Effective Participation in Resource Consent Processes

A Guide for Tangata Whenua

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Ngā tāngata mā rātou tēnei aratohu e pānui

He maha ngā huarahi hei whai mā te tāngata whenua ki te whakangungu i ō rātou taonga me te whai i ō rātou wawata. Ko te whakauru ki roto i ngā tukanga o te Ture Whakahaere Rawa 1991 tētahi o aua huarahi.

Ko te whai o tēnei aratohu, he āwhina i te tāngata whenua ki te whakauru tōtika ki roto i te whakataunga e pā ana ki te whakaaetanga o ngā rawa. Kua tuhia te aratohu mō te tāngata whenua e hiahia ana ki te kite i te Ture Whakahaere Rawa e mahi ana mō rātou, kāore ki te patu i a rātou.

He aratohu tēnei mō ngā whānau, ngā hapū, ngā iwi me ētahi atu whakahaerenga, rōpū rānei e tū ana hei māngai mō te pānga tāngata whenua i roto i te tukanga whakatau whakaaetanga. Me pānuitia e koe tēnei aratohu mehemea:

- kei te hiahia koe ki te whakauru ki te tukanga whakatau whakaaetanga engari kāore koe i te mōhio ki whea tīmata ai
- kua whakauru kē koe ki te tukanga engari kei te hiahia ki te mōhio me pēhea rā e kaha awe ai koe, e mahi tōtika ai, kia whaihua ake ai tōu whānau, tōu hapū, tōu iwi
- kei te hiahia ki te mōhio ki ngā tikanga whakahaere a ētahi atu hapū, iwi rānei mō ēnei take.

Who should read this guide

There are many ways tangata whenua can seek to protect their taonga and pursue their aspirations. Participating in the processes of the Resource Management Act 1991 (the RMA) is one of those ways.

This guide aims to help tangata whenua to participate effectively in resource consent decision-making.[1] It is written for tangata whenua who like to see the RMA working for them, not against them.

This guide is for whānau, hapū, iwi and other organisations or groups who are representing tangata whenua interests in the consent process. You should read this guide if you:

- want to participate in the resource consent process but don't know where to start
- already participate in the process but want to know how to be more influential and effective and achieve more for your whānau, hapū, or iwi
- want to know how other hapū or iwi handle these issues.

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[1] Tangata whenua can also participate in the plan-making processes of the RMA, but that form of participation is not addressed in this guide. Please refer to *Making a Submission on a Proposed Plan, Plan Change, or Variation*, one in a series of everyday guides on the RMA, published by the Ministry for the Environment, and available from councils, or from the Ministry's website (www.mfe.govt.nz) or publications team (phone (04) 917 7506, a 24-hour answer phone).

How to read this guide

This guide is set out in four sections.

- Section 1: What's in it for tangata whenua? explains the RMA and its importance to you.
- Section 2: How and when can tangata whenua get involved? explains and illustrates the various opportunities that you have to become involved in resource consent decision-making, and suggests how you can be most influential in the process.
- Section 3: What do tangata whenua need to participate effectively? provides practical guidance on the structures, systems and agreements that need to be in place for you to take advantage of the opportunities available.
- Section 4: What can tangata whenua expect, and what is expected of tangata whenua? provides guidance on the ways of interacting that are most likely to build the effectiveness of your organisation or group.

Terminology

This guide uses the term 'tangata whenua' to refer to any organisation or group representing tangata whenua interests. Where the guide uses the term 'organisation or group', this should be read to include Māori trust boards, rūnanga, iwi incorporated societies, iwi charitable trusts, marae committees, marae trustees, iwi resource management units, hapū, whānau and any other organisation or group participating in resource management on behalf of tangata whenua.

The guide also refers to 'decision-makers'. For the purpose of this guide, 'decision-makers' refers to the local authorities (the city, district or regional councils) or their representatives (councillors, independent commissioners and council staff) that make decisions under the RMA. These are often referred to simply as 'councils'.

Section 1: What's in it for tangata whenua?

According to tradition, tangata whenua are kaitiaki of the environment within their rohe. Many councils and other authorities who have encouraged their staff to build positive working relationships with tangata whenua in this context have successfully managed to explore and find contemporary expressions of kaitiakitanga. Others have yet to do so. The understanding of kaitiakitanga can vary from council to council, which can be an immediate challenge to moving forwards.

Councils have legal powers and responsibilities for the management of natural and physical resources. If you are unable to have input into their decisions, protecting many of the places and taonga valued by your people will be an uphill battle.

Participation – the bigger picture

This guide focuses on how you can participate in the resource consent process. Tangata whenua need to recognise that resource consents are part of a wider system of planning and allocating financial resources at the regional and local levels. To have maximum impact, you must participate in this broader planning process.

An example of where you can have a greater impact is in the development of national policy statements, national environmental standards, regional policy statements, regional plans and district plans. Having involvement at this higher level can help ensure that te ao Māori is expressed within these planning documents.

The broader process includes the following elements.

The Resource Management Act 1991 (the RMA)

The RMA controls how people can use natural and physical resources – land and buildings, water, air, plants, animals and the coast.

It does this in two main ways. First, the RMA encourages councils to prepare *regional policy statements* and *regional and district plans* which cover how resources are used. These plans set out whether permission (*resource consent*) is required from the council before a resource is used and, if so, what the council considers relevant when deciding whether that permission should be granted. Councils are required to consult tangata whenua when they are developing and changing plans.

Second, the RMA provides for a system of granting *resource consents*. This system includes detailed processes (including the preparation of assessments of effects on the environment and opportunities for public participation) that must be followed by councils when receiving, considering and deciding on applications.

Iwi management plans

Iwi management plans can play an important part in managing resources through the RMA. The RMA recognises that iwi management plans can be a critical part of being effective in resource consent processes. To ensure that councils can take into account iwi management plans, they must be made aware of their existence and significance.

The Ministry for the Environment has published a useful guide to developing iwi management plans (*Te Raranga a Mahi*, August 2000). Download load it from the publications section on the Ministry website (www.mfe.govt.nz) or contact the publications team on (04) 917 7506 (24-hour answerphone).

Local Government Act 2002

The Local Government Act 2002 controls what councils do. It provides a broad mandate for councils to get involved in a wide range of issues, including cultural and environmental issues.

However, to become involved a council needs the backing of its community. It achieves this by preparing long term council community plans (LTCCPs) through a public consultation process. LTCCPs, together with annual plans, ensure that ratepayers' money is devoted to the right things with a long term view in mind. These plans are important for tangata whenua because they can ensure that resources are devoted to supporting tangata whenua in various ways – including tangata whenua participation in resource management.

Tangata whenua and the RMA: a special relationship

The Crown acknowledges the special relationship that tangata whenua have with the environment, which is expressed through whakapapa, pūrākau, whakataukī, pepeha, waiata and in many other ways that reflect this relationship. The Crown acknowledges that these special relationships are not privileges, but rather the expression of rights that were secured between the Crown and rangatira Māori when the Treaty of Waitangi was signed.

This relationship is recognised through the RMA, giving tangata whenua a special position in resource management. Through various sections the RMA recognises:

- the importance of *places and resources* of value to tangata whenua
- the potential value of *kaitiakitanga* as a way of managing resources (including the specific means of iwi management plans)
- the principles of the *Treaty of Waitangi*, including the notion of good faith consultation
- the legitimacy of *consultation* with tangata whenua in policy-making affecting the use of resources.

Although many people have an opportunity to participate in RMA processes, the position of tangata whenua as a partner to the Treaty is reflected in opportunities for participation that are emphasised more strongly.

Tangata whenua and resource consents

The RMA recognises that the relationship tangata whenua have with the environment is a fundamental cornerstone of their identity as a people. In doing so, the resource consent process provides a key mechanism for the protection of tangata whenua values. There are opportunities in the process that provide for tangata whenua to actively seek the protection of their taonga.

However, this is an imperfect process and success lies not only in the use of the process but in other factors as well. For example, the relationship with the local council is important, as is the willingness of the council to explore mutually acceptable solutions with tangata whenua, and overcoming the resourcing issues faced by tangata whenua in discharging their responsibilities as kaitiaki and as Treaty partners.

