Ministry for the Environment
Manatū Mō Te Taiao

National Planning Standards:

Tangata Whenua Provisions

in Resource Management Plans

New Zealand Government

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Contents

Tables

Introduction

The National Planning Standards (also referred to as Planning Standards and Standards in this paper) were introduced as part of the 2017 amendments to the Resource Management Act 1991 (RMA).

The Standards seek to:[1]

- help achieve the purpose of the RMA
- set out requirements or other provisions relating to any aspect of the structure, format, or content of RMA policy statements and plans to address any matter that the Minister for the Environment considers:
  - requires national consistency
  - is required to support the implementation of a national environmental standard, a national policy statement, a New Zealand coastal policy statement, or regulations made under this Act
  - is required to assist people to comply with the procedural principles set out in section 18A of the RMA.

This paper sets out the Ministry for the Environment's (MfE's) research to date on tangata whenua provisions in district and regional planning documents, and prompts your thinking on tangata whenua provisions in plans, before proposed hui that will take place in mid-2018 on the proposed first set of National Planning Standards in plans. In this paper, references to regional planning documents include regional policy statements.

[1] As described in RMA Section 58B.

Context

Plan making was devolved to councils under the RMA in 1991, as they are usually best placed to make decisions on behalf of, and in conjunction with, the local community. Each regional and district council is required to have in place a policy statement (for regions) and plans to manage the natural and physical resources in its region/district.

However, this has resulted in hundreds of plans that reflect local circumstances and community values. This process was a change from historic planning legislation, which required plans to be approved by central government and, at various times, prescribed key elements of plans.

Some councils rolled over existing "tried and true" provisions from plans prepared under the former Town and Country Planning Act 1977, but many others took a first principles approach to developing their first RMA plan. The government anticipated some local variation would occur as councils tailored their plans to achieve sustainable management in their districts and regions.

An unanticipated outcome of this process was how much the core structural elements of the plans were also varied. Over time, the degree of unnecessary variation has become more pronounced.

Opportunities for National Planning Standards for tangata whenua provisions

Unnecessary variation in plans affects the planning system by making plans difficult to interpret and onerous to prepare. The first set of National Planning Standards addresses this by including minimum requirements for structure, form and core content for policy statements and plans.

The National Planning Standards offer an opportunity to provide consistent approaches to planning provisions that impact tangata whenua in district and regional planning documents (see list and explanation on following page). The benefits of these consistent approaches may include:

- improved consistency and clarity in plans that will provide greater certainty in decision-making processes
- less time and fewer resources spent by tangata whenua (including iwi authorities) and councils on plan making and review, hearings and Environment Court appeals
- clearer results from monitoring and auditing of plan provisions across New Zealand
- easier navigation, interpretation and understanding of tangata whenua provisions in plans, including online functionality
- more effective implementation of national direction (including Te Mana o Te Wai provisions in the National Policy Statement for Freshwater Management)
- greater clarity for plan users where rohe (boundaries) cover more than one consent authority.

Part 2 of the Resource Management Act 1991 (RMA) confirms and acknowledges the role of Māori in resource management. Sections 6(e), 6(f) and 6(g) require that "the relationship of

Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga", "the protection of historic heritage from inappropriate subdivision, use and development" and "the protection of protected customary rights" are recognised and provided for. Section 7(a) requires that particular regard is given to 'kaitiakitanga' and section 8 requires that the principles of the Treaty of Waitangi are taken into account. The approach to interpreting Māori values and concepts is important for the effective consideration of these matters in RMA decision making.

Councils also have a responsibility to engage with tangata whenua in the development of district and regional plans, for example RMA Schedule 1 clauses 1A, 1B, 2(2), 3(1)(d), 3B, 4A. Forming relationships with tangata whenua is a key responsibility of councils and an important way to recognise Māori resource management principles. Mana Whakahono a Rohe agreements, introduced through the Resource Legislation Amendment Act (RLAA) 2017, also enable iwi to initiate these relationships.

There are complex and wide-ranging reasons for why a district plan or regional plan may approach tangata whenua issues in a particular manner. The complexity of individual iwi–council relationships and local issues will have a significant impact on how each district and region addresses certain topics.

Furthermore, the rohe and tūrangawaewae (place of rights of residence/right to stand) of iwi, hapū and whānau established through ongoing settlement in specific geographical locations have meant that particular views, values and mātauranga (knowledge) have developed about those places.

Planning documents are just one part of a kete of tools that Māori use in their decision-making, planning and management of the environment. Iwi and hapū all over Aotearoa/New Zealand have their own ways of planning for and managing the environment that are steeped in generations of wisdom, knowledge and practical implementation. Therefore, a Māori planning and resource management perspective may not necessarily fit the confines of a local authority plan or national planning standard.

With that in mind, this paper focuses on standards for the structure and format of some types of tangata whenua provisions, which can provide the benefits listed above. It also keeps the scope for iwi authorities and councils to focus on the issues relevant to them, encouraging and retaining the role of councils to engage in discussion and collaboration with tangata whenua around specific provisions.

