Ministry for the Environment
Manatū Mō Te Taiao

OIAD-49

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 03 June 2021 requesting the following under the Official Information Act 1982 (the Act):

> *I would like to make an OIA request to gain access to the paper submitted by the Te Ao Māori working group for consideration in "New Directions fo Recourse Management in New Zealand: Report of the Resource Management Review Panel June 2020" (hereafter referred to as 'The Randerson Report'), as mentioned on page 11 of the Randerson Report. This group consisted of Dame Anne Salmond, Rebecca Kiddle, Craig Pauling, Tame Te Rangi, Jade Wikaira, and Watene Campbell (as noted in Appendix 9 of the Randerson Report)*
>
> *I would also like to make a request for the Te Ao Māori working group's report, as mentioned on page 94 of the Randerson Report, if this report is different to the paper requested above.*

The Ministry for the Environment (the Ministry) has identified one document in scope of your request, as provided below. Doc 305 *the Treaty and te ao Māori working group final report* is released to you in full.

Please note, this report was submitted by the te ao Māori 'working group' rather than the 'reference group'. The 'reference group' did not produce a report, but instead met with the Panel members on a few occasions to test their proposals.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please no e that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our OIA responses page shortly after the response has been sent. If you have any queries about this, please feel free to contact our Ministe al Services team: ministerials@mfe.govt.nz.

Yours sincerely

K Kohere

Keita Kohere
Director – RM te ao Māori Policy

RM Review Panel Cover Sheet

NAME OF PAPER:
THE TREATY AND TE AO MĀORI WORKING GROUP – FINAL REPORT

CATEGORY:	MEETING DATE:	DOCUMENT NUMBER:
Working Papers		305
SUBCATEGORY: Working Groups		

ORGANISATION:
The Treaty and te ao Māori working group

COMMENTS:

Action number	Action description	Does the report cover the action?
98	Provide a list of all the sections of the RMA that mention the treaty/refer to Maori interests	Document 276 specifically addresses this action and is provided along wi h the working group report on 28 Feb
100	Provide a list of Treaty settlements and key themes (duplicated by action 324)	Doc men 275 specifically addresses this action and will be provided on 6 March with documents completing actions 292 and 297
102	Provide a list of national direction/subordina e RMA instruments which reference the Treaty or Māori interests	Document 277 specifically addresses this action and is provided along with the working group report on 28 Feb.
103	Provide advice on local government's status as a treaty par ner, particularly in regard to delegated functions und r the RMA	Addressed in the working group report
104	Iwi authority /hapū definition & application	Yes in part – discussed in the report pgs.15-16. A co-design process is recommended for further work.
288	Explore Smart Growth and Auckland IMSB and other models for establishing representation on regional or central government planning issues.	Yes – but not in a detailed manner. MfE can provide further detailed advice if required.
289	PCE 2002 report proposed audit function for Māori participation and Treaty compliance - feed into work on CME (Jos)	Yes in part – the idea of an independent audit function is discussed, and the report in question is referenced in as part of Appendix 4

291	Working group to advise if te mana o te taiao is consistent with s 5 and, if not, how this might be addressed either through revising s 5, or inclusion in section 7 or 8.	Yes – see pg.22
292	Definition of Māori terms in legislation	Yes in part – see pgs.15-16 Further advice to be provided from PCO and MfE on 6 March with regards to drafting conventions
293	Working group report to provide panel with background on iwi management plans (problems & solutions)	Yes – see pgs.12-14 and 27-29
294	Confirm all the ideas put forward in Doc 028 have been addressed	Yes – all the ideas from that doc are in this report, though for some ideas more work is suggested.
295	Research on s 33 and 36 B - impact of Treaty settlements & panel's changes on need for such transfers.	Yes in part – s33 and s36B are discussed though not from the perspective of Treaty settlements.
297	MfE legal advice on proposed reference to the Treaty	No – to be provided as separate advice on 6 March.
298	Working group to address: cultural landscapes; Treaty NPS; ideas in Doc 028 , implementation support, guidance and funding	Yes in part – all ideas are discussed apart from cultural landscapes which is recommended to be a part of the definitions co-design process.
299	Working group to consider the definition of Kaitiakitanga.	Yes in part – issue is described on pg.15. A co-design process is recommended to further explore the use of te reo Māori and definitions.
300	Working group to be asked to give a view on local government being required to identify sites of cultural significance and the definition of sites of cultural significance.	No – not covered by the report.
306	Advice to be obtained from the te Ao Māori working group on how Māori should be involved in spatial planning, setting of national direction, the plan making process and in relation to consents.	Yes in part – spatial planning, plan making and the Treaty NPS are covered in the report. Other national direction and involvement in relation to consents are not covered.

324	Analyse treaty settlements to provide possible governance models for partnership in the planning process	No – to be provided as separate MfE advice to supplement action 288 above. Will be addressed by Document 275 on 6 March (see action 100 above).

PANEL NOTES:

The Treaty and te ao Māori working group – Final Report

This paper contains the views and analysis of the Resource Management Review's policy working group on the Treaty and te ao Māori. While the Ministry for the Environment has facilitated the group and compiled this paper, this paper does not necessarily represent the Ministry's policy position nor current government policy.

The working group on the Treaty and te ao Māori has members from the Ministry for the Environment, Te Arawhiti, Te Puni Kōkiri, the Ministry of Housing and Urban Developm nt, and non government members with expertise in te ao Māori in a RM legal and planning context.

Noting the scope and time constraints, there has been no engagement with Māori. This is acknowledged as a significant limitation of this report. The report represents the views and analysis of the working group only, and do not purport to represent the views of Māori.

It is understood that this report is but one step in a broader process and there wi l be many ongoing conversations with Māori before any decisions that will affect them or Treaty settlements are undertaken.

Key messages

1. The working group considers that there is clear evidence that the status quo resource management system does not provide for an effective, Te Tiriti-consistent, role for Māori. Changes are required in order to de iver better outcomes for Māori. Further, there are also opportunities to better align the resource management system with te ao Māori perspectives wh ch could complement western perspectives in a new system.
2. In order to give effect to Te Tiriti o Waitangi and its principles the resource management system needs to ensure that Māo i have a more effective role in the system, one that recogn ses and provides for their role as kaitiaki as well as recognising Māori aspirations for sustainable resource use, provides for partnership arrangements between Māori and other agencies in the governance and management of resources, and provides for tino rangatiratanga so that Māori can be active in the protection of their taonga.
3. Māori engagement in the resource management system is inconsistent, poorly supported, labour-intensive and focussed on the wrong parts of the system. The system does not consistently enable Māori to participate as Te Tiriti partners or discharge their duties as kaitiaki.
4. To address these problems the working group considers the resource management system needs to:
    - Better recognise and embed te ao Māori perspectives in part 2, especially in s5
    - Create a stronger obligation on decision makers to give effect to Te Tiriti o Waitangi and its principles
    - Provide strategic roles for Māori in key parts of the system
    - Require Te Tiriti performance of central/local government to be monitored; and
    - Address capacity and resourcing barriers to effective Māori participation.

5. As signalled by Cabinet, co-design of a number of matters post the Panel's final report is essential. The working group recommends that the Panel's final report should contain the list of suggestions for a subsequent co-design process put forward in Appendix 1.

List of key recommendations

6. Set out below is the working group's list of key recommendations from this report. The working group has made other recommendations in this report, and a complete narrative of the working group's overall recommended package is on pgs.39-42. The reasoning behind the recommendations is set out in the body of the report. All of the recommendations/positions of the working group as they appear in the report body are **in bold** for ease of identification. How the working group's proposed combination of options interact is set out in visually in an A3 (Doc 306 and also on pg.43

7. **The working group's overall recommended package of options is a mutually reinforcing set of proposals that, as a whole, is likely to best address the problems identified and meet the policy objectives outlined in this report.**

Key Recommendations

1. Better reflect te ao Māori in Part 2 of the Resource Management Act by adding the phrase 'whakamana i te taiao' to the purpose statement of s5 and adding the concept 'te mana, te tapu me te mauri o te taiao' as a subpart of this section, i.e. s5(c).
2. Change the wording of the existing Treaty clause (current s8 of the Resource Management Act) to read "To achieve the purpose of this Act, those performing functions under it must give effect to *Te Tiriti o Waitangi* and its principles".
3. Require that the Minister for the Environment prepare a National Policy Statement that provides further guidance and direction on the concept of 'te mana, te tapu me te mauri o te taiao' and on how to give effect to Te Tiriti o Waitangi and its principles. The Minister should be directed in legislation to co-design the National Policy Statement with Māori.
4. Integrate the Resource Management Act tools that are particularly relevant to Māori interests – iwi management plans, transfers of power, joint management agreements and mana whakahono ā rohe arrangements – by having one integrated process that involves all of these tools and is centred on enhanced iwi management plans
5. Implement co-governance for governance arrangements for spatial planning processes so that mana whenua have 50% of the representation on spatial planning governance committees.
6. Establish regional co-governance institutions in relation to the resource management functions of regional councils.
7. Include mātauranga Māori experts when developing environmental limits and targets.
8. Monitor both central and local government Te Tiriti performance. The details of these monitoring arrangements should be co-designed with Māori.
9. Implement all of the capacity and support enhancing initiatives discussed in this report (see pgs. 36-38).
10. The Panel should include in their final report a suite of ideas to be co-designed with Māori, post June 2020.