Section 2: How and when can tangata whenua get involved?

The RMA guarantees tangata whenua an opportunity to become involved in the preparation of *plans* and *policies* by councils under the RMA. Tangata whenua are represented variously through iwi authorities, tribal rūnanga, iwi and hapū trust boards, land trusts or directly as representatives of whānau, hapū and iwi.

The RMA does not provide the same guarantee for individual resource consent applications. However, the courts have clearly held that it is *good practice* for resource consent applicants to consult with tangata whenua where proposals might affect matters set out in sections 6(e) and 7(a) of the RMA.

The courts also suggest that councils (through their officers) have some *obligation to consult* with tangata whenua if the information they receive from applicants is insufficient to make an informed decision on the effects on tangata whenua interests. Councils certainly have an obligation to confirm the adequacy or otherwise of any consultation carried out by an applicant.

The bottom line is that where tangata whenua have a legitimate interest in, or are affected by, a particular application, they have a right to have input into the decision-making process.

A useful summary of case law on consultation with tangata whenua has been published by the Ministry for the Environment (*Guidelines for Consulting with Tangata Whenua Under the RMA: An Update on Case Law*, December 2003). Download load it from the publications section on the Ministry website (www.mfe.govt.nz) or contact the publications team on (04) 917 7506 (24-hour answerphone).

How to influence those outcomes

You can follow a number of principles to ensure your organisation or group has a strong positive influence on the actions of applicants and the decisions made by councils. Not all involve how you engage with an applicant or council over a particular proposal. Some relate to how you frame your interests or concerns, or the extent to which you ensure those interests and concerns are taken into account well before any proposals are actually put to you for comment. These principles are as follows.

- Build strong relationships with councils, with an expectation of good faith and open information sharing from both parties.
- Develop an ongoing positive relationship with key councillors and council staff members involved in the development of plans and the processing of resource consent applications.
- Make submissions on the long term council community plans and annual plans prepared by councils, so you can influence the way they support the involvement of your organisation or group in the consent process.

- Actively participate in the development or change of regional policy statements and regional and district plans prepared by councils, so you can help ensure your relationships with your taonga are recognised and provided for. It is a process demanding in time and resources, but an essential one for any tangata whenua group serious about informing council policy-making. Given the effort required, input into plans is often best handled by an iwi, as opposed to a hapū or whānau.
- Develop iwi management plans, which are an excellent means for making councils and applicants aware of the nature of your relationship with your taonga. Iwi management plans are used to influence council planning documents. Councils must take iwi plans into account when preparing new plans or making plan changes.
- Let councils know about those aspects of the environment that you value or hold dear, such as wāhi tapu and kaimoana gathering areas, so you can ensure they are well informed when it comes to:
  - deciding whether you are an affected or interested party (see below for an explanation of this)
  - telling applicants how to get in touch with you to discuss their proposals.
- Provide applicants and councils with a historical and cultural context for your views about a particular proposal, so you can help them see where you are coming from.
- Work effectively with an applicant at an early stage, so you may be able to enter into a formal agreement to resolve the issues affecting you. These agreements, known as *side agreements*, stand outside the formal RMA processes, but can have legally binding consequences for the parties. See *Your Rights as an 'Affected Person'* (part of the everyday guide to the RMA series).
- Say exactly what it is about a proposal is of concern to you, and be clear about what actions, if any, an applicant might be able to take to address those concerns (by changing their proposal), or what you might expect from a council (by imposing conditions to address those concerns). In this way you are more likely to influence the outcome. The reverse is also true: if you oppose an application without saying why, or without offering some suggestion as to how your concerns might be addressed, your comments may not be given a great deal of weight.
- Focus on the application in hand, so that you are most likely to retain the applicant's attention and commitment to resolving any concerns you may have. Again, the reverse is true: if you raise issues over which the applicant has no control, such as Treaty claims or actions of the council in the past, you may dilute the influence you might otherwise have over the proposal. There may be forums at which such issues can be directly addressed and resolved (such as the Māori Land Court, the Waitangi Tribunal, or specific 'relationship' meetings with councils).

Questions and answers

When should an applicant approach tangata whenua about their proposals?

Ideally, people seeking resource consents (*applicants*) that may involve matters of interest or concern (or both) to tangata whenua should approach tangata whenua early in the development of their proposals. This enables any concerns identified by tangata whenua to be resolved through amendments to the proposal before it has been fully developed. Applicants are encouraged to seek advice from the relevant council as to who should be consulted. If the council thinks there might be effects on the places or resources (or other taonga) that you value, it will ask the applicant to *consult* with you to find out whether this is really the case. Your comments should be reported by the applicant in an assessment of environmental effects (AEE), which forms part of the resource consent application when it is lodged. The applicant may commission a report from tangata whenua which sets out their cultural concerns in detail. These are often referred to as *cultural impact assessments*. You may also at this stage enter into a side agreement which formalises the resolution of your concerns.

Reality check: Unfortunately, applicants sometimes approach tangata whenua when their AEE is effectively finalised. You may only be given an opportunity to respond to lengthy technical reports prepared without your concerns or interests first being discussed. This can put you in 'catch-up' mode, and lead to accusations by applicants that you are being 'reactive' or 'negative' in your responses. In such situations, it is important to maintain your position, and take the time you need to develop a reasoned, considered response.

Who decides if tangata whenua are interested in or are affected by an application for resource consent?

It is the council's role to advise applicants on whether tangata whenua should be consulted. A council can also deem tangata whenua to be *interested* or *affected*. A council may be guided in this decision by:

- the courts' findings that consultation with tangata whenua is good practice
- what tangata whenua have told the council previously
- the contents of iwi management plans
- what might have been agreed with tangata whenua in a relationship agreement (see section 3).

What's the difference between being 'interested in' and being 'affected by' an application?

In simple terms, having an *interest* in an application means that you may have views you wish to express about a proposal but may not be directly affected by it. In this case, you might be consulted by an applicant before any application is lodged with the council. However, having an interest in an application doesn't mean that you have any greater rights to have those interests taken into account than any member of the general public.

Being *affected by* a proposal means that you may be directly affected by what is proposed. It also means that any concerns you may have *will* be taken into account by a council in considering a consent application. In addition to being consulted on a proposal, you may be asked for your written approval to an application. You might be asked by the applicant to do this either before or after they lodge the application with the council. It means that the council thinks you or your relationship with your taonga or the other places and resources you value really could be adversely affected by a proposal. It is a stronger direction than the suggestion that the applicant merely consult you to see whether you have any interest in the proposal.

Applicants need to make clear to you what the purpose of their approach to you is (ie, whether they are consulting with you and/or seeking your written approval). If you are in any doubt about the applicant's motives, contact the council.

Refer to *Your Rights as an 'Affected Person'*, one in a series of everyday guides on the RMA, published by the Ministry for the Environment, and available from councils, or from the Ministry's website (www.mfe.govt.nz) or publications team on (04) 917 7506 (24-hour answerphone)

What kind of input can tangata whenua have?

The kind of input you can have depends on:

- whether you are an interested party or an affected party
- when in the process of making and determining an application you become involved.

Your input can take a number of different forms.

If you are an interested party you can comment on a proposal before the application is lodged – explain the values at stake and how you think the proposal might affect those values, and request that a proposal be modified or withdrawn. If the application is publicly notified you can make a written submission and present your case in person at the subsequent hearing.

If you are an affected party, you can also comment on a proposal before the application is lodged. Applicants may also ask for your written approval. You are not obliged to provide such approval, particularly if you have concerns about the proposal that have not been addressed. Applicants will generally be keen to get your approval because it makes the process much simpler, faster and cheaper for them. If your concerns with the application are such that you don't give your approval, then you will have an opportunity to make a formal submission to the council on the application (see below).

Reality check: A council may decide that you are *interested in* a proposal, when you consider you are directly *affected by* it, or the council may not identify you as either interested in or affected by a proposal at all. If you are unhappy with such a decision, your only option may be to apply for a judicial review in the High Court. This is a time consuming and expensive process and may not result in the outcome you are looking for. The best way to avoid a situation where a council makes decisions about your interests that you are consistently unhappy with is to develop a working relationship with that council, based on a mutual understanding of your interests (see section 3). The council is then in a better position to make informed decisions.