Tangata whenua provisions in district and regional plans

Plans include provisions that impact tangata whenua, some of which are required by law. These provisions are referred to in this discussion paper as 'tangata whenua provisions'. This distinction is not intended to restrict Māori interest in planning matters and the National Planning Standards generally. Some common examples of tangata whenua provisions in district plans and regional plans include:

- recognition of iwi and hapū planning documents recognised by iwi authorities (also known as iwi management plans)
- statutory acknowledgements
- provisions enabled by Treaty of Waitangi settlement legislation including co-governance and co-management arrangements

- te reo Māori definitions and glossaries
- Treaty of Waitangi principles
- RMA obligations to iwi authorities and tangata whenua
- council–iwi relationships
- tangata whenua provision sections, including name, integration and scope
- wāhi tapu and other sites of significance
- tangata whenua consultation and engagement
- development of Māori land and Treaty of Waitangi settlement land
- papakāinga provisions
- tangata whenua relationships with specific natural resources

Research method

In 2016 and 2017, MfE reviewed all district plans and selected regional planning documents in each region for tangata whenua provisions in the:

- introductory sections
- stand-alone sections containing tangata whenua provisions
- definitions sections
- generally throughout the plan.

This review identified variation in the location, structure and content of tangata whenua planning topics. The review provided an understanding of where and how provisions are incorporated in plans, illustrating variation and options for how provisions could be included. This provided a basis for an understanding of topics that would benefit from standardisation. It also illustrated what standards could look like.

The main regional planning documents included three regional resource management plans, one natural resources plan, a regional policy statement and combined regional plan, four land and water plans, a water plan and one water and soil plan.

The results of this research are set out in this paper, along with options for national standards arising from them. The research findings and options fall into four categories: structure and format of plans, definitions, plan content, and zones and overlays. These relate to the National Planning Standards discussion paper topics which have already been released.

The research did not include stand-alone regional policy statements. However, many of the standards proposed will be relevant to regional policy statements, as well as regional and district plans.

Iwi planning documents were not reviewed in this research, which aimed to assess variation in RMA plans to determine which standards would be effective. Iwi planning documents may provide useful best practice examples of tangata whenua provisions that could be used as a basis for national planning standards and plan provisions in the future. Similarly, national direction-setting documents may be researched and used later as a basis for standards, recognising that Māori resource management matters are often responded to and considered at a national and thematic level.

Structure and format

The National Planning Standards will set out requirements and provisions relating to the structure and format of district and regional planning documents. The following section addresses where relevant tangata whenua provisions could be placed in the structure of plans, and if there is a standard format that they may be included in.

The topics addressed are iwi and hapū planning documents, statutory acknowledgements, plan sections on RMA and Treaty of Waitangi principles, tangata whenua–council relationships, council engagement, and sections containing tangata whenua provisions and definitions.

Recognition of iwi and hapū planning documents

Description

Iwi and hapū planning documents are documents developed and approved by an iwi authority to help tangata whenua exercise their roles and responsibilities on the resource management issues of importance to them. They reflect tino rangatiratanga (sovereignty) and kaitiakitanga (guardianship roles) and articulate how tangata whenua want their aspirations with respect to Part 2 of the RMA to be realised. They reinforce relationships with councils, encouraging iwi and councils to work together on outcomes. As the RMA does not set out a process by which these documents are developed, they assume a variety of shapes and forms.

Iwi and hapū planning documents express the aspirations and expectations of tangata whenua with regard to Māori cultural heritage. They may contain information relating to specific cultural values, historical accounts, descriptions of areas of interest, and consultation and engagement protocols for resource consents and/or plan changes. Tangata whenua may also wish to include inventories of their heritage resources and outline the appropriate management techniques.

Iwi and hapū are at different stages in developing these documents for a number of reasons. As with the development of second generation plans, iwi and hapū planning documents have evolved within dynamic and changing resource management environments and Treaty of Waitangi settlement stages. Some iwi and hapū have developed iterations of their plans, while others have not yet developed any plans.

When preparing or changing an RMA planning document, the RMA requires councils to take into account any relevant iwi planning document that has been lodged with the council, to the extent that its content has a bearing on the resource management issues of the district or region (sections 61(2A)(a), 66(2A)(a), and 74(2A)).

In developing or changing a district plan or regional planning document, the council has the option to incorporate sections of iwi or hapū planning documents or to reference sections from these documents into the plan under RMA Schedule 1 Part 3. This mechanism is likely to be used more as co-management entities become more common and the relationships between councils and iwi develop.

What our research tells us

MfE's National Monitoring System 2014/15 data identifies around 125 planning documents from iwi and hapū lodged with 53 councils. It also found that many councils that do not have an iwi or hapū planning document lodged with them still reference the possibility of an iwi or hapū planning document in their district plan and regional planning document. This was often done in anticipation of an iwi or hapū planning document being made during the life of the plan.

The location in district plans where these iwi and hapū planning documents were referenced varied. For example, a number of councils acknowledge iwi and hapū planning documents in specific iwi sections while others address them in strategic and introductory sections.

Regional planning documents tended to refer to iwi and hapū planning documents in locations such as the introduction and methods. Other regional councils do not reference iwi and hapū planning documents in their plans, and instead include them on the council website.

There is also variation in how iwi and hapū planning documents are acknowledged and integrated into district plans and regional planning document. For example, some iwi and hapū planning documents are referenced in plans as a basis of consultation, or a document to be taken into account. Other councils adopt a policy supporting the development of them, and others incorporate their provisions into the plan.

Our initial preferred option

We suggest that iwi and hapū planning documents that iwi authorities have lodged with councils should be listed in district and regional planning document, with hyperlinks to the documents themselves where available. This is similar to the approach adopted for national policy statements and national environmental standards. This list could be in the introduction section and below the references to national direction (RMA section 58G(2)(a)). Iwi authorities may still ask for content within these documents to remain confidential, however. This list could also be kept up to date without the need for a Schedule 1 plan change, if it was an appendix and a non-statutory part of the plan or if the planning documents were not listed and instead hyperlinked.