Purpose and context

8. The aim of the comprehensive review of the resource management system (the review) is to improve environmental outcomes and better enable urban and other development within environmental limits.

9. Ministers agreed the review should ensure that Māori have an effective role in the resource management (RM) system that is consistent with the principles of the Treaty.

10. The purpose of the Treaty and te ao Māori working group (the working group) is to provide practical advice on how te ao Māori perspectives and the Treaty of Waitangi could be better embedded in the RM system including spatial planning[1]. The Resource Management Review Panel (the Panel) is particularly interested in how the RM system might provide for a convergence or alignment of a te ao Māori world-view and a western world-view[2].

11. The working group was tasked with developing an initial 5-10 pag report and this final report addressing the matters in Issues 2, 3 and 4 of the Panel's Issues and Options paper (Transforming the resource management system: Opportunities for Change), as well as considering te ao Māori and Treaty of Waitang aspects of other issues[3]

12. For consistency, in this report the term 'Māori' is used as a broad term that encompasses all of the indigenous people of Aotearoa including both mana whenua and mātāwaka. 'Mana whenua' is used when refer ing to whānau hapū and iwi who have customary authority over an area, and the term 'mātāwaka' is used when referring to whānau, hapū, and iwi Māori living in an area who aren't mana whenua. Other terms are only used when the context demands it, e.g. quo ations or when referring to specific sections of Resource Management Act 1991 (RMA)

Constraints/limitations

13. There have been some constraints that have limited what this report has been able to cover, including:

- The working group was established in December 2019 and has only held a few meetings. Hence, the e has been limited time to explore the different issues and options relevant to the large topic of how te ao Māori perspectives and the Treaty of Waitangi could be better embedded in the RM system including spatial planning. The working group has focused its efforts on key matters, such as Part 2, meaning that some matters and options haven't been given the time and focus that would be desirable.
- There has been no co-design or consultation with Māori on the working group's mahi. Issues and options of this nature and importance would be best co-designed with Māori. Whilst this is partially a problem in and of itself, it has also limited the working group's understanding of how the potential options in this paper would work and be received on-the-ground by Māori.

[1] pg.3, Doc 091 – Scoping Paper – The Treaty and te ao Māori working group

[2] Ibid, pg.3

[3] Ibid, pg.3

[4] the term 'tangata whenua' is used in the RMA in places. Tangata whenua is defined in the RMA as 'in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area'

Problem definition and objectives

14. The current RM system is not fit-for-purpose and one of the fundamental issues with the status quo is that the RM system is not effectively providing for Māori as an intrinsic part of the system.

15. Te Tiriti o Waitangi/The Treaty of Waitangi is the basis for the relationship between Māori and the Crown in Aotearoa/New Zealand. Te Tiriti guarantees to mana whenua tino rangatiratanga over their whenua (land), kāinga (villages) and taonga katoa (all their treasures). Te Tiriti places obligations on the Crown to provide for the rights, interests and values of Māori in the RM system. Both Treaty partners should act in accordance with Te Tiriti and its principles

16. Treaty principles, derived from the two texts of Te Tiriti/the Treaty and the context in which the Treaty was entered, have become increasingly recognised and reflected in regulatory frameworks over the past few decades. The RMA was one of the first p eces of legislation to include reference to the principles of the Treaty (s8 of the RMA).

17. The RMA also provides for other specific aspects, that are of particular importance to Māori interests including, but not limited to, s6(e)[5], s7 a)[6], s33 transfers o power, s36B joint management agreements, and s58M Mana Whakahono ā Rohe arr ngements.

18. Justice Joe Williams notes that the RMA "was the fi st genuine attemp to import tikanga in a holistic way into any category of the general law"[7]. H also argues that the "RMA is frankly not pulling its weight"[8]. Key evidence for this proposition includes:

- Māori participation in the RM system being heavily focussed on reactive, inefficient and labour-intensive processes such as consenting, rather than on processes with strategic impact such as p ann ng[9].
- Just under 50% of counc ls not provid ng financial support for mana whenua participation in policy statement and plan-making processes[10].
- Inconsistent and generally limited engagement with Māori by local authorities despite the strong obligations in part 2 of the RMA and also in the Local Government Act 2002 (LGA)[11].
- Limited and inconsistent use of iwi management plans (IMPs) by councils[12].
- Extremely limited uptake of tools within the RMA aimed at enhanced roles for mana whenua, especially ss. 33 and 36B.

[5] s6(e) requi s recognition and provision for the relationships Māori have with their ancestral lands, water, sites, wāhi tapu, and oth r taonga

[6] s7(a) requires that all persons exercising functions under the RMA shall have particular regard to kaitiakitanga

[7] p.18, Justice Joseph Williams, 2013. Lex Aotearoa: A Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law, *W ikato Law Review*.

p.22, Ibid.

[9] Te Puni Kōkiri, He Tiro Whānui e pā ana ki te Tiaki Taiao 2012: 2012 Kaitiaki Survey.

[10] https://www.mfe.govt.nz/rma/national-monitoring-system/reporting-data/m%C4%81ori-participation/iwihap%C5%AB-involvement-resource

[11] Te Puni Kōkiri and the Ministry for the Environment, 'Stocktake of Council Iwi Participation Arrangements', Nov 2015

[12] https://www.mfe.govt.nz/rma/national-monitoring-system/reporting-data/m%C4%81ori-participation/iwi-hap%C5%AB-management-plans

- The clear pattern of significant outcomes for Māori being delivered through historical Treaty of Waitangi Settlements (Treaty settlements).
- Consistent communication from Māori through Treaty settlement negotiations, Waitangi Tribunal proceedings and submissions on the scope of the Arawhiti portfolio that the RM system does not ensure their participation as Treaty partners and kaitiaki.

19. There are significant and longstanding problems for Māori in how the RM system has been applied and the review is a significant opportunity to provide for better outcomes for Māori and a more effective role for Māori in the RM system.

20. Whilst much of the architecture to address this issue is available in the RMA, it has not been implemented in such a way as to provide for better outcomes for Māori wellbeing. However, the solutions to address issues for Māori in the RM system will likely need to be both legislative and non-legislative in order to achieve actual and long lasting change.

What are the policy problems or opportunities?

21. The Government is committed to improving services and outcomes for Māori and strengthening the Crown's relationship with Māori. The Government is advancing Public Service Reforms, with a key focus on Te Ao Tūmatanui – Strengthening the Māori-Crown Relationship[13]. Having a stronger role for Māori in the RM system would align with the Government's Public Service Reform objectives.

22. Since the RMA was enacted, attempts have been made to strengthen the role of Māori in the RM system.

23. Treaty settlements have had large implications for some (but not all) Māori in the RM system. Some settlements have resulted in particular roles for Māori in the RM system, for example bilateral relationships between mana whenua and local government (including in some cases co-governance/co-management arrangements), and establishing in law the legal personhood of particular taonga.

24. However, this approach has also led to inconsistent outcomes for Māori, particularly between mana whenua who have settled and those who have yet to settle, but also with the differing outcomes across settlements.

25. In successive reports the Waitangi Tribunal has found that the RM system often falls short of fully adhering to the principles of the Treaty. In its recent Wai 2358 report, whilst the Tribunal congratulated the Crown on "its commitment to address Māori rights and interests in a Treaty-compliant manner", it ultimately found that "the RMA had significant flaws in Treaty terms at the time the reform programme began, and that the reforms the Crown has completed are not sufficient to make the RMA and the freshwater management regime Treaty compliant".[14]

26. In some cases the challenges, in relation to better aligning the RM system with te ao Māori perspectives, stem from the difficulties of embedding tikanga, mātauranga and te reo Māori concepts which are not well understood by non-Māori in a primarily 'Western' framework. In other cases, a lack of will or capability in central/local government to properly engage (or engage at all) with Māori has led to failure of the system to adequately provide for the role of Māori in the RM system.

[13] https://ssc.govt.nz/our-work/reforms/public-service-reforms-factsheets/?e5920=5932-factsheet-3-te-ao-tumatanuistrengthening-the-maori-crown-relationship

[14] p. 523, Waitangi Tribunal, 2019.

27. In any case, in order to give effect to Te Tiriti o Waitangi and its principles the RM system needs to ensure that Māori have a more effective role in the system, one that recognises and provides for their role as kaitiaki as well as recognising Māori aspirations for sustainable resource use, provides for partnership arrangements between mana whenua and other agencies in the governance and management of resources, and provides for tino rangatiratanga so that mana whenua can be active in the protection of their taonga.