What if applicants fail to consult with tangata whenua or effectively take into account their concerns?

Some councils will distribute applications they receive, or summaries of applications received, to tangata whenua to enable them to comment. Comments made by tangata whenua can influence whether an application is *publicly notified* (see below), and even whether or not it is approved and, if so, what conditions are imposed.

Although this process is not provided for in the RMA, councils often use it to as a safety net to ensure applications that might affect tangata whenua are brought to their attention.

The council may also decide to *notify* a consent application. A decision to notify an application depends on the nature of the effects of what is proposed, and whether any of the parties it thinks are affected by the proposal have not given their written approval. Basically, notification works as follows.

- If a council thinks the effects of what is proposed will only be minor, and that nobody will be affected, or all the parties it considers might be affected have given their written approval, then it is likely to deal with the application in a *non-notified* manner. This means the council makes a decision without inviting submissions, or asking for anybody else's views.
- If a council thinks the effects of what is proposed will only be minor, it will only notify those people it thinks may be affected. These – and only these – people will have an opportunity to make a written submission. This may include tangata whenua if the council thinks they are affected.
- If a council thinks the effects of what is proposed will be more than minor, then the application will be *publicly notified*. This means that anybody, including tangata whenua, will be able to make a submission. Submissions need to be sent to councils by the date specified in the public notice. Public notices are often sent directly to organisations or groups representing tangata whenua. They will also appear in the local newspaper.

Forms for making submissions are available from the council, but these often don't allow room for a full response, so you may wish to develop your own submission form or provide additional information as an attachment to the council submission form. Submissions need to clearly state whether you support or oppose an application, your reasons for your views, and what actions you expect the council to take to reflect those views.

What happens once a submission is made?

If you make a submission, you will have an opportunity to talk about it at a public hearing. So will any other submitters, as well as the applicant. The council will then decide on the application. It will decide whether to grant or decline the application, and what conditions to impose on the granting of any consent. If you are unhappy with the decision you can appeal it to the Environment Court.

Refer to *Making a Submission About a Resource Consent or a Designation; Appearing at a Resource Consent or Designation Hearing*; and *Your Guide to the Environment Court*, three in a series of everyday guides on the RMA, published by the Ministry for the Environment and available from councils, or from the Ministry's website (www.mfe.govt.nz) or publications team on (04) 917 7506 (24-hour answerphone)

It is important to understand that no matter whether they are interested or affected, no party other than the council itself has any right of veto over an application. If you are not happy with the council's decision, there are opportunities to appeal that decision to either the Environment Court or High Court, depending on what you are not happy with. These are formal and usually expensive processes.

The various opportunities for involvement in resource consent decision-making are illustrated in the fictitious scenarios set out in the following text box. The jargon that councils commonly use in corresponding with parties on consent applications is explained in this context.

The resource consent process and tangata whenua – some scenarios

You can get involved in influencing resource consents in several ways. The following examples illustrate the various opportunities you have to become involved.

The iwi is consulted by Applicant A

Applicant A wants to build a hotel on the lake front next to some natural hot pools. He approaches the local council. The council's planner tells *Applicant A* that if he wants to go ahead he will need a resource consent. The council planner also suggests that before the applicant applies to the council he should consult with the tangata whenua. Given the iwi's relationship with the lake, the council planner thinks they will be interested. The planner gives *Applicant A* the contact details for a representative of the local iwi.

Applicant A contacts the iwi representative and arranges a meeting. At the meeting the iwi representative is given a copy of the applicant's plan. *Applicant A* and the iwi representative reach an understanding about the internal hapū process required to get feedback, how the cost of this can be met, and how long it will take. Once discussions have taken place within the iwi, the iwi representative contacts the applicant and explains what the iwi likes and dislikes about the proposal. She also offers a suggestion on how the proposal might alleviate some of her iwi's concerns.

Applicant A thinks about what the iwi representative has told him and decides to alter his plans by setting aside a reserve between the lake and his hotel. He prepares an assessment of environmental effects (AEE), which he must give to the council along with his application for resource consent. In the AEE, *Applicant A* says that he has talked to the iwi representative and that she has talked to her people. He also includes the feedback he got from the representative and explains what he proposes in response.

This is called being *consulted* before an application is made, or *pre-application consultation*. While an applicant is not required to do this, it is recommended good practice and its value is supported by case law.

The council might use the information provided by the iwi representative to help decide:

- whether an application should be publicly notified
- who it should regard as an affected party
- whether the information supplied by the applicant is sufficient
- what the effects of the proposed development might be.

Reality check: Applicants may be resistant to consulting you before finalising their proposals and/or lodging their applications. In such cases, you will be reliant on councils recognising that particular applications may be of interest or concern to you (see next scenario).

The iwi is notified about a consent application

One day the iwi representative gets a letter from the local regional council about an application for a resource consent she has never heard about before. The application is from *Applicant B,* the owner of a large dairy farm. *Applicant B* has just installed a new milking shed and wants to discharge waste from the new shed into a river that flows through his property.

The council's rules don't allow for dairy shed waste to be discharged into rivers. In fact the regional plan states that any application for discharge of waste into rivers should be automatically publicly notified. The council has told *Applicant B* that the application will be notified but that he really should consult with the tangata whenua before making an application as they are likely to be directly affected by what is proposed. However, *Applicant B* decided not to talk to the tangata whenua.

The letter the iwi representative receives tells her that the council has an application from *Applicant B* that might be of interest to her iwi, that it is being publicly notified and that the iwi has until the end of the month to make a submission.

The council sent the letter just in case the iwi representative has not seen the public notice in the newspaper. The iwi will be able to make a submission – but so will anybody else.

This is called being *advised* of a notified application (or being *served notice*).

Reality check: A council officer will often make a decision as to which tangata whenua (if any) are likely to want to respond to specific consent applications. Unless there is an agreed process in place, relevant tangata whenua can be overlooked. Even with an agreement, processes can occasionally break down. To be certain that opportunities to respond to notified resource consent applications are not missed, you should regularly check the public notices in the newspaper or the council website, or both.

The iwi is identified as an affected party

Another day the iwi representative gets a letter from the local council. The letter says that the council has received an application from *Applicant C*, who wants to build a new house on a ridge overlooking the estuary. The iwi representative didn't know anyone was planning to build on that ridge.

The council is advising the iwi of the application because when the council planner visited the ridge to look at where *Applicant C* wants to build her house, he noticed a lot of shells and some uneven ground that suggested it might once have been occupied by tangata whenua.

The council decided that the local iwi is an *affected party*. The letter it wrote to the iwi representative said that the iwi could make a formal submission on *Applicant C's* application.

In this case the iwi representative is the only person the council wrote to. Only her iwi can make a submission.

This is called *limited notification to an affected party*.

Reality check: As with scenario B, the council officers would need to know which tangata whenua to contact. In this case, council officers would also need to be able to anticipate an issue of interest to tangata whenua. This may be problematic when council officers are not aware of such issues.

Applicant D seeks the iwi's written approval

Applicant D wants to build a new marina just down the road from the local marae. *Applicant D* has prepared plans that show a new marina just inside the mouth of the local estuary. When he shows these plans to the regional council planner, the planner realises that if the marina is built where *Applicant D* wants it, pipi beds used by the local marae might be lost.

The council planner tells *Applicant D* that the regional council will consider the local iwi as an *affected party*. He also says that the council will also treat the local boat club as affected because they use the area for boating activities (sailing school, waterskiing, etc).

Applicant D is very keen to begin work on the marina in the coming summer so he doesn't want the marina application to be publicly notified. *Applicant D* rings up the iwi representative and arranges to come and talk to the marae committee. He also contacts the boat club.

The marae committee holds a hui, where *Applicant D* explains what he wants to do. He explains how much of the pipi beds can remain available for the marae and how the marae committee will have access to a berth in the new marina.

In return he asks that the marae committee give their *written approval* to the proposed marina. After internal consultation and discussion, the iwi decides that most of the pipi beds would not be affected and with their access to the berth they will be able to get easier access to other kaimoana. They give their written approval to *Applicant D* and sign the appropriate development plans.