Regional and district plans could have a description about how these iwi and hapū planning documents have been, or should be, used for resource management planning processes. This may be in the introduction section or in a flowchart of how to use the plan, or within the relevant plan sections.

Councils will need to engage with iwi and hapū about how they want their provisions to be given regard in RMA plans. The RLAA 2017 also requires the evaluation (section 32) report to show how iwi and hapū planning documents have been taken into account.

Statutory acknowledgements

Description

A statutory acknowledgement is a formal recognition by the Crown of the particular cultural, spiritual, historic and traditional associations that a Māori claimant group[2] has with a statutory area. A statutory area can include an area of land, a landscape feature, a lake, a river or wetland, or a specified part of the coastal marine area. Like iwi and hapū planning documents, statutory acknowledgements provide for tangata whenua values and relationships with the environment. They recognise locations where Māori have a special relationship.

The association of a Māori claimant group with a statutory area is outlined in the schedules to a Claims Settlement Act.[3] Within statutory areas, consent authorities must have regard to statutory acknowledgements and must attach a public record of the statutory acknowledgment over the relevant statutory area within RMA planning documents.

Rules or provisions that apply to statutory acknowledgement areas may or may not be included. If they are not included, the protection of sites of cultural significance relies on voluntary initiatives and other non-regulatory methods.

What our research tells us

Table 1: How statutory acknowledgements are recognised in district and unitary plans

Method to recognise statutory acknowledgments	Number of district and/or unitary plans using this method
Full text attached as plan appendix	12
Identified within sites of cultural significance, archaeological sites, sites of significance, wāhi tapu, nohoanga section	10
Referenced and explained in plan introduction	7
Explained and identified in a tangata whenua chapter	6
Located on maps rather than in text	6
Online display of the full text only	6
Mentioned in the issues section	3
Listed only in an appendix	2
Legal definitions and locations provided only	2
In an appendix to a tangata whenua chapter	1
The relevant site explained in the definitions chapter	1
Not included and/or no statutory acknowledgments	22

[2] A Māori claimant group is an entity representing one or more Māori groups in a Treaty of Waitangi settlement negotiation with the Crown.

[3] A Claims Settlement Act is government legislation in response to breaches of the Treaty of Waitangi in relation to a Māori claimant group.

Similarly, regional planning documents include information about statutory acknowledgements in varied forms and locations. Two regional planning documents reference statutory acknowledgements in the introduction; four include statutory acknowledgment text in schedules and one in an appendix. One regional planning document references statutory acknowledgments in the methods section and one regional planning document in a tangata whenua values chapter. One regional council also places information about statutory acknowledgements separately on the council website.

Our initial preferred option

This variation presents an opportunity to provide a standard way to reference statutory acknowledgements in plans and standard information to be included. National planning standards could specify that statutory acknowledgements are listed in the planning documents introduction section with hyperlinks to the full settlement legislation and/or agreement.

At the start of the statutory acknowledgments, there could be a brief explanation about what the statutory acknowledgments are, the effect they have within the plan and baseline requirements for legislation. This explanation needs to remain flexible so content can be decided between iwi and councils.

Alternatively, the full statutory acknowledgment could be included as a plan appendix.

Resource Management Act 1991 Māori resource management principles

Description

The purpose and principles (Part 2) of the RMA contain provisions particularly relevant to iwi authorities and tangata whenua. These are:

- section 6(e): Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga
- section 6(f): Recognise and provide for the protection of historic heritage (which includes wāhi tapu and other sites of significance to Māori) from inappropriate subdivision, use, and development
- section 6(g): Recognise and provide for the protection of protected customary rights
- section 7(a): Have particular regard to kaitiakitanga
- section 8: Take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Councils must prepare their planning documents in accordance with the Part 2 purpose and principles.

The principles of the Treaty of Waitangi have been developed over time through the courts, the Waitangi Tribunal and the perspectives of the Crown and Māori. These principles are not defined absolutely and have been developed to guide the relationship between the Crown and, by extension local government, and Māori.

Councils must take these principles into account, along with other Part 2 principles, when preparing and changing RMA plans, as interpreted and directed by higher planning documents (such as national policy statements).

What our research tells us

The majority of district and regional plans reference RMA provisions relevant to tangata whenua planning, relevant Treaty of Waitangi principles and/or the Treaty of Waitangi text.

Table 2: Locations for Resource Management Act 1991 sections 6, 7 and 8 Māori-specific principles and Treaty of Waitangi principles in plans

District and/or regional planning document section	Number of plans with Treaty of Waitangi principles located in this section
Tangata whenua and iwi chapter	30
Introduction	23
Significant resource management issues	10
Objectives	2
Separate schedule or appendix	2
Strategic framework	1
Council functions and responsibilities	1
Context	1
District background	1
Provisions not located	6

The content covering Treaty of Waitangi principles and RMA Māori resource management-specific principles in district and regional planning documents also varies.

Table 3: Content type of Resource Management Act 1991 (RMA) Māori-specific principles and Treaty of Waitangi principles in plans

Content type	Number of plans with this content
RMA Māori-specific principles	35
Specific Treaty of Waitangi principles	27
The way that Treaty of Waitangi principles will be implemented	15
Treaty of Waitangi (Te Tiriti o Waitangi) text	6
Relationship created by Treaty of Waitangi obligations	1
No provisions	6

Variation exists in the Treaty of Waitangi principles that are included and how the principles are articulated in plans. The research did not examine this variation in detail, on the assumption that this is an area where the application of Treaty of Waitangi principles would be based on locally driven plan content.