28. Partnerships between the Crown and mana whenua in the RM system are a key way to deliver on the goals above. **The working group considers that partnerships are an area where there is significant opportunity for the RM system.**

29. The working group envisages that partnerships at a national, regional and local level will become a central tenet of a future RM system, with strategic RM occurring in partnership.

30. Whilst the principle of partnership is based in Te Tiriti, and this is significant in and of itself, it should not be forgotten that partnership is also a good idea for delivering on shared goals and working through difficult trade-offs.

31. Resource management inevitably involves trade-offs and balancing competing ideals. By working together and making decisions in partnership different parties can better understand each other's positions, potentially avoid the loss of significant time and effort in legal action, and most importantly can achieve lasting change by acting together.

32. The LGA and RMA already contain tools which enable partnership but these have, in general, not been used. The status quo bias of local authorities, and central government for that matter, can be an insurmountable barrier to applying the current enabling provisions in the RMA.

33. In order to accomplish true and equal partnership it should be directed by legislation, institutionalised and protected from political influence, so that it becomes entrenched into the cultural bedrock of the system. This means that changes to legislation, improvements in implementation and investment in capacity and support are needed.

34. More specific aspects of the general problems are articulated below.

Specific problems

Te Tiriti o Waitangi and its principles are not given sufficient weight in Part 2

35. Section 8 has the weakest directing words in Part 2 – 'take into account'. This has less weight than the directing words in section 7 ('have particular regard to') and section 6 ('recognise and provide for').

36. When it was enacted the RMA was considered by many to be a progressive piece of legislation for the recognition of Māori interests in the RM system. However, not long after the RMA was enacted criticism of the lack of significance given to the Treaty principles in decision-making processes under the Act began to emerge – particularly from the Waitangi Tribunal. The 1993 Ngawha Tribunal was the first to find that the RMA's Treaty clause was insufficient. Others followed including: the Te Arawa Geothermal Tribunal, the Te Whanganui-a-Orotu Tribunal, the Ika Whenua Rivers Tribunal, the Whanganui River Tribunal, the Central North Island Tribunal, the Te Tau Ihu Tribunal, the Wairarapa Tribunal, the Tauranga Moana Tribunal, and the national Freshwater and Geothermal Resources Tribunal.

37. The Waitangi Tribunal's Wai 2358 report is the latest in a number of reports that have found that the Treaty clause in section 8 of the RMA does not have the weight required to adequately recognise and protect Māori interests.

38. The Tribunal, in Wai 2358, note that sometimes the requirements in s8 to take into account the Treaty principles are interpreted as a procedural requirement and that therefore only consultation is required. In other cases s8 is interpreted in terms of ss 6(e) and 7(a) with the result being that wider Treaty principles (including partnership and active protection) were not necessarily considered[15].

39. The words 'take into account' are the weakest directing words used in Part 2. This in combination with a narrow interpretation of Treaty principles can lead to a situation in which the Treaty principles, which encompass much more than just what is to be recognised and provided for in s6(e) and had particular regard to in s7(a) are given insufficient weight and this in turn leads to worse outcomes for Māori in the RM system.

40. In the Tribunal's view, "the reference to the Treaty principles in the Act should encompass all those principles and impose an obligation or duty upon RMA decision makers. An amendment to section 8 … is required to make the RMA Treaty-compliant".[16]

41. MfE officials have undertaken research that identifies that there are at least 43 pieces of legislation (not including the numerous references in Treaty settlement legislation) that have clauses that reference either Te Tiriti, the Treaty or the Treaty principles. Of these pieces of legislation, 35 have directing words and over half (19) have stronger directing words than 'take into account'. It is also worth noting that since 2012, there has been a trend for stronger Treaty clauses and only one Treaty clause since 2012 has had a weighting of 'take into account' or less.

42. Given this trend, and the significance of the RM system for providing a mechanism to ensure the obligations on the Treaty partners flowing from Te Tiriti o Waitangi are upheld, options for increasing the weighting to be given to the Treaty clause in the RM system have been considered below.

'Balancing out' of Māori interests in Part 2 of the RMA

43. Because s8 is so weak Māori interests are often 'balanced out' in the trade-off exercise undertaken under ss. 6-8 of Part 2. As the Whanganui River Report noted, "[section 8] does not require those with responsibilities under the Act to give effect to Treaty principles but only to take them into account. This is less than an obligation to apply them. When ranked with the competing interests of others this means that guaranteed Treaty rights may be diminished in the balancing exercise that the Act requires"[17].

44. The Waitangi Tribunal's Wai 2358 report found no compelling evidence to dispute the claimants notion that Māori interests were often 'balanced out' when RMA decision makers must consider ss. 6-8 of the RMA.

45. Part of this challenge may be that the relevant Part 2 provisions (e.g. ss. 6(e), 6(g), 7(a) and 8) haven't been interpreted and implemented as may have been intended. The Crown counsel for the Wai 2358 inquiry[18] argued that the Supreme Court *King Salmon*

[15] p. 50, Waitangi Tribunal. 2019. Wai 2358 report

[16] p. 51, Waitangi Tribunal. 2019. Wai 2358 report

[17] p.330, Waitangi Tribunal. 1999. *The Whanganui River Report (Wai 167 report)*. Wellington: Waitangi Tribunal.

[18] p. 25, Waitangi Tribunal. 2019

decision[19] showed that s5 of the RMA had to be interpreted as an integrated whole, with environmental protection at its core and that this same interpretation may apply to how Māori interests are treated in ss. 6-8.

46. Hence, if the root issue regarding 'balancing out' of Māori interests are due to the way the legislation has been implemented prior to *King Salmon,* then changing the legislation may not prove to be effective. Nonetheless, legislative changes certainly have the potential to increase the weight given to Te Tiriti and its principles of the Te Tiriti (and other sections in Part 2) and should be explored, whilst keeping implementation (and interpretation) issues in mind.

Local government as Treaty partners

47. Under the RM system, many of the persons exercising functions and powers under the RMA are local authorities, which have been delegated a number of resource management functions and powers by the Crown.

48. The definition of the 'Crown' in the Public Finance Act 1989 includes central government departments but does not include local government. While some legislation requires local government to take the Treaty of Waitangi 'into account', it doesn't necessarily follow that this legislative requirement then delegates to local government the Crown's Te Tiriti partner responsibilities.

49. In some jurisdictions internationally local government has a larger role and corresponding responsibilities than in Aotearoa (for example in the Nordic countries) and could be considered to be a branch of central government. This is not typically the case in Westminster-based systems which tend to follow a more principal-agent type model[20] where certain functions and powers are delegated from central to local government, generally via legislation.

50. Nevertheless, local government has taken on the role of a Te Tiriti partner in some cases (e.g. co-governance and co-management arrangements), and there is a widespread view amongst Māori that local government is carrying out functions and powers of the Crown that derive from Te Tiriti and is therefore a crucial player in the RM Te Tiriti relationship. Feedback from hui has called for monitoring and reporting on Te Tiriti performance of local (and central) government.

51. Overall, there is a complicated three way relationship between mana whenua, local government and central government, especially with the complex natural resources arrangements that are emerging out of Treaty settlements. As the Mana Whenua Kaitiaki Forum have highlighted, "[t]he direction of travel for land and waters governance is to a three-party arrangement: central government, local government, and mana whenua. This means land development decisions and environmental quality decisions will inevitably require engagement by the three parties jointly"[21].

52. Thus the relationship between local government and mana whenua is important. Examples of generally effective partnership exist such as the natural resources plan committee 'Te Upoko Taiao' set up to oversee the Greater Wellington Regional Council's new regional plan. The growing body of settlement legislation is providing a nexus for the development of relationships between local government and mana whenua.

[19] Environmental Defence Society v The New Zealand King Salmon Company Limited [2014] NZSC 38

[20] http://www.mdl.co.nz/site/mckinley/files/pdfs/Local-central-govt-socialservicedelivery-Dec13.pdf

[21] p.2 of part 1 of the Mana Whenua Kaitiaki Forum letter on the RM review

53. Nonetheless, whilst there have been some improvements in certain regions, there are still challenges for many mana whenua groups when attempting to interact with local government as a Te Tiriti partner. Questions remain as to whether a specific legislative change is required to reinforce that local government has a Te Tiriti partner role when that role and subsequent responsibilities are delegated to it by central government.

54. The Waitangi Tribunal, in their Wai 2358 report, recommended that s8 be amended to state that "the duties imposed on the Crown in terms of the principles of the Treaty are imposed on all those persons exercising powers and functions under the RMA"[22]. Their view is that "such an amendment would ensure that Māori interests are protected (not balanced out), that local authorities and all RMA decision makers carry out Treaty responsibilities and obligations, and that part 2 of the RMA is Treaty compliant".

55. However this may not be strong enough to impose an obligation on local authorities to act as Te Tiriti partners and something with greater direction and specificity may be required to achieve this aim, e.g. a Te Tiriti National Policy Statement (NPS).