This is called gaining *written approval* from affected parties.

Reality check: The applicant may not be active in consulting with tangata whenua before finalising their proposals. The marae committee may not be prepared to lose a portion of the pipi bed, and the applicant may not be prepared to modify his proposal to avoid that loss. In such situations, the marae committee are perfectly within their rights to refuse to give their written approval. They are then likely to have an opportunity to lodge a submission on the application, if the applicant decides to proceed and their application is publicly notified.

The applicant may also get the written approval of some tangata whenua who may not be mandated to speak for a group and may not understand the consequences of their support. While this may result from applicants failing to understand hapū dynamics, the result can be a cause of divisions within tangata whenua.

Applicant E negotiates with iwi over obtaining their written approval

Applicant E wants to erect a cellphone communications aerial on a promontory near a marae. The site is a former pa, and it is referred to in pepeha of the marae. Tangata whenua understand the positive gains from the proposal, which will provide cellphone coverage for their area and out to sea. The seaward coverage will significantly contribute to marine safety.

The applicant and tangata whenua discuss how their concerns can best be resolved. The applicant agrees to continue dialogue about the most appropriate location of the tower so maximum coverage can be maintained but it is not visible from the marae. The applicant agrees that tangata whenua will be engaged to oversee initial works to ensure no cultural heritage sites are compromised and that tangata whenua will be informed when there are job opportunities for construction and maintenance.

The applicant agrees to resource the process. The tangata whenua agree not to oppose the applicant.

Reality check: If tangata whenua are not skilled in negotiating agreements, they may find they have been excluded from opposition but the fine print of the agreement fails to support the concerns that they have raised and thought were resolved. There is also the possibility that people can be 'bought off', leading to a short-term gain and a long term loss. Finally, while side agreements can be a means of reaching effective resolution, they are outside the RMA and can only be enforced under civil law proceedings. The council will not enforce any side agreements.

Applicant F proposes a non-complying subdivision of concern to iwi

Applicant F wants to subdivide a coastal property into 2,000-square-metre residential lifestyle sections. The subdivision rules of the district plan allow a minimum section size of 4 hectares. The application is classed as a non-complying activity under the district plan. The applicant argues in her AEE that the objectives and policies of the plan encourage development of subdivision where there is existing residential development, and that within 1 kilometre of the site there have been similar density subdivisions approved.

The tangata whenua identify that the specific coastal area proposed for subdivision is of special significance, and there are objectives and policies in the plan that recognise the importance of such areas to Māori and support their preservation. Tangata whenua point out that to approve this application could effectively enable all the area within a kilometre of the other settled areas to be similarly subdivided if the applicant is unable to show that this proposal has unique aspects that would differentiate it from any subsequent applications.

The council decides to decline the application as not being consistent with the plan's objectives and policies.

Reality check: The need to understand planning law and how to present tangata whenua values in its terms may prevent many tangata whenua arguments being effectively heard. Even when they are, you can not always expect that the decision made by the council will support tangata whenua values, as there will be many factors influencing their decision. Where a proposal may have a significant impact on tangata whenua values and there is a need for these to be clearly articulated, tangata whenua may wish to employ the services of an expert such as a resource management lawyer or planner to help them to prepare and present their case.

The iwi makes arrangements with the council to view applications received

After a request from the iwi, the council instigates a new practice. It agrees to send a weekly summary of every resource consent application that it receives to the local iwi representative.

The iwi representative carefully reads the summary, noting down any applications she thinks the iwi might have an interest in. She has some internal guidelines to help her and an agreed timeframe for getting back to the council. Once she has a complete list of all the applications that seem to be of interest, she sends a fax back to the council asking for copies of all the applications on her list.

She receives copies of the applications the next day. Once she has the applications she works through them checking to see whether any issues of interest to the iwi are raised by the applications. Sometimes she goes and looks at the site where a development is proposed. If she is not sure, she discusses issues with others in the iwi.

If there are applications that affect the iwi, the iwi representative will write a letter back to the council explaining that the iwi considers itself an affected party. She will also explain why and how it is affected. The iwi representative has an arrangement with the council that if she doesn't respond within a certain time the council will assume the iwi authority considers itself unaffected.

This is called responding to *council-initiated consultation*. Not all councils provide this opportunity, but some iwi can negotiate this arrangement with their councils. Just like *Applicant A*'s case, the council uses the information supplied by the iwi representative to help decide:

- whether an application should be publicly notified
- who it should regard as an affected party
- whether the information supplied by the applicant is sufficient
- what the effects of the proposed development might be.

While this arrangement provides a useful safety net, it doesn't do away with the iwi's desire to be consulted by applicants early in the process over proposals that are most likely to affect them. This position is clear to the council, and it acts accordingly by advising people to consult with the iwi over particular applications that are likely to be of concern to them.

Reality check: Council staff change, their interpretation of agreements changes, and in time tangata whenua may find that the applications they have an interest in are not being sent to them for a response. Agreements must be monitored and reviewed to ensure they remain valid, and that they are respected by the parties concerned. The workload reviewing all applications can be onerous, and often unachievable. The quandary is finding the right balance: if you don't get them all, you might miss the critical one; if you do get them all, you may be too busy to find the critical one.

Section 3: What do tangata whenua need to participate effectively?

This section sets out some of the key things tangata whenua need to think about once they decide to get involved in resource consent processes. These are summarised in the checklist below.

Setting up to participate effectively: a checklist

- Make sure you clearly *allocate responsibility* within your organisation or group for participating in resource consents. Each hapū or whānau should know what their role is.
- Establish internal *decision-making processes* on resource consent matters that are clear to the council and applicant.
- Determine who (or what legal entity) will be *responsible for liaising* with the councils. Make sure the councils know who the contact person is.
- Meet with neighbouring tangata whenua resource management organisations to determine *areas of separate and common responsibility*.
- Set up good *office systems* to manage the flow of information that could come your way.
- Make sure you have the *resources and equipment* you need to make the office systems work.
- *Budget* what the set-up and ongoing costs are and make sure you have access to the money/revenue to cover these costs.
- Signal your intent to enter into a memorandum of understanding or similar *agreement* with your councils to establish a working relationship.

Sharing the workload – allocate responsibility between and within iwi, hapū and whānau

Shouldering the responsibility for responding to requests for consultation is not something that any tangata whenua group should consider lightly. To make the job easier, consider those issues where your iwi trust board or rūnanga can be called in to assist and teach you. In learning about the consent process it is advisable to approach councils to help you with capacity building (see section 4).

It might be that the iwi has responsibility for some issues, while individual hapū or whānau have responsibility for other issues – it will depend on your iwi. There is no right way to do this, but it makes it easier for everyone if you take a consistent approach.

Sometimes it can be that hapū or whānau have responsibility but there is an understanding within the iwi that hapū and whānau will discuss or confirm important issues with the wider iwi before providing input to the council or applicant. For larger and more complex proposals the iwi, rather than hapū or whānau, may need to assume responsibility for responding (perhaps in consultation with hapū and whānau).

How Kai Tahu o Murihiku has allocated responsibility

Invercargill City Council, Southland District Council, Gore District Council and Environment Southland entered into a Charter of Understanding about matters concerning the Resource Management Act 1991 with Kai Tahu o Murihiku in 1997. This charter defines the process for facilitating Kai Tahu o Murihiku involvement and consultation in the resource consent process. It also clarifies for resource consent applicants the range of Kai Tahu interests in RMA issues.

Governance structure

Kai Tahu o Murihiku represents 18 papatipu rūnanga o Murihiku. Kai Tahu o Murihiku formed Te Ao Marama Inc (Rōpu Whakahaere), which is made up of two representatives each from the Awarua, Hokonui, Oraka–Aparima and Waihopai rūnanga (eight in total). Te Ao Marama Incorporated (Inc.) employs a kaupapa taiao manager to provide a direct link to the local councils, Kai Tahu o Murihiku and the 18 papatipu rūnanga.