Our initial preferred option

Best practice in plan drafting is to not repeat legislation or national direction within an RMA plan. If the legislation or direction changes the plan may become inconsistent with the superior document. This best practice may become part of a national planning standard.

The difficulty in standardising the Treaty of Waitangi principles is that the principles are not necessarily fixed, and can continue to develop over time through case law. The National Planning Standards are not the best place to standardise these principles. The desirability and feasibility of standardising the local application of these principles would also be difficult, given the diversity and contextual nature of tangata whenua–council relationships.

However, there is an opportunity to standardise the location where plans should address the application of Treaty of Waitangi and RMA Māori resource management principles, as part of plan structure.

Because of the importance of plans applying these resource management principles, the National Planning Standards could also direct all plan makers to specifically address RMA sections 6(e), 6(f), 6(g), 7(a) and 8 in this specified plan section. At a minimum, this could be quoting these principles in the plan, but preferably the plan section would apply these in consultation with tangata whenua and in reference to iwi and hapū planning documents, for example:

- the relevant Treaty of Waitangi principles for the district or region
- resources of significance to Māori
- the kaitiaki roles in the district or region
- arrangements set out in deeds of settlement.

Tangata whenua–council relationships

Description

Many plans include a section on the relationship that councils have, or intend to develop, with tangata whenua. This is increasingly the case as councils are required to engage with iwi through Treaty of Waitangi settlement legislation, and other relevant legislation such as the RMA and Local Government Act 2002 (LGA). Relationship structures may include partnerships, consultation committees, recognition of cultural values and resource management, the development of protocols and memoranda of understanding, and commitments to consult with tangata whenua. Meaningful relationships with iwi and hapū are important for ensuring that Māori values and concepts are given effective consideration in RMA decision-making.

The way these agreements are worded and applied to plans is outside the scope of the national planning standards. However, there is scope to consider a standard for the location of these matters in plans and to direct plan makers to reference and briefly describe them.

What our research tells us

Table 4: Location of iwi authority–council relationship content in plans

Plan section	Number of plans with iwi authority–council relationship content located in this section
Tangata whenua and iwi	23
Introduction	18
Resource management issues and/or strategic framework	9
Background	3
Objectives and policies	1
Regional policy statement	1
Zones	1
Heritage	1
No provisions	9

Most plans included content about council–iwi authority relationships in either a tangata whenua section or in the plan introduction section.

Our initial preferred option

Our initial preference is that national planning standards specify a location for content about tangata whenua–council relationships. The reference and brief description of relationship agreements, including mana whakahono a rohe (MWAR) and post-settlement procedures, should be updated without needing a Schedule 1 process, unless this has a substantive change to plan content. Appending the description so that it is a non-statutory part of the plan or providing a hyperlink would enable this.

The 2017 amendments to the RMA introduced MWAR and iwi participation arrangements. MWAR are written agreements between local government and iwi authorities. They are a mechanism for councils and tangata whenua to agree on ways tangata whenua may participate in RMA decision-making, and to help councils with their statutory obligations to tangata whenua under the RMA. MWAR may eventually become an effective place to document the formal relationship and engagement processes between councils and tangata whenua through iwi authorities.

Māori consultation requirements

Description

Many plans include information on how councils intend to consult with Māori on particular matters and for particular activities. Some of these directions come from post-Treaty of Waitangi settlement directions for iwi involvement in resource management. Section 81 of the Local Government Act 2002 also states the responsibility of councils to engage Māori in decision-making processes.

Consultation by the council with Māori can help to serve a variety of requirements. It helps the council in assessing effects of consent applications and in addressing the various requirements of Part 2 of the RMA (ss6(e), (f), (g), s7(a) and s8). It meets obligations to serve notice of applications on iwi authorities, where they have been determined to be potentially affected

parties. In suggesting that applicants consult with Māori, council can help applicants meet their obligations to provide a fully rounded assessment of environmental effects.

In addition, consultation with Māori can lead to collaboration, enduring partnerships and collective aspirations in relation to natural and physical resources.

The content of Māori consultation provisions is outside of the scope of the National Planning Standards. However, there is an opportunity to consider a standard for the location or reference of these matters in plans as it is apparent from our research that plans do include this type of information.

What our research tells us

A majority of district plans reference requirements and methods to consult Māori. However, there is variation in the way this is referenced.

Table 5: How consultation with Māori by applicants is referenced in plans

Reference	Number of plans using this reference
Included in policies, objectives and methods, often with requirements for information exchange and a commitment to ongoing consultation	18
Consultation protocol established, often reference to open communication and ongoing consultation	6
Reference to Resource Management Act 1991 requirement for consultation and assessment of environmental effects	5
Reference to use of iwi management plans IMP for consultation	5
Who to consult with, specific contact may be referenced	5
Recommendation and encouragement to consult	3
Resource consent consultation procedures outlined	3
Specific requirement for a cultural impact assessment	2
Consultation procedures	1
Mention of need to take into account cultural effects	1

Variation also exists in the location for where Māori consultation is mentioned. It may be outlined in the introductory section, a tangata whenua section or occasionally in a cultural and heritage section.

Our initial preferred option

For the first set of national planning standards, because of the valid variation in council plans on this topic, our initial preference is to have a standard location for iwi consultation provisions and to recommend the inclusion of guidance or a link to guidance. In the future, if guidance is tested and found to be useful to standardise across the country, it could become part of the National Planning Standards.

A standard reference or location for consultation or other engagement with Māori could help to increase the prominence and accessibility of these provisions in plans. However, this needs to be flexible because the location and plan references for council consultation and other engagement with Māori is often affected by Treaty of Waitangi settlement legislation, post-settlement co-management, MWAR and iwi participation arrangements, iwi management plans and the plan rules themselves.