RM partnerships are often derived from Treaty settlements rather than from the RM system itself (ss. 33 and 36B) and/or from Iwi Management Plans

56. The current RM system contains a number of tools to enable and encourage partnerships and engagement between local authorities and mana whenua within the RM system. These include:

- Iwi Management Plans (IMPs)[23] which must be taken into account under ss. 61, 66 and 74 when a regional or district council is preparing a policy statement or plan.
- s33 transfers of power which enable a local authority to transfer functions, powers or duties to an iwi authority.
- s36B joint management agreements which enables a local authority or local authorities to enter into an arrangement with an iwi authority or hapū which enables for functions, powers or duties to be undertaken jointly.

57. The 2017 RMA amendments introduced Mana Whakahono ā Rohe arrangements (MWaR) under s58M. These provide a mechanism for iwi authorities (and potentially hapū) and councils to discuss, agree and record ways in which tangata whenua may participate in RM processes. MWaR did not introduce any new opportunities for mana whenua and local authorities to work together per se, but do enable mana whenua to compel local authorities to negotiate a binding agreement about how existing opportunities are implemented and there is nothing limiting their scope as to providing for more than what existing RMA opportunities can provide.

58. However there has been no uptake of some legislative provisions, such as section 33 of the RMA (delegations of local government functions to other entities) and limited uptake of section 36B (joint management agreements) with only two occurring outside of Treaty settlement processes. Treaty settlements are leading the way in achieving RM partnerships.

59. However, whilst some mana whenua have strong co-governance roles others only have limited RM roles and some have no roles at all. The Government's position on what it

[22] second bullet point of recommendation 7.7.2

[23] The provisions in the RMA use the terminology 'planning documents recognised by iwi authorities'

will consider within Treaty settlements changes over time, as do mana whenua priorities for redress and RM arrangements may not always feature.

60. Variations between settlements may be justified by local circumstances and the particularities of the grievances, however the RM outcome is that there is no consistency in partnerships in the RM system, despite the system providing for the uptake or application of RMA s36B joint management agreements or s33 transfer of powers provisions, and the ability to establish joint committees under the LGA.

61. The Waitangi Tribunal in its Wai 2358 report suggests that the terms of section 33 of th Act have created barriers to its use, and there are no incentives and no compulsion for councils to transfer powers to iwi. They go on to state that "[d]ue to the failu e of councils to use section 33, Joint Management Agreements were added in 2005 but these have only been used twice without the Crown's intervention in a Treaty settlement. Again, the Act creates barriers to their use but has no incentives or compulsion for councils to pursue co-management arrangements" [24]

62. General barriers to the use of these provisions include:

- Resourcing and capacity/capability issues for both councils and mana whenua, including a lack of guidance and support
- Lack of political will
- Fear about giving too much power away
- Potential to add administrative workload, timing delays and cost to RMA processes e.g. resource consen s

63. Whilst a large part of this challenge is a lack of uptake or implementation due to the general barriers above, legislative barriers (in particular the criteria in ss33 and 36B that need to be met[25]) are also a contributor to this cha lenge (these are discussed further in the options section).

64. The RMA contains some consultation re uirements[26] that afford an avenue for iwi authorities, and tangata whenua via iwi authorities, to provide advice on RMA policy statements and plans. However, this consultation occurs after the significant phase of policy development and can be seen by some local authorities as a 'tick box' exercise. Māori at hui consistently provide feedback that consultation is not enough and that partnership and further influence in the RM system is desired.

65. One such avenue for wi influence in the RM system are IMPs. The Wai 262 report notes tha IMPs "provide the only mechanism by which iwi authorities are able to exercise influence on resource management decisions by setting out their own issues and prioriti s without any consulting council or applicant filter. It is the only instance where Māori can be proactive in resource management without needing the consent of a minister, a local authority, or an official" [27].

[24] p. xxi, Waitangi Tribunal. 2019.

[25] http://paclii.org/journals/fJSPL/vol13no1/pdf/coates.pdf

[26] For example RMA, Schedule 1, s3(1)(d) requires consultation with tangata whenua through iwi authorities during the preparation of proposed policy statements or plans, and Schedule 1, s4A requires that a copy of draft proposed policy statements or plans are provided to iwi authorities before notification and local authorities must have particular regard to any advice received on draft proposed policy statements or plans from iwi authorities.

[27] p. 117, Waitangi Tribunal. 2011.

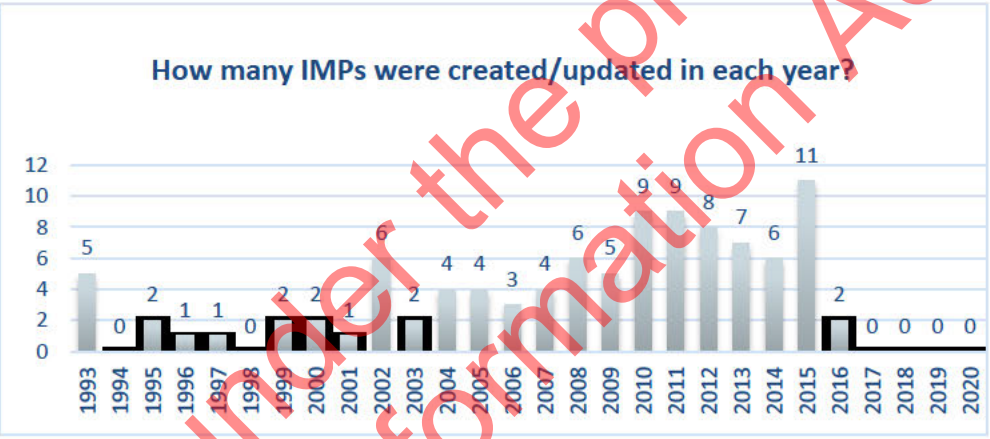
66. The 2012 Kaitiaki Survey[28] highlighted that kaitiaki groups consider that iwi and hapū management plans are an excellent RMA tool with 92% of groups reporting that they were either 'useful' or 'very useful'.

67. However, under the RMA local authorities only need to 'take into account' any relevant planning document recognised by an iwi authority when preparing a plan or policy statement. Again, 'take into account' are the weakest directing words in the RMA. How local authorities have taken into account IMPs is rarely reported in their s32 evaluation reports for policy statements and plans.

68. A stocktake of IMPs was undertaken by MfE a few years ago. As at 2016 there were 109 IMPs from iwi and hapū known to have been developed in Aotearoa. Of those plans, only 75 (69%) were available online. Plans that aren't available online are much more difficult to utilise.

69. Some IMPs are taonga specific (i.e. they relate to the management of a particular taonga such as a river, a mountain or a fishery) but most are mana whenua based plans that encompass the rohe of the relevant group and may relate to several kinds of taonga.

70. The first IMPs were created in 1993, though it wasn't until 2002 that most plans were developed and some of the earlier plans were beginning to be updated[29].



71. Of the plans that were available online the stocktake provided some statistics regarding heritage and site identification, 66 (88%) address Māori heritage issues, 28 (37%) include a map of major sites, 30 (40%) include an inventory of sites, 26 (35%) indicate that the iwi or hapū hold an unpublished heritage inventory (e.g. a record of confidential sites), 44 (59%) express an intention to develop or further develop an inventory of heritage sites, and 10 (13%) include statutory acknowledgements.

72. IMPs can be a sophisticated and useful expression of mana whenua priorities for RM issues – particularly when they have been well resourced and engaged on (e.g. the Waikato-Tainui Environment IMP).

73. However, although any IMPs lodged with councils need to be taken into account under the RMA, many iwi do not have sufficient resourcing, capability or expertise to produce plans that can provide sufficient content and 'evidential basis' to be translated into regional and district plans. This in turn makes it difficult for councils to know how to 'take into account' IMPs in their RMA documents. Likewise, many council staff don't have the ability to engage with IMPs or apply them to policy or consenting processes.

[28] Kaitiaki Survey Results, Te Puni Kōkiri, 2013.

[29] Note that data in the stocktake was only from 2016 and earlier

74. Often this means in practical terms that these plans have little influence on plan making and decisions under the RMA.

75. The Wai 262 report makes recommendations regarding IMPs that will be explored later in this report, but importantly the Tribunal in that report saw enhanced IMPs as a central avenue for delivering on the Treaty principle for partnership and that, with some legislative and implementation changes, enhanced IMPs could provide a basis to deliver on the opportunities provided for in ss. 33 and 36B.

76. Central government has previously made attempts to address these issues through non legislative guidance[30] and through legislative intervention via the addition of the MWaR provisions (iwi participation arrangements). MWaR are designed to assist tangata whenua and local authorities to discuss, agree and record how they will work together under the RMA, and to assist local authorities to comply with their statu ory deities under the RMA including through the implementation of ss. 6(e), 7(a) and 8.