Te Rōpu Taiao is a political structure that sits between Te Ao Marama Inc. and the four councils, and is made up of one representative from each of the four papatipu rūnanga o Murihiku (the same representatives form each of the form the Management Committee of Te Ao Marama Inc.) and one elected councillor from each of the four councils. This rōpu now meets eight times a year and negotiates the annual budgets for funding Te Ao Marama. This rōpu also negotiates and adopts protocols for iwi input into plans, policies and consents.

The charter has helped to define the issues concerning iwi values, such as water and water-related activities and land activities. This list helps both councils and applicants for resource consent when engaging in consultation.

Funding for Te Ao Marama Inc.

These four councils fund Te Ao Marama Inc., a business unit providing liaison between resource consent applicants and local rūnanga. Te Ao Marama is a one-stop-shop for iwi liaison for resource management issues. Consent applicants who want to liaise with iwi can contact Te Ao Marama, who can then arrange for consultation with the appropriate rūnanga.

Resource consent applicants requiring iwi consultation are charged on a user pays basis for the time involved in consultation. There are also charges for disbursements and reasonable travel and accommodation costs, where necessary.

One important thing to bear in mind with this example is that Kai Tahu have the advantages of settlement assets, which have enabled the investment in time and money to achieve their structure. They also have statutory acknowledgements, which require mandatory responses from councils, and local rūnanga have the parent rūnanga to support and assist them.

Good practice

- Once you have worked out the best way of allocating responsibility within your organisation or group, tell the council who it should deal with and for what issues. Do this by writing a letter to the Chief Executive. Or, if you haven't already done so, get it included in a formal relationship agreement.
- If the allocation of responsibility between iwi, hapū or whānau is complex, try to make sure it is written down and available as part of an in-house resource management manual.
- If you make any changes in the allocation of responsibilities, notify the council as soon as possible, so they are informed and can let applicants know.

A lack of any clear agreement within your group or organisation about representation can affect your ability to respond to requests for consultation. This can in turn reduce your influence in the process, and your effectiveness in dealing with applicants. Also, without a clear allocation of responsibilities, the council might receive multiple responses and become confused about the 'officially' endorsed view of your people.

Set up internal decision-making processes

It is important to think about what process to use when deciding how to respond to resource consent applications. This may be an existing process or a new process. The decision-making process may vary according to the type of issue you are addressing, and who holds the knowledge needed to respond.

The decision-making process you use will depend on what your organisation or group is comfortable with. What is important is that you establish a process and follow it consistently. Councils and applicants look for certainty that you represent the views of your organisation or group on the relevant matters. Consistency gives them confidence that the advice provided by you is an accurate reflection of your people's views.

That doesn't mean you can't have different processes depending on the importance of the issue. As a general rule the more important the decision, the more people within your organisation or group might be involved. For example, where resource consents are minor, the decision on whether to make a comment or what your organisation or group should say might be a matter that your resource management specialist can deal with. On more important issues the resource management specialist might need to get confirmation through hui, a standing committee or kaumātua.

Good practice

- Make sure councils and applicants understand how decisions are made. This can help them appreciate the importance of the issue to you and understand your timeframes for putting together a response.
- Make sure any decision-making process is as simple as possible and can reach decisions without too much delay. This will mean that your input can be timely and more effective.

Internal decision-making processes – how Kai Tahu ki Otago does it

Kai Tahu ki Otago has developed separate protocols with Dunedin City Council, Waitaki District Council, Clutha District Council, Central Otago District Council, Queenstown Lakes District Council and Otago Regional Council for defining the process for facilitating iwi consultation in the resource consent process.

KTKO Ltd, a stand-alone company established by Kai Tahu ki Otago, has developed a guidelines manual to assist Otago Regional Council staff identify what is of interest to iwi so that affected party status can be determined. This guideline manual will be extended to all district councils.

The decision-making process

The protocols cite the Te Runanga o Ngai Tahu Act 1996. This provides Te Runanga o Ngai Tahu with greater responsibility, accountability and certainty in the decision-making process regarding their resources and assets. The Act prescribes that where consultation is required with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngai Tahu Whanui, be held with Te Runanga o Ngai Tahu.

Te Runanga o Ngai Tahu is the tribal representative body of Ngai Tahu Whanui, a body corporate established under the Te Runanga o Ngai Tahu Act 1996. Ngai Tahu Whanui refers to the collective of the individuals who descend from the primary hapū of Waitaha, Ngati Mamoe and Ngai Tahu namely, Kati Kuri, Kati Irakehu, Kati Huirapa, Ngai Tuahuriri and Kai Te Ruahikihiki.

The Te Runanga o Ngai Tahu Act also acknowledges that consultation in the first instance is with the papatipu rūnanga. The four papatipu rūnanga of Otago and their whānau rōpu have combined to create KTKO Ltd, a stand-alone company independent of the regional and district councils.

What is the role of KTKO Ltd?

KTKO Ltd facilitates consultation between resource consent applicants and kaitiaki rūnanga. KTKO Ltd seeks written approvals on the applicant's behalf with the papatipu rūnanga within the region. Where applicants are applying for a non-notified application, KTKO Ltd will seek written approvals on behalf of the applicant from the relevant rūnanga. Where applicants are applying for a notified consent, KTKO Ltd will put the applicant in contact with the relevant rūnanga for their views or concerns.

Cost recovery

KTKO Ltd provides this service to applicants on a user pays cost recovery basis.

Once again, as with the previous example, Kai Tahu have the benefit of statutory acknowledgements, settlement assets and a very large rohe, which enable them to operate this structure. While this arrangement is unique in Aotearoa, there are lessons that can be learnt by smaller tangata whenua groups from how they operate.

Getting the structure (or person) in place

Tangata whenua resources and needs will vary greatly. For some hapū and iwi it will be both possible and necessary to establish a *resource management unit* as a separate legal entity with a number of staff. In other cases, hapū or whānau might simply nominate one person who oversees resource consent matters on a part-time and/or voluntary basis. It is essential that a formal mandate is determined for the structure or person to speak on behalf of the tangata whenua, and the degree to which this autonomy is confirmed.

While some iwi have developed effective resource management units, many have little capacity in this respect. There may be no developed skills for you to draw on near to your rohe.

Networking with other more distant tangata whenua groups may help provide critical support. Although resource management professionals in councils and private practice can be helpful, you are likely to find many situations where they fail to understand your kaitiaki perspective and may not provide the sought-after level of assistance. Networking with other tangata whenua groups will provide you with access to others' experience and understanding that you can build on.

While you may be fortunate in being able to access funding and other resources from your iwi, councils or other sources, this is not always the case. Establishing and maintaining resource management capacity, at least in the early stages, is likely to have real costs. You need to be realistic about how these will be resourced.

Options for establishing a separate legal entity include companies, trusts (of various kinds) and incorporated societies. Different options present different legal and tax implications. If you're going to set up a new entity – or use an existing entity for a new resource management purpose – you should seek expert legal advice.

Your local Te Puni Kōkiri (TPK) office will be able to provide advice on trust and business structures.

Skill level required

Where one or more people are nominated as the resource management representative, they should have the following skills:

- a grounding in kaitiakitanga and tikanga of the tangata whenua concerned
- at least a basic knowledge of the RMA, the consent, submission-making and hearing processes, and the policy statements and plans prepared by the relevant councils
- a basic understanding of the professional disciplines brought to bear during the consent process (eg, civil engineering, environmental science, archaeology, ecology, etc.)
- excellent administrative and organisational skills – meeting constant deadlines is an important aspect of participation in the consent process
- the time to devote to the task – dealing with resource consents can be a demanding and relentless job. It does take time, and those appointed should not be over committed with other responsibilities.

Where you are working in a team situation, it is not essential that all team members have the above skills, but that collectively the necessary skills are possessed.

Commitment to the job

Being committed to the job is critical. While it is important for the person appointed to have some knowledge of the RMA and some appreciation of the environment, this understanding can be furthered on the job and assistance can be sought by networking with other tangata whenua representatives in similar roles, and with councils.

Administrative support and relationships

Having a part-time volunteer in this role can work, but they do need to be supported by good systems and processes and have a supportive relationship with councils. You also need to factor in likely costs relating to the need for transport, office supplies and information for any volunteers.