Tangata whenua provisions – section title, terms, integration and scope

Description

Most plans have specific sections for tangata whenua provisions, as well as provisions integrated through other plan sections. There are many titles used for the parts of plans specifically for tangata whenua provisions, and it plays different roles in different plans, from background information to detailed policies and functions for post-Treaty of Waitangi settlement iwi authorities. The National Planning Standards are an opportunity to provide a standard name and location for sections containing iwi planning provisions. Standardised headings throughout could also help to specify content.

What our research tells us

Titles of tangata whenua provisions sections

A survey of district plans revealed many different titles for sections containing tangata whenua provisions. These titles are clustered into common terms below, with the number of times the title is used.

Variations on 'tangata whenua'

Tangata whenua (23), Takata whenua/tangata whenua values (3), Tangata whenua cultural values (1), Mana whenua (7), Tangata whenua relationships/relationships with takata whenua (2), Partnership with tangata whenua (1), Takata whenua (1), Tangata whenua and mana whenua (1), Ngāi Tahu mana whenua (1).

Variations on 'tangata whenua resource management'

Issues and matters of importance to tangata whenua (2), Issues for tangata whenua (1), Resource management and tangata whenua (1), Tangata whenua and resource management (1), Relationship of tangata whenua with natural environment of district (1), Tangata whenua strategy (1).

Variations on 'iwi perspectives and values'

Iwi perspective (1), Māori perspective (1), Māori resource management perspectives (1), Māori resource management values (1), Māori issues (1), Māori issues and values (1), Tangata whenua interests (1).

Variations on 'Treaty of Waitangi'

Treaty of Waitangi (1), Principles of the Treaty of Waitangi (1), Treaty of Waitangi issues (1), Treaty of Waitangi issues and other matters of concern to Māori (1), Treaty of Waitangi and matters of significance to iwi (1), Treaty of Waitangi and Māori resource management values (1).

Variations on 'heritage'

Heritage (1), Cultural heritage (1), Māori heritage (1), Iwi cultural and historic heritage and economic resources (1).

Other variations

Iwi consultation (1), Māori (1), No heading.

Integration of tangata whenua provisions into plans

Fifty-nine district plans and seven regional planning documents contain a separate section for tangata whenua provisions. Most objectives, policies and rules relating to iwi resource management aspirations are set out in these sections. Papakāinga or iwi development zones are often placed separately from these iwi provision sections.

Six district plans and three regional planning documents integrate tangata whenua provisions throughout the plan, placing a small section relating to tangata whenua considerations in the objectives, policies or rules of each chapter. The section explaining the tangata whenua provisions generally may still be placed separately in the introduction. One plan states that tangata whenua specifically asked for this approach.

Scope of tangata whenua provisions in plans

The scope of content that relates to Māori resource management is highly variable among district plans.

Table 6: Main focuses of tangata whenua provision chapters in district plans

Focus of the iwi provision chapter	Number of plans with this chapter focus
Māori resource management values	19
Issues of interest to tangata whenua	15
History	12
Identification of Māori to consult	10
Resource Management Act 1991 and Treaty of Waitangi principles	11
Historic resource use	6
Recognition of differing Māori and Pākehā perspectives	4
Demographics	4
Partnership and consultation practices	3
Heritage management	3
Māori resource management	3
Limitations to Māori resource management capacity and understanding	1
Claims legislation	1
Māori land	1

For regional planning documents, two tangata whenua provisions chapters focus on defining tangata whenua and kaitiaki roles, seven focus on issues of interest to tangata whenua, and four focus on Māori resource management values or concepts.

Our initial preferred option

We do not have a preferred option on what separate tangata whenua provisions chapters should be named and their scope: this is a matter best placed for local councils and tangata whenua to derive. We see benefits in tangata whenua provisions being both integrated in the plan and also for tangata whenua provisions placed in a stand-alone section with cross references elsewhere in the plan. Mandatory or discretionary headings for stand-alone sections could help standardise the plan content relating to tangata whenua, ensuring that the main topics are covered.

Alternatively, existing plan variation may suitably reflect the involvement of tangata whenua in local resource management and should not be constrained through the National Planning Standards.

Definitions

Te reo Māori definitions and use

Description

Te reo Māori terms for activities, policies, standards and concepts are increasingly used in RMA plans, with the words taking legal weight for councils and plan users. This has generated discussion about how Māori terms should be applied and defined within the context of RMA plans.

Some councils have been wary of explaining te reo Māori words by using another language, namely English. This has created variation in the weight that plans give to the definitions of these words. For example, the terms may be in a glossary to be used as guidance for interpretation, rather than a definition per se.

What our research tells us

Most RMA plans define te reo Māori terms used in the plan. Variation exists in where te reo Māori terms are defined. Some district plans also include terms defined in iwi planning documents and in the RMA.

Table 7: Location of definitions and explanations for te reo Māori terms in plans

Location of definitions and explanations for te reo Māori terms	Number of plans with this location of definitions and explanations
Definitions chapter	62
Separate glossary	9
Values in the plan	3
Appendix to the tangata whenua chapter	2
Within the plan text	1
No te reo Māori definitions	7

The Independent Hearings Panel on the Proposed Auckland Unitary Plan found that te reo Māori terms are provided to help with interpretation of terms used in the Plan; they are not intended to be used as definitions. The Panel recommended te reo Māori words be placed in a glossary where they can provide help but do not function as definitions. The Independent Hearings Panel on the Proposed Christchurch Replacement District Plan recommended that an explanation of Māori terms and concepts be contained in the introductory chapter as relevant to the management of natural resources.