77. Either local authorities or iwi can initiate a MWaR. Hapū can be a party to a MWaR but can't be the initiating party, which is a significant limitation of this tool for hapū. The key change introduced by the provisions is that iwi authorities now have the opportunity to compel local authorities to enter into a relationship agreement with them

78. The parties to a MWaR are not required to notify the Ministry for the Environment (MfE), but MfE is aware of three formal initiations thus far and has an cdotally heard that two more are being proposed – though no MWaR have been officially entered into thus far. MfE is also aware of two initiation tha councils have pushed back on because the groups involved were considered not to be iwi author ties or not considered to be mana whenua in the area.

79. Barriers to iwi initiation of MWaR include:

- resourcing and cap city/capability issues
- difficulties agreeing on what is sought through a MWaR
- no perceived benefit if iwi already have good relationships and service level agreements with councils
- Only rec gnised iwi authorities can initiate – tangata whenua in many regions of Aotearoa are hapū or whānau based rather than iwi based e.g. Bay of Plenty, Northland, also urban Māori often identify as whānau, rather than a particular wi or hapū

80. Barriers to council initiation of MWaR include:

- Lack of political will
- Fear about giving too much power away
- Costs to councils to negotiate and agree MWaR
- Potential to add administrative workload, timing delays and cost to RMA processes, e.g. resource consents, as a result of a MWaR arrangement.

81. Given these provisions were only enacted in 2017, and only a small number of arrangements are in the process of being set up, it is too early to know how effective they may or may not be at increasing mana whenua participation in the RM system.

[30] For example, FAQ's about Iwi Management Plans – https://www.qualityplanning.org.nz/node/1005

82. Nevertheless, issues remain in the system that span beyond what arrangements for Māori participation can deliver, and a challenge for any future RM system will be to bridge the gap between 'settled' iwi who have co-governance and co-management arrangements in place and those whose only means of exerting influence on natural resource decision-making are within the consultation framework of the RMA/LGA.

The use of te reo Māori and defining te reo Māori terms in English in legislation

83. **The working group generally supports the use of te reo Māori in legislation as a way of better aligning the RM system with te ao Māori. Whakataukī (Māori proverbs), with the permission of the appropriate mana whenua, could also be utilised in legislation in order to provide reference and guidance.**

84. However, the language used in legislation is at times inconsistent, and te reo Māori terms are sometimes defined differently between statutes. This can make it difficult for government, Māori and users of the Act to understand what the requirements are

85. It is important to note though that one single English-translated definition of a te reo Māori term may not be suitable for all circumstances and all legislation. The use of Māori terms without the understanding or follow through on those terms is an issue as those terms don't then represent the true meaning of the te reo Māori kupu. For example, there have been some comments from Māori at hui that the current definition of kaitiakitanga in the RMA is narrow and only focuses on people, whereas the concept also involves a spiritual element that is not recognised by the current definition.

86. There may be circumstances where it is appropriate to provide national direction for the RM definition of a te reo Māori term. For example, the term 'marae' could potentially be usefully defined, because the current definitions in plans variously encompasses land use elements such as educational use, residential use, or housing for kaumātua. The national planning standards don't have any defined terms in the definitions standard, however they do specify that "Te reo Māori terms used in rules must be defined or translated in English in the definitions chapter"[31]. Presumably the reasoning for this is that rules require greater specificity than objectives or methods and that leaving the term undefined would make the rule too uncertain and certainty is preferred to flexibility in these situations.

87. However there are also advantages to leaving terms undefined in that it enables mana whenua to define those terms locally in terms of what it means to them. Feedback supporting leaving terms undefined has come through in a number of hui where Māori have raised that they want to determine the meaning of concepts themselves, rather than a generic definition.

88. The independent hearings panel on the proposed Auckland Unitary Plan found that explanations of te reo Māori terms are useful to help with interpretation of terms used in the plan but they are not intended to be used as definitions. They recommended te reo Māori words be placed in a glossary where they can provide help but do not function as definitions. This could provide a potential middle-ground between certainty and flexibility.

[31] pg.53 - https://www.mfe.govt.nz/sites/default/files/media/RMA/national-planning-standards-november-2019.pdf

Definition of iwi authority and hapū

89. One of the specific challenges of defining te reo Māori terms relates to the current definition of 'iwi authority'[32] and the lack of definition of 'hapū' in the RMA. The Cabinet paper that established the review specifically included 'clarification of iwi authorities and hapū' as a key issue to be addressed as part of the review.

90. The underlying issue in this area is that in some cases local authorities and applicants for resource consents find it difficult to know which iwi and/or hapū to engage with on RM issues. This tends to be more of an issue in parts of the country that have a large number of iwi and hapū, e.g. Bay of Plenty.

91. The rohe of mana whenua do not follow local government boundaries and can be overlapping (and sometimes contested). Mana whenua within a region may have differing views on RM matters, and Māori within mana whenua groups may have differing views. Māori views may not form into a simple input into government processes. These are challenging areas to provide guidance on as a one-size-fits-a approach is almost always going to be inadequate.

92. The RMA reference to iwi authority is derived from the Runanga Iwi Act of 1991 subsequently repealed. The reference and definition of iwi authority was highl ghted as an issue in the Te Roroa report produced in 1992 by the Waitangi Tribunal

93. The definition of iwi and hapū is designed to allow parties to self-ident fy because it is not appropriate for the Crown to define iw and hapū. The RM sys em may need to understand the complexity in this space and allow for it to an extent. However, in practice this has meant that local authorities often have the difficult role of working out whether a group actually represents tangata whenua

94. Section 35A of the RMA is meant to help local au hor ies work out who to engage with. Te Kāhui Māngai[33] maintai ed by Te Puni Kōkiri (TPK) is currently the only tool which fulfils that function at a national level.

95. RMA provisions for engagement with tangata whenua[34] focus on engagement with iwi authorities. Iwi authorities tend to be place-based and associated with particular rohe (traditional areas). Many mātāwaka have affiliations across a number of different iwi, but do not live in the rohe that they whakapapa to. For mātāwaka who live away from their ancestral lands or do not identify with any particular mana whenua group, there are considerably few r oppor unities to engage with the RM system.

96. The definition of iwi authority and hapū remain problematic for local government. The cur ent provisions do not assist local government when iwi or hapū hold differing views as to which groups hold mana whenua over a particular area and something is needed to address this otherwise other changes would be difficult to implement. Co-design, or maybe just handing it over to mana whenua, of a definition for iwi authority and hapū and a way for councils to access this information is likely the best way forward because it allows mana whenua to co-decide/decide how this process should work.

[32] The definition of iwi authority under the RMA is "means the authority which represents an iwi and which is recognised by that iwi as having authority to do so"

[33] http://tkm.govt.nz/

[34] which the RMA defines as, "in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area.

Issues with the development of housing on Māori land

97. Māori have a long held strong interest and concern in the access to and use of natural resources for their social, economic and cultural wellbeing. It is important that the RM system not only recognises this, but also ensures that this intent flows through to the implementation of the Act.

98. A key driver of poor social and economic outcomes in New Zealand is that urban land and development markets are not operating efficiently. This is due, in part, to the individual and cumulative impact of many land uses and RM regulations. In particular, planning provisions (e.g. zoning and associated rules) can act as a barrier to development on Māori land (e.g. Papakāinga development).

99. These barriers are generally at a local planning level (e.g. district plans) where traditional mana whenua land is zoned 'rural' and the rules (i.e. net site area rules) often don't provide for housing developments. Additionally, some council's district plans do not have papakāinga provisions, making it difficult for mana whenua to develop housing on their whenua. During a recent Treaty settlement implementation discussion, a mana whenua group explained that there were no papakāinga housing provisions in their local council district plan, despite their IMP explicitly stating their aspirations for this to occur.

100. Local authorities with large amounts of mana whenua traditional land w thin their territorial area should ensure provisions are made for papakāinga hou ing and other Māori developments. This includes these councils ensuring that their rules, policies and objectives in their district plans reflect IMP and Treaty Settlements (in relation to housing). This could enable mana whenua to achieve thei housing aspirations.

101. It is important that councils develop strong relationships with mana whenua so they can easily engage and have an understanding of the amount of Māori land in their territory. In regard to land use, planning rules should be reviewed and, where applicable, barriers should be removed to the d ve opment on Māori land. The need for national direction on papakāinga and Māori housing more generally has been mooted.

Transparency and accountability, and a lack of monitoring of RM decisions on Māori wellbeing

102. Recognition of the role of Māori in the RM system by central and local government entities is hugely variable throughout New Zealand. This results in different outcomes for Māori. Some local authorities treat engagement with Māori as a 'tick box' exercise and do the bare m nimum, some have good intentions but struggle to deliver due to capacity or capability while others have set up processes for a stronger level of involvement of Māori in decision-making and other RM processes.

103. Ther is a need for greater transparency and accountability in decision-making to provide confidence to Māori that their issues and concerns are being provided for. While some formal agreements (such as relationship agreements) have been established etween local authorities and Māori, informal agreements tend to dominate.