Training

Make use of iwi and hapū networks to find out what hui are taking place that might offer training opportunities on resource management or business topics.

You may be able to make arrangements with your council to have somebody from your organisation or group spend some time working with and/or observing the work of council staff and decision-makers involved in processing applications for resource consent. This can give you a real familiarity with and insight into the process, and the pressures and timeframes under which councils operate, as well as building relationships with the people concerned. Councils may also be able to offer other assistance in capacity building (see section 4).

You should spend time becoming familiar with council and Environment Court decisions that affect your rohe, particularly where tangata whenua have not been active in resource consent processes. Although district and regional plans give direction to decisions, there can be wide interpretations, and precedents can be set in terms of what values are important in decision-making. One of the most important, but challenging, tasks is to begin to understand previous decisions that have been made, and to begin to influence resource consent decisions to support tangata whenua values.

The Māori Business Facilitation Service run by Te Puni Kōkiri (TPK) provides mentoring, advice, facilitation, guidance and information on business matters. The service is available to new or existing Māori businesses, individuals, landowners, trusts, rūnanga, trust boards and other Māori organisations. Contact your local TPK office for more information.

Te Wānanga o Aotearoa is one of a number of institutions that runs small business courses. Te Wānanga o Aotearoa also offers extramural courses in iwi environmental management and trusteeship. For further information, phone 0800 355 553.

Mauriora ki te Ao scholarships are offered by various ministries, including the Ministry for the Environment, to Māori studying in environmental science and resource management. For more information, contact Riki Ellison in the Maruwhenua unit at the Ministry for the Environment on (04) 916 7668.

Both the New Zealand Planning Institute (NZPI) and the Resource Management Law Association (RMLA) offer conferences, seminars and other professional development opportunities. These cost, but assistance may be available from your local TPK office or your council.

Good practice

- Don't nominate people who are too busy with other responsibilities placed on them by your organisation or group.
- If you are not well resourced and are appointing someone on a volunteer and/or part-time basis, make sure they have the willingness and the time to devote to the job.
- Always make sure the council knows who the appropriate contact is.
- Advise the council if the contact changes or if his/her contact details change.
- Even if you're a well resourced organisation or group, the most important skills to devote to resource consent processes are good organisational skills. Technical skills must be backed up by administrative ability. The best qualification is a good track record in organisation and administration.

Getting the systems in place

Being involved in the RMA can take a lot of time and involve a lot of paper. If your organisation or group is going to make the most of the opportunities available to it, you are going to have to be well organised. That means getting good office systems in place to keep track of all the information that comes your way. The types of systems you will need to consider are set out in the following text box.

Some basic systems

No matter whether you are a big organisation or a one-person-band, you will need basic office systems. These will include the following.

Recording incoming mail

Keep a record of the correspondence you receive. When you open the mail, record the date, writer and subject of the letter in a book or computer file. If you do this you have a clear record of what you have received and when. This can save you arguments about when you received something – or even whether you got it at all.

It's not always necessary to do this (especially if you get most of your correspondence by email), but you should always *stamp* incoming mail with the date stamp. That way at least you always know when you received the letter.

It is always a good idea to separately log any resource consent applications that come in the mail.

Maintaining a bring-up system

A bring-up system is simply a way of making sure you don't forget to do things that are important. There are all sorts of bring-up systems. Often you get letters that you don't have to deal with straight away but you do need to deal with them by a specified date. You can simply file these letters in a desk file that you look at every day. The desk file can be organised so that you can file letters to be looked at a day, a week or a month out. Many computer software packages have electronic bring-up systems and reminders.

Recording key dates and commitments

In addition to a bring-up system, you will need a system to keep track of critical dates (such as when meetings are scheduled, when submissions end, or when hearings are to be held). A simple paper diary or wall chart will work fine, but those with access to a computer might find an electronic system better. Computer-based systems have the advantage of allowing you to change dates easily, and they can give you reminders.

No matter what system you use, the trick is to keep it regularly updated. Every time you get a letter, an email or phone call make sure any key dates are transferred into your dairy.

A filing system

Any office needs a filing system. As a general rule every resource consent application that your organisation or group decides to get involved with should be given a separate file with a unique identifying number. That way you can store them in some logical order and find the information you need easily.

Templates

A simple way of reducing the work of running any office is to have model letters and forms (or *templates*) for the things you do most often. Templates can be in electronic form, or they can just be photocopies where you fill in the blanks.

Your organisation or group might use templates for:

- acknowledging an application forwarded by a council and advising when you expect to provide comment
- advising that your organisation or group has no interest in a particular application
- requesting more information about a proposal
- invoicing (where charging is appropriate).

Charging policy

If you are going to charge for your involvement in RMA processes, you need to be clear and open about your charging policy. Two approaches are common:

- you can offer a *fixed price* to look at an application and another fixed price for subsequent tasks (like preparing a report, or holding hui), or
- you can charge according to the *time spent* on a project.

You also need to decide whether to charge separately for the cost of disbursements (things like the use of your vehicle and phone calls), and whether you will charge for travel time and, if so, at what rate. Disbursements can be charged at either an *as incurred* rate (eg, the actual cost of phone calls associated with a particular application), or on a *fixed rate* basis (eg, a standard 5% on top of the time spent looking at an application, to cover fixed costs such as phone and computer use, power, etc.).

Sometimes you might encounter applicants who are unwilling to pay you. When you have been approached by an applicant for your comment, you should not assume that the applicant will pay. You should make sure that you address the issue of payment and agree on this with the applicant from the start. In doing so, ensure you make it clear to the applicant what service they should expect.

Time recording

If your organisation or group is charging for time spent providing comment on an application, you will need a system of recording time. As with any business, when you charge for a service there is a reciprocal obligation to be open and transparent about how much time is spent on each task. If someone questions how much you charge, you should be able to supply a detailed record of the hours spent and what was done.

Time recording is simple enough; it's just a discipline on individuals to make sure they record time on a daily basis. You can either use a *job sheet* approach (where a form sits on the front of every job file so that time is recorded each time anyone works on a project). Or, you can use a *diary* approach, where anyone working on a project keeps their own diary, with the hours worked against each project clearly recorded.

It is important to remember that it won't be reasonable for everyone who works on a project to be charged out at the same rate, so you need to make sure your time recording shows who has worked on a project and what they did.

Accounting systems

If you are incurring costs and receiving income you will need at least a basic accounting system. This system will include keeping separate records of:

- accounts payable (the money you have paid out) – this will allow you to keep track of what your costs have been and will be important if you are charging for disbursements
- accounts receivable (the money that has been paid to you) – this will allow you to keep track of who and how much you have charged.

Note: the IRD may also require you to keep a cash book, file a tax return and charge GST (depending on how much money is being made). You should check with the IRD if you have any doubt about your tax obligations.

Getting systems in place – how Ngati Wai Trust Board does it

At Ngati Wai Trust Board, consent applications are *logged* (recorded as having been received) and distributed to the resource management unit. Applications are assessed according to pre-determined criteria to establish the nature of any concern and to set priorities for responding to applicants.

Each application is assigned a cover sheet that summarises location, applicant name, date received, whether it is a notified or non-notified application, and other critical information.

Specific agreements

If an interest is established and more information is required, contact is made with the district council to seek more information via section 92 of the RMA. A specific agreement between Whangarei District Council and the Trust Board guides the subsequent actions of both parties for their ongoing involvement in the consent process. (See text box titled 'Specific agreements – how Ngatiwai does it', on page 25.)

Cost structures

Applicants are contacted immediately after an interest is established and a schedule of costs is sent out to them clarifying the charging regime and itemising costs. Costs are allocated differently depending on the activities (eg, by document perusal, site visit, report writing and vehicle mileage). Disbursement costs are standardised. Costs of administration are incorporated as overheads across the cost items.

The cost structure is explained to the applicant or their agent.

All activities are costed by the hour, apart from disbursement costs, and an estimation of total time spent is made directly by the RMA expert and office administration staff at the end of the consultation process.

Timeframes

Meeting commitments and site visit times and dates are managed individually by the staff member allocated to the particular application. There are no formal systems in place for managing this process.