Our research shows that variation exists in how Māori terms are defined in plans. A 2015 report by Boffa Miskell determined common terms defined in plans through scanning a sample study of plans.[4] Te reo Māori terms identified in this report include hapū, iwi, iwi authority, mana whenua, papakāinga, papakāinga housing, tangata whenua, taonga, urupā and wāhi taoka/tapu/tapu area/tapu site.

[4] Boffa Miskell. 2015. *RMA District Plan Definitions.* Prepared for the Ministry for the Environment by Boffa Miskell. Wellington: Ministry for the Environment.

Our work on developing a Definitions planning standards identifies papakāinga housing and marae as terms that could be given a standard definition in the first set of national planning standards because these are often used in plan rules and encompass land use elements such as: educational use, residential uses or housing for kaumātua.

Our initial preferred option

Plan users and councils would benefit from having a standard location where key and common te reo Māori terms are defined (or otherwise explained). When it comes to specific provisions, our preference is to require councils to define terms used in rules or terms that have legal weight in the definitions section, and include other terms in a glossary. The Planning Standards would not define te reo Māori terms at this stage.

Focus topics

The topics included are the wording of wāhi tapu/sites of significance and a zone or set of provisions for papakāinga and Māori land. MfE research identified the potential to set out content for these topics in future standards.

Wāhi tapu/sites of significance

Description

Part 2, section 6(e) and (f) of the RMA requires decision makers to recognise and provide for, as matters of national importance, the relationship of Māori to their ancestral lands, water, sites, wāhi tapu, and other taonga, and the protection of historic heritage (defined to include sites of significance to Māori including wāhi tapu) from inappropriate subdivision, use and development.

There is variation in the wording for wāhi tapu/sites of significance. An opportunity exists to standardise the way wāhi tapu/sites of significance are termed, incorporated and recognised in plans.

What our research tells us

Terms

All district plans address sites of significance to Māori in some manner, but we observed variations in terms used to describe these features. Less than half of all district plans use the specific term ‘sites of significance’. Most use a variation such as ‘sites of cultural importance’ or ‘wāhi tapu’.

A varied approach to the inclusion of sites of significance was also observed in regional planning documents. Around half of regional planning documents did not include sites of significance. Those that did include sites of significance used terms such as ‘spiritual and cultural beliefs, values and uses of significance’ and ‘mana whenua values’. This is reflective of the interchangeable use of terms within the RMA on this topic.

Methods of incorporation

The main provisions relating to sites of significance were objectives and policies that often stated that sites would be identified by tangata whenua and/or iwi and appropriately protected. The intent of policies and objectives in this space was consistent across the country, with the specific phrasing the most notable difference. The other main approaches to recognising sites of significance were issue statements that restate obligations under the RMA and the Treaty of Waitangi to protect wāhi tapu/sites of significance.

Our initial preferred option

We suggest that all district and regional planning documents use the umbrella term ‘sites of significance to Māori’ as a category or overlay title. We note this may include a wide range of sites significant to different groups, for example: an iwi authority, a particular hapū or even Māori in a different rohe with a historical affiliation to a site. However, within this category a

variety of different terms may be used, depending on what is being identified and protected, and for whom.

The detail of the site described in the plan, whether it be a wāhi tapu, wāhi tūpuna, historic site, site of cultural importance and so on, should remain with the relevant iwi authorities and councils. Likewise, the specific plan provisions to protect these sites should remain tailored to the local situation and need for protection from inappropriate subdivision, use and development.

Use of te reo Māori

Description

Te reo Māori is an official language of New Zealand and can be used in legal proceedings under Te Ture mō Te Reo Māori 2016 (Māori Language Act 2016). This Act states that government departments, such as MfE, should be guided by the following principles:

- iwi and Māori should be consulted on matters relating to the Māori language
- the Māori language should be used in the promotion to the public of government services and in the provision of information to the public
- government services and information should be made accessible to iwi and Māori through the use of appropriate means (including the use of the Māori language).

What our research tells us

Te reo Māori is used in the text of a small number of district and regional planning documents, typically in introductory or scene-setting sections and for Māori-specific policy. For example, one regional planning document has an introduction translated into te reo and another uses te reo headings in its tangata whenua section. In our research, several district plans and half of the main regional planning documents for each region also included whakatauki (proverbs) at the beginning of the plan or chapters.

Our initial preferred option

We recognise that translation of plans into Te Reo is likely to create difficulties in legal interpretation. However, use of te reo could help to enhance the richness of sections that relate to tangata whenua.

We propose:

- requiring operative regional policy statements to have a foreword written in both English and in Māori (many already include these)
- encouraging plans (through guidance) to incorporate te reo Māori translations of tangata whenua plan content, where practicable, incorporating local dialect variations..

Papakāinga provisions

Description

Papakāinga can be translated as ‘home base’ or ‘home village’. Provisions related to papakāinga development are often included in district plans, although this is sometimes limited to papakāinga housing, that is, allowing for Māori to build multiple residences on multiply-owned Māori land. Papakāinga in its fullest sense refers to development by tangata whenua on their traditional rohe for residential, social, cultural, economic and recreation activities. Papakāinga has traditionally occurred on Māori land; however, there are emerging examples of papakāinga development on general land, such as Māori trusts developing freehold land in urban areas. There has been an observed trend in papakāinga being raised by iwi authorities and councils as a planning and resource management issue of importance.