104. A lack of adequate monitoring is prevalent throughout the RM system. There is little monitoring or evaluation of the impacts of RM decisions on Māori and certainly not in a comprehensive manner. It is difficult to tell to what extent outcomes that are important to Māori are being achieved and how Māori wellbeing is affected. Hence, whilst there has been a large number of submissions, feedback from hui and anecdotal evidence that there are significant issues for Māori in regards to the RM system – there is little understanding of to what extent these issues result in worse outcomes for Māori.

105. This is a systemic problem of the current RM system and the broader lack of monitoring and oversight, and is one of the issues that should be addressed in a future system.

Capacity and support challenges

106. Despite the significant benefits of Māori engagement in the RM system, engagement can be time-consuming and resource-intensive for all parties involved. Significant levels of capability and capacity are required from central and local government, and mana whenua for engagement in RM system to be effective.

107. While some mana whenua have the capability and capacity to engage fully in the RM system, many do not, and some choose not to. Most mana whenua do not have a steady stream of income to dedicate to RM, or dedicated and trained staff. Only around half of all local authorities (54%) have a budget commitment to assist mana whenua participation in policy processes and fewer (27%) have a budget commi ment to assis mana whenua participate in resource consent processes[35]. The result is inconsiste t and ad hoc and often sub-optimal participation by mana whenua in th RM system.

108. The 2012 Kaitiaki Survey[36] highlighted that a large proportion of kaitiaki groups said that their work is mostly unpaid, with 47% of respondents reporting that only 0-20% of their work is paid. For groups that do have some funding, their main sour es are from iwi and hapū, with only 23% of groups reporting they rec ived funding from local government and 17% of groups reporting they received funding f om central government.

109. They survey further highlighted that groups often engaged with multiple local authorities, with 79% reporting that they engaged with 2 or more councils and 18% engaging with 5 or more councils. Additionally, groups in the Auckland area noted that although they engaged with just one council, they also engaged with 16 local boards and many Council Controlled Organi ations.

110. Groups were also asked about how timely and efficient engagement is for local and national level RMA work. Groups were least positive about their engagement in national policy and planning with 49% reporting that engagement was too late or non-existent, highlighting that Māori can be absent from strategic RM decision making processes.

111. Often council and mana whenua efforts can be concentrated at lower level processes in minor planning and cons nting decisions. This is resource intensive, means that mana whenu resources can be spread thinly, and overall means mana whenua have less influence in the RM system.

112. Under s81 of the LGA a local authority must "establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authori y" and must "consider ways in which it may foster the development of Māori c pacity to contribute to the decision-making processes of the local authority".

113. However an MfE stocktake of council budgeting practices showed how few councils make pecific budgetary commitments to support Māori participation in RM processes

114. The Productivity Commission's draft report on *Better Urban Planning*[37] surveyed Councils perceptions of the barriers to engagement with Māori on planning. The results

[35] 2017/18 data - https://www.mfe.govt.nz/rma/national-monitoring-system/reporting-data/m%C4%81ori-participation/iwihap%C5%AB-involvement-resource

[36] Kaitiaki Survey Results, Te Puni Kōkiri, 2013.

[37] New Zealand Productivity Commission, 2016.

clearly identify that "limited resources available to iwi/Māori groups to participate in the planning process" is the most significant issue as perceived by Councils[38].

115. Some councils and central government departments do not have sufficient capability and capacity to engage effectively with Māori, and to understand and assess Māori aspirations, values and interests. Some particular issue areas are a lack of understanding by central and/or local government of:

- te ao Māori, and Māori values and interests
- the complexity of Māori relationships with the environment
- what is expected regarding legislative requirements relating to Māori, e.g consultation requirements in Schedule 1 of the RMA and s82(2) of the LGA
- the importance of Māori engagement and the benefits of early engagement
- how to effectively engage with Māori, what groups to engage with and how to reconcile differing views.

116. Whilst local government will always need to prioritise across outcomes and outputs, this lack of understanding may be a result, in part, of a lack of political will to prioritise resourcing to this work. Resources may not necessarily be being applied in the right parts of the system, by either local government or Māori, e.g. a lot of resource and effort is put into engaging with mana whenua on applications for resource consents. Overall the system is bottom heavy. This reflects the more reactionary role that mana whenua generally play in the RM system rather than having input upfront.

117. Government entities often rely on consultation to fill in gaps in their knowledge of Māori interests – which is often the most appropriate mechanism to do so as it allows Māori to speak for Māori interests. However, this can lead to mana whenua being inundated with requests for engagement. Government entities are often not aware that another entity is also consulting with a particular group and that mana whenua may have limited resources and competing priorities.

118. Relationships between mana whenua and local/central government (with some exceptions) tend to be issues based, rather than enduring partnership relationships.

119. The financial and time costs required for central and local government to engage with Māori, and/or Māori to engage with government, are significant. There are generally no consistent sources of funding and support for engagement. The lack of resources acts as a barrier to Māori engagement in RM processes. However failing to engage can also be very costly financially and in terms of relationships and the environment.

120. Overall there are significant and multifaceted capacity and support challenges for all parties in regards to engagement with Māori.

What are the objectives sought in relation to the identified problems/opportunities?

121. Ensuring that Māori have an effective role in the RM system that is consistent with the principles of the Treaty of Waitangi, is a key goal in the Panel's terms of reference.

[38] pg.195, Ibid.

122. In line with this goal, the identified problems/opportunities above, and the scope of the working group's work[39], there are some objectives that should be sought to be achieved in any options to address the problems/opportunities:

A. Better align the RM system with te ao Māori perspectives

B. Te Tiriti o Waitangi and its principles are upheld and given appropriate weighting by decision makers throughout the RM system

C. Māori have a more effective role in the strategic end of the RM system

D. The principle of partnership is embedded into RM decision making for the majority of RM decisions

E. Reduce barriers to development on papakāinga, and barriers to Māori housing more generally

F. Work towards improving capacity and capability for Māori to better engage and participate in the RM system

[39] i.e. to provide practical advice on te ao Māori perspectives and the Treaty

Options

123. This section identifies some options to address the problems in the key areas where system changes could provide for better alignment of the RM system with te ao Māori.

124. Other options not fully considered by the working group are also identified to highlight other avenues that could be explored further.

Purpose and principles of a future system

125. This section is divided between a discussion on the purpose of the Act, and a specific discussion on the Treaty clause, i.e. s8 of the current RMA

The purpose of the resource management system

126. The purpose and principles, or Part 2, of the RMA are the 'engine room' for the Act and the RM system as a whole. As the Legislation Design and Advisory Committee guidelines note, "the provisions of the proposed legislation should be consistent with its purpose and the policy objective that underlies it"[40]. Another way of thinking about this is that the purpose of a piece of legislation needs to reflect the actions that are desired to take place as a result of it. If we want the RM system to align with te ao Māori, and be consistent with Te Tiriti, te ao Māori perspectives need to be reflected in the purpose.

127. **The working group considers that the current sustainable management purpose of the Act has 'run its course' and that something new is needed to better provide for the actions that are desired to take place as a result of this legislation.**

128. This is fundamental. **The working group considers that the RMA should remain an integrated statute as this is more consistent with the te ao Māori view of the world which is inherently integrated**. If the RMA is to remain an integrated statute that provides for both environmental protection and development within environmental limits, it needs to have a purpose that allows for all of the desired aims of the RM system.

129. In order to achieve the policy objective of better aligning the RM system with te ao Māori perspectives, the purpose needs to reflect both te ao Māori and western worldviews. Both Māori and non-Māori need to be able to understand the underlying policy objectives of the system and recognise those policy objectives being expressed in language and meaning that resonates with them. **The working group considers that the purpose should contain te reo Māori kupu so that te ao Māori perspectives are reflected and embedded in the core of the system.**

130. Below are some ideas which could achieve the aims sought for a new purpose for the RM system. This wording is one way in which these aims could be achieved. Other, potentially better, wording could be explored/designed/developed as part of a future co-design process with Māori.

Te Mana o te Taiao – Whakamana i te taiao

131. Te Mana o te Taiao is a concept that has been drawn from the Te Mana o te Wai framework as articulated in the Kāhui Wai Māori report[41]. In the report a kaupapa Māori hierarchy of obligations is articulated, i.e. the environment, the essential needs of

[40] http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/early-design-issues/chapter-2/

[41] https://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/kahui-wai-maori-report.pdf

people, then other consumptive uses. As the purpose and principles of the RMA apply to all aspects of the environment, the framework would need to be expanded to apply not only to water, but to the environment as a whole – hence Te Mana o te Taiao.

132. The working group recognises that the phrase 'Te Mana o Te Wai' as it is articulated in the Kāhui Wai Māori report places the first obligation on protection of the health and mauri of the water and therefore places emphasis on protection of the wai. This emphasis is appropriate for wai, which is a taonga, is in a poor state across Aotearoa and at risk of ongoing degradation. However, given the current use of Te Mana o Te Wai and its meaning as expressed in the Kāhui Wai Māori report, the working group considers this may not be directly transferable to an overarching purpose for the RM system as a whole. To create a distinction from the phrase 'Te Mana o Te Wai', the working group has considered alternative wording. Two wording proposals considered by the working group are:

- 'whakamana i te taiao'; and
- 'te mana, te tapu me te mauri o te taiao'.