Filing system

Consent applications are not formally filed until involvement in them has been completed. Completed consent applications are stored in box files according to the type of consent (eg, land use, subdivision, discharges), with a logging sheet that summarises the contents of the box.

Resources and equipment

Anyone involved in responding to requests for consultation will need basic office equipment. It makes dealing with the paper deluge a lot easier.

Basic office equipment

At a minimum every efficient office will generally have the following:

- a good desk – you'll need a decent-sized one for spreading out plans
- a telephone (you don't need a dedicated number if you're operating from home, but it is good to have one if your home phone is heavily used by the whānau! You have to be contactable so, at the very least, you should have a telephone answering machine or a answering service that can take messages when you're out)
- a filing cabinet/system, or book shelf if you can't get hold of a proper filing cabinet
- an in-tray for putting mail you haven't dealt with yet
- a wall chart/calendar for work planning and noting key dates
- a white board for noting down things to do and prioritising tasks
- stationery – paper for letters and faxes (letterhead if you have it – but it's not essential), a diary (for recording meeting dates and other commitments, and for recording time spent on a job), files that can store all the paper and plans you might get from an applicant or council, and a date stamp to use on incoming mail (to record when you receive something by mail).

It is increasingly difficult to work without a fax machine and a computer with internet access. Without them you will be cut off from ready access to information and to other tangata whenua groups. Your ability to produce professional standards of documentation depends on computing and printing capacity.

You will need to have a copy of the RMA so you can check what it says when applicants and others refer to particular sections. Some companies will supply you with updates on case law and amendments, which you can use to keep your copy of the RMA current. You should also get hold of copies of the relevant district and regional plans for your rohe. Councils are required by law to provide copies of these (including any updates), without charge, to tangata whenua of the area through iwi authorities and tribal rūnanga. If you haven't got a copy, ask your council. It may not provide a copy free of charge to *every* whānau or hapū group, but they should be able to give you some key sections, direct you to where you can find it on the web, or email you an electronic copy.

Budgeting

Even if you are represented in RMA processes by people acting in a voluntary, unpaid capacity, there will be costs that need to be met if you are to be effective in the consent process over the long term.

These include:

- set-up costs – these will be the costs associated with purchasing the resources and equipment identified above (*capital costs*) and any one-off costs like getting expert advice
- costs associated with ongoing involvement – these will be mostly *operating costs* (like costs of rent, hui, travel, wages, gathering information and minor office supplies), and the cost of depreciation on capital items (computers and other expensive office equipment).

Organisations or groups that participate in the resource consent process may need a simple *business plan*. This will include an estimate of likely annual costs and forecast annual income. Income might come from several sources (eg, from other activities, from donations and grants and/or from fees, and from charges on resource consents). While you shouldn't aim to make a profit from participating in resource consent processes, you will need to ensure that you can cover your costs.

You will also need to ensure you have adequate cash flow and that your expenditure is phased to match your income. If you are relying on a grant that is paid in an annual lump sum, for example, you will need to ensure that you don't overspend early in the financial year, leaving you with a cash flow crisis at the end of the year. Many grants come with a requirement that they be separately recorded in financial statements, and that those accounts clearly show how the money was spent.

The Māori Business Facilitation Service run by TPK can help with budgeting matters. Contact your local TPK office for more information.

Relationship agreements

In some situations a verbal agreement between your organisation or group and the council will work well. But in most cases it will be better to have your relationship formalised in a *written agreement.* That way both parties know exactly what has been agreed, the relationship is less dependent on goodwill between particular people, and the agreement remains in place to be understood by others when those originally involved move on.

Written agreements between tangata whenua organisations or groups and councils generally come in two forms:

- general agreements (often referred to as *relationship agreements* or *charters*)
- detailed agreements specifically aimed at resource consent processes (often referred to as *memoranda of understanding, protocols* or *service contracts*).

General relationship agreements

Many tangata whenua organisations or groups have found general relationship agreements with councils to be of real value. These agreements don't just relate to resource consents – they cover the overall way in which the organisation or group and a council interact on all issues. They establish a way of working together, of giving meaning to partnership and other Treaty principles (see text box).

Te Tangata Whenua o Te Upoko o te Ika a Mauri and Wellington Regional Council

The seven iwi who are tangata whenua in the Wellington region and the Wellington Regional Council signed a Charter of Understanding in July 2000.

The Charter is a general agreement that contains the following:

- high-level goals for the relationship – what the parties expect to get from it and how they will work together
- acknowledgement of the Treaty of Waitangi and its principles as the starting point of the relationship
- identification of the ways in which iwi *representation* will occur
- recognition of principles of consultation
- commitment to conflict resolution that is positive, not litigious
- commitment to provide resources for tangata whenua
- an undertaking about how the Council will treat sensitive information provided by tangata whenua
- an acknowledgement of the need to learn more about areas of common interest through education and training.

The relationship agreement – suggested content

It is not possible to provide a model agreement because every case will be different. However, it is possible to provide an outline of the matters that can be covered by such an agreement.

The sort of provisions your organisation or group might want to get into a general relationship agreement may include:

- ***mandate*** – get your organisation or group acknowledged by your council as having status (mana whenua) within the district or region
- ***recognition*** – ensure the council knows *how* you are associated to the place and what your relationships are with other whānau, hapū and iwi in the area

- ***representation*** – ensure there is a clear understanding about how tangata whenua will be represented in decision-making (eg, through committees, regular hui)
- ***issue resolution*** – ensure there is an understanding between your organisation or group and the council on how you are going to discuss issues and resolve any differences, including how you might develop more detailed agreements to deal with specific issues
- ***governance and decision-making process*** – ensure the council knows what level within your organisation or group to contact on resource consent matters (ie, they need to know whether to speak to the iwi, hapū, trust boards, marae committee, rūnanga).

For guidance, refer to *Talking Constructively: A Practical Guide for Building Agreements Between Iwi, Hapu and Whanau, and Local Authorities* (May 2000), available from the Ministry's website (www.mfe.govt.nz) or publications team on (04) 917 7506 (24-hour answerphone).

Specific agreements – how Ngatiwai does it

The Ngatiwai Trust Board has a specific agreement with Whangarei District Council (WDC) that sets out agreed criteria to be used when an iwi or hapū group requests consultation on a resource consent application. It also sets out the responses WDC will make to such requests.

The agreement specifies what information the iwi or hapū group will provide to WDC (a) when heritage sites may be subject to threat from a resource consent application; and (b) when customary rights might be compromised by a consent application.

The agreement specifies that where WDC is satisfied that a threat exists, it will require that an applicant consult, may require an archaeological assessment, and/or may impose appropriate resource consent conditions (or advice notes).

Provision for securing on-site inspections by Ngatiwai is also provided for.

Specific agreements

Specific agreements often follow on from a general agreement. They detail how the high-level commitments set out in a general agreement will work in practice.

Specific agreements often take the form of memoranda of understanding or protocols.

Specific agreements covering resource consent participation might address the following:

- why, how and when the two parties are going to talk about tangata whenua involvement in resource consent processes
- how the council will recognise tangata whenua interests in resource consent decision-making; for example:
  - what information will your organisation or group be prepared to provide to either the councils or applicants, and how will sensitive information be handled?
  - when will your organisation or group be treated as an interested party?
  - when will your organisation or group be treated as an affected party?
  - what level of information about cultural effects will councils require in AEEs?
  - who will councils regard as appropriate to comment on the cultural effects on your people?
  - what responsibility for consulting with your organisation or group will the council take, and what responsibility will it encourage applicants to take?
  - will it send your organisation or group a summary of applications received? which applications will it send? In what agree timeframe will you be expected to respond?

  - what will it do with the feedback your organisation or group provides on applications forwarded to it?
  - what level of financial or other assistance is the council able to offer you so your organisation or group can participate effectively?
- what reciprocal commitments your organisation or group will make to:
  - ensure the council knows who (which person) within the organisation is the primary contact person – and whether this depends on the issue being discussed
  - offer the council an idea of the types of issues/decisions you want to have a say in.