What our research tells us

Existing MfE research found different activity statuses in district plans for papakāinga activities. The requirement for (or removal of requirement for) resource consent can increase (or decrease) the cost of a papakāinga development by around $10,000 per dwelling.

In 2016, 59 per cent of district plans provided a specific rule for papakāinga in the plan, 60 per cent of which list papakāinga as a permitted activity. However, 18 per cent of district council plans do not specifically provide for or enable papakāinga, and papakāinga is a ‘non-complying’ activity in three district plans.

A small number of councils included a specific papakāinga chapter, with most including papakāinga provisions within a broader Māori or tangata whenua chapter. A small number of plans included papakāinga as a zone or overlay; a similar number did not mention papakāinga at all.

Two regional planning documents also included papakāinga and other forms of cultural facility development, such as marae, kaumātua housing and whare wānanga, as regionally significant issues.

Rural papakāinga

Papakāinga development is often located in areas zoned as ‘rural’ in district plans. Rural zoning can be a hindrance to papakāinga development, with rural zones usually containing rules that limit the number of houses, housing density and fragmentation of rural lands. Locational constraints also affect infrastructure availability, with papakāinga often sited on any given land block that is available rather than a site carefully selected and optimally zoned from a development perspective.

Some councils address this issue through either specific papakāinga zones, which can be applied to Māori land in the district, or through provisions within the rural zone that accommodate for the different needs of papakāinga compared with common rural uses.

Urban papakāinga

Urban papakāinga development is increasingly occurring.[5] This is because 84 per cent of Māori live in urban areas[6], urban land is being returned through Treaty of Waitangi settlements, and because of issues around housing affordability,

Urban-specific issues for papakāinga developments could include:

- the density of papakāinga housing being potentially higher than the underlying urban zone
- neighbourhood sensitivity issues in a residential area if the papakāinga development seeks to include a mix of non-residential activities, such as community facilities.

These issues are often raised with other activities in urban zones, such as churches and retirement villages, which commonly have planning provisions developed to account for them. It remains unclear whether urban papakāinga developments have effects of a defined, specific nature that justify creating a specific rule to cater for them over and above what plans already typically provide for through 'residential activities' and 'non-residential activities'.

Our initial preferred option

We propose providing a standard on where provisions specific to Māori land or Treaty of Waitangi settlement land should be located in district plans, if the council and relevant iwi authorities decide this is appropriate. This is elaborated on later in the section 'Development of Māori land and Treaty of Waitangi settlement land'.

Other options that could be considered include:

- location for objectives, policies and rules for papakāinga development
- specific exclusions or parameters on district plan provisions for papakāinga development

The reasoning for providing a standard definition for papakāinga is also discussed above in the section 'Te reo Māori definitions and use'.

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[5] Controller and Auditor General. 2011. *Government planning and support for housing on Māori land: Nga whakatakotoranga kaupapa me te tautoko a te kawanatanga ki te hanga whare i runga i te whenua Māori*. Wellington: Office of the Auditor-General.

[6] https://teara.govt.nz/en/urban-maori/page-1

Zones and overlays

Development of Māori land and Treaty of Waitangi settlement land

Description

Māori land

Ownership and development of Māori land helps iwi, hapū and whānau to provide for themselves. In parts of the country, large proportions of land are Māori-owned (as defined in Te Ture Whenua Māori Act 1993). It is important to enable Māori to provide for their cultural, economic and social wellbeing in an environmentally sustainable way.

To provide for this, a wide range of activities may need to be allowed for on Māori land. Many of these activities may exist in conjunction with a marae, and may include education or training facilities, housing or medical facilities.

In addition, recent and future Treaty of Waitangi settlements between the Crown and tangata whenua are giving iwi authorities greater access to financial resources. This, in turn, is shifting the focus for iwi authorities from protecting resources to managing and developing them as well.

The unique nature of Māori land can create challenges for development because of the:

- additional legislative requirements and controls under Te Ture Whenua Māori Act 1993
- additional constraints in RMA plans on land use, water takes, discharges and other activities on Māori land that has yet to be intensified (because of historical and legal limitations) in the same way that general land has. These constraints are often applied because of RMA requirements to protect and preserve undeveloped areas that have biodiversity, natural character and landscape values
- controls on land succession to descendants and members of the hapū or whanau associated with the land
- multiple ownership and multiple options for land management
- difficulty in obtaining capital for development
- land use reflecting cultural and spiritual values and the relationship of Māori to their ancestral land.

Treaty of Waitangi settlement land

The Treaty of Waitangi settlement process often includes land given back to iwi or hapū as either commercial or cultural redress for past land confiscation and unfair land purchase. The land sometimes has constraints under the Reserves Act 1977 and the Conservation Act 1987. It may also be subject to easements protecting public right of access. The land may be converted to Māori land and managed under Te Ture Whenua Māori Act 1993, or kept by the iwi as general land for commercial development or other uses.

What our research tells us

Plans often have specific provisions for development of Māori land, to recognise the different characteristics of this land and the challenges of multiple ownership. Sometimes specific provisions also apply to Treaty of Waitangi settlement land.

Table 8: How district plans provide for development on Māori land and Treaty of Waitangi settlement land

Methods to provide for Māori land and Treaty of Waitangi settlement land development	Number of plans with this method
Papakāinga/marae zone (and related terms)	14
Papakāinga/marae overlay (and related terms)	1
Objectives, policies and rules for Māori land	11
Inclusion in issues, strategic section or policy	5
Objectives, policies and rules for papakāinga/marae development	3
Use of rules only	3
Māori or Treaty of Waitangi settlement land zone or overlay	2
Addressing relationship between Te Ture Whenua Māori Act 1993 and Resource Management Act 1991	2
Māori or Treaty of Waitangi settlement land chapter	2
Identification on a map only	1
Environmental accord implementation	1
No specific provision for Māori land or papakāinga or marae development	21

Some objectives, policies, methods and rules were placed in a tangata whenua and iwi section, while others were integrated throughout different zone sections in the plan.