133. The phrase 'whakamana i te taiao' puts the quality of 'mana' into the directive of 'whakamana'. This phrase invokes a mātauranga Māori view to the interaction with the environment, replacing directives such as promote and enhance.

134. The phrase 'te mana, te tapu me te mauri o te taiao' translates to 'the mana, the tapu, and the mauri of the environment'. This concept encompasses the key values that are present in the environment in accordance with tikanga and mātauranga Māori. It might be said that this is not too dissimilar from Te Mana o Te Wai. However, the similarity simply recognises that the term 'mana' is considered by the working group to be the appropriate term to be used. There is sufficient difference to distinguish this phrase from Te Mana o Te Wai. Further, the concept of Te Mana o Te Wai fits neatly into a subset of 'te mana, te tapu me te mauri o te taiao' and is consistent with a flow from the general to the specific as it steps down to more particular parts of the environment. Mana and tapu are inseparable. Where there is mana there is also tapu. They are linked and therefore both should be referenced. Tapu is also an important environmental concept for Māori. The reference to mauri recognises mauri as a further element of the environment. If the Panel does not agree with the use of the term mauri, it may choose to remove this term so that the phrase reads 'te mana me te tapu o te taiao'.

135. **The working group considers the inclusion of the need to whakamana i te taiao is consistent with aim of the review: to improve environmental outcomes and better enable urban and other development within environmental limits.**

136. **When the working group refers to the need to whakamana i te taiao it does not consider that this necessitates 'environmental protection at all costs'. Rather it recognises, in the same vein as environmental limits and continuous improvement, that development needs to be constrained to a 'safe space', as to go below that space (in the long term) would likely negatively impact both te taiao (the environment) and te tangata (the people).**

137. The working group's understanding of the Panel's interim proposal for s5 is that the purpose of the Act is to:

- "promote and enhance the quality of the *natural and built environments* in order to support the *wellbeing* of present and future generations by ensuring that:

  a) the use, development and protection of *natural and physical resources* is *sustainable* and is undertaken in compliance with prescribed environmental limits;

b) indigenous *biological diversity* and the health of ecosystems are enhanced and restored;

c) *te mana o te taiao* is recognised;

d) positive outcomes for the natural and built environments are identified and promoted; and

e) the adverse effects of activities on the natural and built environments are avoided, remedied or mitigated."

138. The working group met with the Panel on 4 February 2020 to discuss Te Mana o te Taiao and was subsequently asked to advise if Te Mana o te Taiao is consistent with the Panel's interim proposal for s5 and, if not, how this might be addressed either through revising s5, or inclusion in section 7 or 8?

139. The working group has considered this question in the light of both the original idea of Te Mana o te Taiao and in light of the working group's new preference of using the phrases 'whakamana i te taiao' and 'te mana, te tapu me te mauri o te taiao'.

140. In many ways the answer to this question depends on what is meant by the word quality in regards to the natural and built environment. This isn't clearly defined in what is currently in Part 2, nor is it indicated that it will be defined.

141. According to the oxford dictionary quality means "the standard of something when it is compared to other things like it; how good or bad something is"[42]. Assuming that this will be interpreted in this light, perhaps quality of the natural and built environments encapsulates some of the concept of Te Mana o te Taiao – but the working group considers it doesn't capture all of the concept. There is a depth of meaning to the words 'Te Mana o te Taiao' that is hard to put into a few English words. The relationship between the environment and people, which is largely based on whakapapa, which is key to te ao Māori is not easy to describe in English.

142. At a deeper level, it is not about consistency or inconsistency. Some might say that the current Part 2 of the RMA and the Panel's Part 2 are both based in the Pākehā world and require Māori to cross over into this world and subordinate the Māori worldview to that of the Pākehā worldview.

143. Would the lens that 'Te Mana o te Taiao', as the sole purpose statement of a new Act would put over the system, do the opposite and ask Pākehā to cross over into a Māori world that doesn't resonate with them? There certainly seems to be a fear from some that this would be the case.

144. **The working group considers that it is possible, and essential, to have te ao Māori worldviews visible and reflected in the purpose of a future system, and this could work together with western worldviews.**

145. As the working group noted in its interim report (at para 39) a broad co-design process would be the ideal mechanism to develop the detail of a Māori framework that could be the basis of a new purpose for the system. 'Whakamana i te taiao' is an example of progress that has been made to date and it would be a significant loss if a Māori concept was not progressed further due to the concept not being developed sufficiently as a result of the limited time that the working group has been able to put into its development.

146. We recognise that the Panel is very likely to recommend a replacement to Part 2 in its final report and hence we have provided the advice in this report to assist the Panel

[42] https://www.oxfordlearnersdictionaries.com/definition/english/quality_1

should they wish to incorporate a Māori framework. Though even in that case we would still recommend a co-design process, which could be recommended by the Panel (consistent with what was signalled by Cabinet) to be initiated post the Panel's final report to develop the detail of a Māori framework. Such an approach would not only help groundtruth and flesh out the concepts, but could also assist to achieve buy-in from both Te Tiriti partners to a Māori framework being a key part of a future system.

Options for integration

147. There are several options for the integration of a Māori framework into the Panel's interim Part 2. A range of options are set out below.

148. Option A: Whakamana i te taiao could be the sole purpose:

5 Purpose

The purpose of this Act is to whakamana i te taiao by ensuring tha :

…

149. Option B: Whakamana i te taiao could be incorporated into the Panel's interim wording, with or without further edits as follows:

5 Purpose

The purpose of this Act is to whakamana i te taiao, to promote and enhance the quality of the natural and built environment, which will in turn ~~in order to~~ support the wellbeing of present and future generations by ensuring that:

…

150. Option C: In addition to including whakamana i te taiao as part of the purpose statement the concept 'te mana, te tapu me te mauri o te taiao' could be in a subpart of the purpose statement to supplement and support better aligning the RM system with te ao Māori:

5 Purpose

The purpose of this Act is to whakamana i te taiao, to promote and enhance the quality of the natural and built environm nt, which will in turn support the wellbeing of present and future generations by ensuring that:

(c) te mana, te tapu me te mauri o te taiao are recognised, provided for and enhanced;

…

151. Option D: A Māori framework could be just in a subpart of the purpose statement:

5 Purpose

The purpose of this Act is to promote and enhance the quality of the natural and built en ironment, in order to support the wellbeing of present and future generations by ensuring that:

(c) te mana, te tapu me te mauri o te taiao are recognised, provided for and enhanced;

152. Alternatively no mention of a Māori framework could be made in the purpose and instead it could be outlined in a preamble via a broader narrative approach. This could potentially enable a Māori framework to be properly described in a way that a rigid legislative framework may not. A provision could then be added relating to the preamble like in the Te Ture Whenua Māori Act 1993:

2 Interpretation of Act generally

(1) It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the principles set out in the Preamble.

153. **Out of these options the working group considers that Option C is preferred. This would allow te ao Māori to be reflected in the purpose statement, i.e. what the goal is overall, and in the subpart of the purpose statement, i.e. what needs to happen in order to achieve the goal. This would reflect the policy objective of better aligning the RM system with te ao Māori.**

154. The next question is whether 'whakamana i te taiao' and 'te mana, te tapu, me te mauri o te taiao' should be defined or left undefined. As discussed earlier there are advantages and disadvantages to defining te reo Māori terms in legislation. **However, if the phrase 'whakamana i te taiao' was to form part of the purpose statement the working group considers that it should be defined in the interpretation section.**

155. Again, ideally this would occur through a co-design process and the Panel could recommend that a definition of 'whakamana i te taiao' be co-designed with Māori.

156. If the Panel did wish to include an interim definition of 'whakamana i te taiao', this could be something along the lines of:

Whakamana i te taiao means the need to recognise, restore, uplift and enhance the mana of the environment.

157. **The working group considers that the concept of 'te mana, te tapu me te mauri o te taiao' should be expanded upon in a NPS. The working group considers that this should be a mandatory NPS and that the Minister for the Environment be directed in the legislation to co-design this NPS with Māori.** This could be done in the same NPS as that proposed in the Panel's section 9(3)(f) and could also include that this NPS may expand upon the phrase 'whakamana i te taiao' as well.

158. There are a number of opportunities that the shift to outcomes and limits that the Panel's proposed Part 2 would provide for including the potential for a greater focus on the desired outcomes that are important for Māori.

159. **The working group considers that 'in regards to freshwater, te mana o te wai' should be inserted as an outcome under the natural environment outcomes heading, perhaps as b)(i** This would link the primary goal of the NPS for Freshwater Management (NPS-FM) to the new purpose of the RM system as per the recommendation in the Wai 2358 report to make Te Mana o te Wai a matter of national importance that must be recognised and provided for[43] and would align with the recommendation in the Kāhui Wai Māori report to reform the RMA in line with the directive of their paper[44].

