facilitator to help resolve the dispute (and may direct the parties to use an alternative dispute resolution process), in which the cost of the facilitator is met by the Crown.

To seek Ministerial intervention, the party or parties must make an application in writing to the Chief Executive of the Ministry for the Environment and copied to manawhakahono@mfe.govt.nz. It should describe:

- the background and context of the Mana Whakahono negotiations
- the basis for the dispute
- the non-binding process that was followed
- who is involved
- what progress has been made
- the issues over which no agreement was reached
- what support the parties are seeking.

To make sure the Ministry fully understands the situation, we may contact the party(ies) seeking assistance before referring the matter to the Minister for the Environment.

If the Minister decides to appoint a facilitator, they may choose to discuss the proposed appointment and the proposed fees with Cabinet. The appointment process is likely to take several weeks to complete.

Part 6.

Treaty of Waitangi settlements and iwi participation legislation

Tangata ako ana i te kaenga,
te turanga ki te marae, tau ana

A person nurtured in the community
contributes strongly to society

How do Mana Whakahono ā Rohe relate to Treaty settlements?

Mana Whakahono are an option under the RMA, outside Treaty of Waitangi settlements, for local authorities and tangata whenua to have relationships.

Section 58U: Relationship with iwi participation legislation

A Mana Whakahono a Rohe does not limit any relevant provision of any iwi participation legislation or any agreement under that legislation.

RMA defined term

Iwi participation legislation means legislation (other than this Act), including any legislation listed in Schedule 3 of the Treaty of Waitangi Act 1975, that provides a role for iwi or hapu in processes under this Act.

Mana Whakahono are not contingent on proof or the nature of historical grievances:

- For iwi who have Treaty of Waitangi settlement redress that triggers the Resource Management Act 1991, contained in iwi participation legislation, a Mana Whakahono cannot limit this redress.
- For iwi who have not yet settled their historic Treaty of Waitangi grievances, Mana Whakahono are an option outside of this context, for local authorities and iwi to discuss and agree how those parties want their relationship to operate and particular mechanisms to give effect to the parties' objectives.

In the *Next Steps for Freshwater Consultation Document*, where the Mana Whakahono proposal was initially expressed (although in a slightly different form to that ultimately legislated through the RMA amendments) the Government confirmed:[7]

> 'The call from iwi for greater participation in natural resource management has been addressed in some instances through Treaty of Waitangi settlements for example, through establishment of a joint committee with a regional council, an advisory committee to the local authority and specific requirements to appoint accredited iwi commissioners to consent hearing committees.
>
> However, there is still a need to consistently provide opportunities for iwi engagement in local authority decision-making about natural resources. For this reason, the Government included a new provision for iwi participation arrangements in the Resource Legislation Amendment Bill introduced in 2015.
>
> However, as part of our discussions with the Freshwater Iwi Leaders Group on improving iwi participation in freshwater decision-making, we discussed an alternative proposal to the iwi participation. Under this proposal, iwi could invite local authorities to agree how iwi and local authorities will work together on natural resource management. The name the Freshwater Iwi Leaders Group proposed for this agreement is *Mana Whakahono'*.

Fundamentally, a Mana Whakahono cannot limit a Treaty of Waitangi settlement. However, it does provide participating authorities the opportunity to discuss how the Treaty settlement redress is being implemented – and agree on if the Mana Whakahono includes further obligations on the participating authorities about this redress. For example, where an iwi authority has a statutory acknowledgement over a particular area, the parties may want to agree a process where the local authority staff visit the statutory acknowledgement area as a part of their training and on-going development; and ensure the statements of association that provide the kōrero (story) for the statutory acknowledgements are also well known by local authority and iwi authority staff.

The Mana Whakahono could also provide opportunities to:

- strengthen Treaty settlement redress by ensuring it is implemented in the way envisaged by the participating authorities and provided for in the iwi participation legislation
- complete a stocktake of arrangements between the participating authorities, including Treaty settlement redress, to ensure all Treaty settlement mechanisms are being implemented as the participating authorities agreed to through the Treaty settlement process
- rationalise various arrangements between the participating authorities into a Mana Whakahono.

Iwi participation legislation is predominantly Treaty of Waitangi settlement legislation but also includes other legislation that provides a role for iwi or hapū in processes under the RMA (eg, particular rights recognised under the Marine and Coastal Area Act 2011).

All options would need to be assessed on a case-by-case basis, to ensure the obligation not to limit iwi participation legislation in section 58U is complied with.

7 Ministry for the Environment, 2016. Next steps for fresh water: Consultation document, p.30.

Ka mahi te tawa
uho ki te riri

Well done,
you whose courage
is like the heart
of a tawa tree