Separate treatment for Māori land and Treaty of Waitangi settlement land was deliberately excluded from one plan after the tangata whenua asked for the land to be treated the same as all other land during consultation with the council.

Specific plan provisions for Māori land and Treaty of Waitangi settlement land were not found in regional planning documents, which relate more to natural resource management rather than land development specifically.

During regional workshops on the National Planning Standards in June and July 2017, participants indicated an interest in a standard zone or overlay for Māori land for optional use in plans. For more information about zones and overlays, refer to the National Planning Standards: Zones and Overlays – Spatial layers in plans: Discussion Paper C. Also refer to the earlier section ‘Papakāinga provisions’ for further discussion.

Our initial preferred option

Our preference at this point is to provide the option of a zone that can be applied to land owned by Māori (whether Māori land or Treaty of Waitangi settlement land) primarily for Māori cultural and community development, with provision for associated housing and commercial activities to suit a hapū and/or whanau. This will provide a new method for councils and iwi authorities to consider when preparing an RMA plan.

We do not want to limit the use of Māori land to just one zone, when this land could be developed within, or for, residential, commercial, industrial, rural or conservation purposes. All zones and overlays should be open to land owned by Māori. Methods to reduce historic development imbalances imposed on Māori land can be incorporated within the zone and overlay provisions. For example, a rural zone could include a precinct with a broader range of development opportunities for a specific area of Māori land.

These options to develop Māori land can be outlined in iwi and hapū planning documents and created in partnership between iwi authorities and councils. They should recognise the specific land characteristics, Treaty of Waitangi settlement legislation, the importance for Māori to provide for their cultural, economic and social wellbeing, and tangata whenua aspirations for different sites.

We would appreciate feedback on whether a standard should be developed to recognise these types of enabling provisions for Māori land development and to ensure the development is sustainable. A national standard that includes a framework to facilitate Māori land development may be useful.

Key questions

This report is intended to prompt your thinking about tangata whenua related provisions in plans, before consultation. The questions below help to guide this.

Questions

1 Which of the provisions outlined above would most benefit from standardised, and why?

2 Would standard sections and locations for provisions be useful?

3 What balance do you think there should be between integrating provisions in the plan and placing them in a tangata whenua section?

4 How should Te Reo Māori words be incorporated and defined in plans?

5 What are the most effective planning tools to protect and manage sites of cultural significance?

Next steps

We are currently in the drafting and testing phase for the National Planning Standards. The 'Introduction to the National Planning Standards' overview document details the process and engagement opportunities during each stage of development. The flow chart below shows each stage of the development process and anticipated timeframes.

We intend to publically notify the first set of draft Planning Standards in late May for formal consultation and submissions mid- 2018. We intend to hold workshops and regional hui on the draft standards as part of consultation (find further information on the Ministry for the Environment website- https://www.mfe.govt.nz/rma/legislative-tools/national-planning-standards).

Contact

If you would like any further information or to provide feedback you can contact us at:

Email: Nyssa.Payne-Harker@mfe.govt.nz or planningstandards@mfe.govt.nz

Website: www.mfe.govt.nz

Phone: +64 4 439 7400

Glossary

Hapū

Kinship group, section of a large kinship group and the primary political unit in traditional Māori society

Iwi authority

The authority which represents an iwi and which is recognised by that iwi as having authority to do so

Iwi

Extended kinship group- often refers to a large group of people descended from a common ancestor and associated with a distinct territory

Iwi/hapū management plans

Planning documents that are recognised by an iwi authority, relevant to the resource management issues of the region/district/rohe and/or lodged with the relevant local authority

Kaitiakitanga

The exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship

Kaumātua

Elder, a person of status within the family

Kete

Basket, kit

Mana Whakahono ā Rohe

Iwi participation agreements entered into between an iwi authority and a local authority

Mana whenua

Customary authority exercised by an iwi or hapu in an identified area

Māori claimant group

An entity representing one or more Māori groups in a Treaty of Waitangi settlement negotiation with the Crown

Marae

A fenced-in complex of carved buildings and grounds that belongs to a particular iwi (tribe), hapū (sub tribe) or whānau (family)

Mātauranga

Knowledge

Papakāinga

A group of houses, of three or more, developed on multiple-owned Māori land

Rohe

Boundary/territory

Statutory acknowledgments

A statutory acknowledgement is an acknowledgement by the Crown that recognises the mana of a tangata whenua group in relation to specified areas - particularly the cultural, spiritual, historical and traditional associations with an area. These acknowledgements relate to 'statutory areas ' which include areas of land, geographic features, lakes, rivers, wetlands and coastal marine areas, but are only given over Crown-owned land

Tangata whenua

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

Taonga

Treasure, anything prized

Te mana o te wai

Recognises the connection between water and the broader environment, the health of the waterbody and the health of the people

Te reo Māori

The Māori language

Tikanga Māori

Maori customary values and practices

Tino rangatiratanga

Self-determination, sovereignty

Tūrangawaewae

Place of rights of residence/right to stand

Wāhi tapu

Sacred place, sacred site

Whakataukī

Proverbs

Whānau

Extended family, family group

Whare wānanga

University, place of higher learning