Specific agreements do not have to be restricted to those between councils and tangata whenua. Sometimes tangata whenua can enter into agreements directly with applicants – particularly those applicants who are constantly requiring resource consents (often throughout the country).

Agreements of any kind – whether general or specific – should contain a commitment by the parties to regularly review them to see how they are working, and determine whether any changes need to be made.

Good practice

- There is no right way to express a relationship. Do what works for you. Different tangata whenua organisations and groups have relationships expressed in various ways – sometimes formal, sometimes informal. While it's usually best to have things written down, if you've got a relationship that works for both parties, stick with it. If it's not working, you should do something about it.
- In signing up to a specific agreement, work out what needs to be done and don't promise to deliver what can't be done. Explain to the council what is achievable with existing resources.

Often the council may offer to draft the agreement. Make sure that you fully understand what is written down and, if you don't understand or don't agree, ensure that it is explained or altered to your satisfaction, and that your people are comfortable with it before signing.

Section 4: What can tangata whenua expect, and what is expected of tangata whenua?

This final section provides guidance on how you might gain the maximum benefit from involvement in the resource consent process through building positive relationships with other parties involved in the consent process, particularly applicants and councils. The advice in this section plots a middle ground that responds to concerns expressed by tangata whenua, applicants and councils. Responding to these concerns – while maybe not what you always want to do – is in the long term interests of tangata whenua.

This section acknowledges that consultation with, and involvement of, tangata whenua is a *right* not a privilege. But it also acknowledges that:

- there is a strong element of *reciprocity* in consultation – there are, in other words, *obligations* associated with the right to be consulted
- tangata whenua can be most effective in protecting their interests in resource management by conducting their involvement in a business-like and professional way.

This section looks at:

- mutual expectations
- what tangata whenua can expect of councils and applicants
- what councils and applicants expect of tangata whenua.

General expectations of all parties

There are three general expectations that all parties should hold about the RMA consent process and associated consultation. These are that all parties:

- enter into consultation processes in *good faith*
- acknowledge that resource consents often involve potential *economic and social benefits* for the community as well as environmental and cultural costs, and that these need to be weighed in the responses provided
- *participate positively* by, where possible, looking for solutions to issues that might work for all parties.

What tangata whenua can reasonably expect from councils and applicants

Facilitation of consultation

You can expect that councils will not trouble you with trivial issues. This of course depends very much on the level of information a council has on your concerns.

There can be a danger when councils decide on what is of importance to you if you are not involved in defining those issues. What may seem trivial to a council may not be trivial in cultural terms. One example may be losing some flax as part of a swamp drainage, where there is seen to be plenty of flax in an area. The council may not be aware that that flax is the only good weaving flax that maintains a tradition of korowai making.

However, you can reasonably expect:

- to be consulted about issues that might concern you
- that councils will routinely advise applicants that you have an interest in particular applications, and supply applicants with:
  - the name of the appropriate tangata whenua contact
  - the contact details of that person
  - advice about the preferred consultation method of your particular tangata whenua organisation or group (if known)
  - any particular protocols that may apply.

Manner of consultation by the applicant

You can reasonably expect that applicants will consult in a genuine manner. Those consulting should:

- understand that true consultation involves the presentation of a *proposal*, not the final version
- undertake consultation early, allowing enough *time* for you to respond
- be prepared to *listen* and consider responses
- provide enough *information* to enable you to respond meaningfully – including offering a site visit
- acknowledge that merely providing people with an opportunity to make a submission will not, in itself, generally be regarded as acceptable consultation.

If consultation by an applicant hasn't been adequate, then you can reasonably expect that councils will take this into account in considering the application.

Recognition of the costs of consultation incurred by tangata whenua

Tangata whenua can reasonably expect that both councils and applicants will understand and acknowledge the realities facing them, including that they:

- incur costs in responding to resource consents
- are generally not well resourced
- often have internal decision-making processes (and in particular a preference for consensus), which means they need a reasonable time period within which to respond.

Many organisations and groups that represent tangata whenua expect applicants to recompense them for the actual and reasonable costs incurred in responding to requests for consultation. They also expect that as part of their project planning, applicants will make allowances for the time it takes tangata whenua to provide a response on a particular application.

Support for participation

Councils are increasingly providing resources to tangata whenua to enable them to participate in consultation effectively. This might involve one or more of a variety of measures, including:

- providing funding assistance
- assisting in capacity building (see adjacent text box)
- appointing liaison officers to facilitate good information exchange and consultation between tangata whenua, applicants and councils
- providing access to information held by councils that might assist tangata whenua make useful responses to applicants
- making commitments to attend regular hui, and review processes and practices.

The nature of the support will depend on the commitment and resources of the council, the needs of tangata whenua, and the ongoing number of applications of interest to tangata whenua.

If the council does not provide the advice suggested above, you should raise these matters in your discussions over any relationship agreement you might have, or that you may be seeking to reach.

Capacity building

Capacity building initiatives might include:

- appointing a consent officer to help tangata whenua understand the consent process and the technical implications of the consent application
- organising workshops for tangata whenua representations on RMA processes and issues
- providing funding assistance for tangata whenua representatives to attend expert seminars and training schemes
- summarising applications and related information to assist tangata whenua to understand issues quickly
- assisting in the development of iwi management plans.

What councils and applicants expect from tangata whenua

In terms of developing and maintaining good relationships in resource consent processes, you should be aware of the following expectations.

Timeliness

Councils and applicants expect that, in responding to requests for comment or information, tangata whenua will:

- recognise the commercial pressures faced by applicants and the statutory timeframes and political pressure often imposed on councils, and respond within a reasonable timeframe, with no undue delay
- keep to timeframes that have been agreed to by their representative organisations or groups
- inform the parties in advance if they can't keep to a timeframe (because of unforeseen circumstances) and offer a new timeframe
- inform the council of changes in contact details as soon as possible.

Statutory timeframes under the RMA

The RMA imposes timeframes on the councils' processing of resource consents. In general terms, the RMA gives councils 20 working days to process an application that is not publicly notified.

Applications that are publicly notified have timeframes for every step of the process.

In addition, everyone involved in the consent process is under a general statutory obligation to avoid undue delay.

Often an extended period of silence after a request for consultation will be interpreted by councils, and particularly applicants – however erroneously – as a sign that tangata whenua have no view, or no concerns, about an application.

Responsiveness

Councils and applicants expect that, in responding to requests for comment or information, tangata whenua will:

- keep to agreements reached with applicants or councils to the best of their ability
- act on agreements reached – make sure they do what they say they will do
- provide responses in writing (or email or fax)
- let applicants and councils know promptly if they don't have an interest in an application referred to them.

Certainty

Councils and applicants expect that, in considering what response to make, tangata whenua will:

- draw on any existing iwi management plans (and constantly review and update iwi management plans on the basis of experience)
- respond in ways that can be given effect to and, wherever possible, be specific about what value exists and where it exists
- be consistent in the way they approach applications and applicants.

Charging

If establishing a charging regime, councils and applicants expect that tangata whenua will:

- understand and acknowledge that as tangata whenua you are in a *monopoly* position, so that in most cases the applicant cannot go elsewhere for information
- adopt appropriate charging practices, in particular:
  - provide estimates of likely cost when asked
  - make the fees (including charge-out rates) transparent by indicating charges for specific tasks before work commences
  - set any hourly rates according to the skills that are being applied (eg, office administration costs would not be charged at the same rate as expert input)
- operate a business-like charging system, including:
  - sending out invoices (with a GST number if applicable)
  - itemising invoices (so that fees and disbursements are separated and disbursements are itemised)
  - giving a summary on the invoice of the services provided
  - keeping sufficient records so that an explanation of invoices can be provided if the invoice is challenged.

Can I charge for my input into a resource consent application?

There is nothing in the RMA that stops tangata whenua (or anybody else) charging for providing input. However, there is also nothing in the RMA that requires anyone to pay.

In general, applicants' willingness to pay will depend on the quality of the service they get and the reasonableness of the charges compared to other types of expert advice they might commission.

If you follow standard business practices, you will develop a degree of confidence between the applicant and yourself and, in the long run, the council. Your success in protecting your taonga lies in good relationships as much as in the power of legislation.