The Treaty clause

160. In the RMA, the 'principles' part of Part 2 are currently expressed in ss. 6, 7 and 8 as matters to 'recognise and provide for', 'have particular regard to' and 'take into account' respectively. As previously discussed, s8 is the Treaty clause in the RMA which has the weakest directing words in the hierarchy of matters to be considered under Part 2.

[43] p.559, Waitangi Tribunal. 2019. The Stage 2 Report on the national Freshwater and Geothermal Resources Claims (Wai 2358 report). Wellington: Waitangi Tribunal.

[44] p.5, Kāhui Wai Māori. 2019. Te Mana o te Wai: The Health of our Wai, the Health of our Nation. Wellington: Kāhui Wai Māori

161. As a number of reports and experts have noted, most recently in the Wai 2358 report, "section 8 of the RMA is entirely inadequate for the degree of recognition and protection of Māori interests that is required by the Treaty"[45].

162. **The working group recommends that the Panel strongly consider increasing the weighting given to the Treaty clause in the RM system. We think it would be appropriate to replace 'take into account' with 'give effect to'.** This would place the RMA in the company of at least eight other pieces of legislation that use the directing words 'give effect to' in regards to the Treaty or Treaty principles[46]. Numerous organisations[47], as well as feedback from Māori, have recommended that the RMA should give effect to the principles of the Treaty.

163. **Further, the working group recommends that the Treaty clause be altered to read "To achieve the purpose of this Act, those performing functions under it must give effect to Te Tiriti o Waitangi and its principles".**

164. A change to 'give effect to' the Te Tiriti and its principles would modernise the RMA Treaty clause and send a strong signal that RM decision makers should give greater weight to Te Tiriti and its principles. This change could have a number of positive flow-on implications, for example:

- assisting with addressing the misalignment between the Crown, local authorities and mana whenua about the role of councils in Te Tiriti relationship, i.e. requiring councils to act as Te Tiriti partners, without needing to change other constitutional definitions
- the new clause could be a lens for the other sections of Part 2 to be viewed through and could result in greater use of RMA provisions, such as s33 transfers of power and s36B joint management agreements.
- it could also help contribute to more positive housing development on mana whenua land by engaging through a partnership approach, which could also help prevent future housing Treaty breaches and claims, such as the current Wai 2750 housing claim.

165. It is important that the Treaty clause refers to giving effect to Te Tiriti o Waitangi and not just the principles so that particular attention is paid to the obligations set out in Te Tiriti, i.e. what was agreed to in the te reo Māori version of the document that was signed

166. The Cabinet Office Circular CO (19) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance - sets out guidelines agreed by Cabinet for policy-makers to consider the Treaty of Waitangi in policy development and implementation. This circular specifically requires attention to be given to the articles of the Treaty, i.e. not just the Treaty principles.

167. **The working group suggests that the definition of 'Te Tiriti o Waitangi' in this clause should be the same as the current definition in the interpretation section**, i.e. it would refer how the word Treaty is defined in section 2 of the Treaty of Waitangi Act 1975 which is "**Treaty** means the Treaty of Waitangi as set out in English and in Māori in Schedule 1".

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[45] p.66, Waitangi Tribunal. 2019. The Stage 2 Report on the national Freshwater and Geothermal Resources Claims (Wai 2358 report). Wellington: Waitangi Tribunal.

[46] These being the Climate Change Response Act 2002, Conservation Act 1987, Exclusive Economic Zone and Continental Shelf (Environmental Effects Act) 2012, Hauraki Gulf Marine Park Act 2000, Historic Places Act 1993, Heritage New Zealand Pouhere Taonga Act 2014, Ngā Wai o Maniapoto (Waipa River) Act 2012, and the Royal Society of New Zealand Act 1997.

[47] Including the Waitangi Tribunal, the Environmental Defence Society and the Productivity Commission.

168. A change from Treaty of Waitangi/Te Tiriti o Waitangi to Te Tiriti o Waitangi may have little legal effect. However, the working group's position is more of a moral position than a legal one. Te Tiriti o Waitangi was the document that was signed by most of the rangatira and therefore it is Te Tiriti o Waitangi that should be referred to. The Treaty of Waitangi and Te Tiriti o Waitangi are separate documents in practice. Even if they were originally intended to mean the same thing, in practice they do not and from a Māori perspective the English version is weaker than the te reo Māori version.

169. As for the practical effect of changing the words in the Treaty clause, as many others have noted[48], changing the words themselves is not in itself likely to be sufficient to achieve the practical effect desired from an increased weighting being given to Te Tiriti and its principles and something further is required to provide guidance on how to give effect to Te Tiriti and its principles in an RM system context.

170. There are two primary options for this; further subclauses that expand upon how to give effect to Te Tiriti and its principles and/or national direction

Further subclauses

171. There has also been a trend in recent years, as the Productivity Commission noted[49], towards additional provisions that outline the obligations, duties or responsibilities in relation to the Treaty principles in the specific area that the legislation relates to. A good example is s7AA of the Oranga Tamariki Act 1989 which imposes particular duties in order to provide a practical commitment to the principles of the Treaty by ensuring that a number of matters in relation to the wellbeing of Māori children and young persons are reflected in the policies and practices of Oranga Tamariki.

172. It relation to the RM system, many of the persons exercising functions and powers under the RMA are local authorities, which have been delegated a number of RM functions and powers by the Crown. The Waitangi Tribunal, in their Wai 2358 report, recommended that s8 be amended to state that "the duties imposed on the Crown in terms of the principles of the Treaty are imposed on all those persons exercising powers and functions under the RMA" (second bullet point of recommendation 7.7.2). Their view is that "such an amendment would ensure that Māori interests are protected (not balanced out), that local authorities and all RMA decision makers carry out Treaty responsibilities and obligations, and that part 2 of the RMA is Treaty compliant".

A National Policy Statement

173. The RM system also provides for national direction to be created, e.g. NPSs, that local authorities are required to 'give effect to'. As the Productivity Commission notes, "excellence in regulatory practice with respect to Treaty principles, however, cannot be legislated for. Good practice in upholding Treaty principles of partnership, mutual respect and good faith depends on senior leadership, good internal policies and processes, and guidance for staff and stakeholders"[50]. This indicates that it could be difficult to effectively outline in subclauses in the legislation how to give effect to Te Tiriti and its principles.

174. Instead guidance on how to give effect to Te Tiriti and its principles could be provided in the form of a NPS which could outline the obligations, duties or responsibilities that are

[48] For example, the Waitangi Tribunal in its 2011 Wai 262 report *Ko Aotearoa Tenei*.

[49] see p.168, New Zealand Productivity Commission. 2014. *Regulatory institutions and practices – final report*. Retrieved from www.productivity.govt.nz

[50] Ibid, at p.183.

required in order to give effect to Te Tiriti and its principles in an RM system context. This was a recommendation of the Productivity Commission's *Better Urban Planning* report.

175. An NPS could be more directive than additional subclauses to a Treaty clause as local authorities would be specifically required to give effect to whatever was in the NPS. The NPS could direct local authorities to act as Te Tiriti partners and be a better means of achieving the aim of the subclause suggested in the Wai 2358 report.

176. A NPS could also contain guidance and direction on other relevant matters such as further elaborating on the concept of 'te mana, te tapu me te mauri o te taiao', providing guidance on how to provide for the parts of the RMA that are particularly relevant to Māori interests, and provide direction on how enhanced IMPs (see the section below on this topic) should be considered for in spatial plans and other RM system plans

177. **On balance, the working group considers that a mandatory NPS would be the best approach to provide further guidance and direction on how to give effect to Te Tiriti o Waitangi and its principles. The Minister for the Environment should be directed in legislation to co-design the NPS with Māori.**

Integration of RMA tools – enhanced IMPs

178. As discussed in the problem definition section there a e a number of ools and processes in the RMA that relate to mana whenua involvement in the RM system or provide the potential for mana whenua involvement, including IMPs, MWaR, s33 transfers of power, and s36B joint management agreements

179. Each of these tools has the potenti to provide for better outcomes for Māori but they are all failing to live up to that potential as the problem definition section outlines. As noted earlier a Treaty clause with stronger direct ng words could have an effect in and of itself to encourage stronger uptake and use of these provisions. However, notwithstanding this potential effect, there are barriers to the use of some of these provisions that would also need to be addressed.

180. For a start the legislative criteria ba riers to the use of s33 could be removed, i.e. repeal s33(4)(c)(i)-(iii), and just leave the test under s33(4)(c) as both authorities agreeing that the transfer is desirable. Simi arly the criteria barriers to the use of s36B could be repealed, i.e. repeal s36B(1)(b)(i)(B) and (b)(ii).

181. Second, ss33 and 36B could include a positive obligation for local authorities to investigate opportuni ies to utilise these sections (or this could be done via MWaR). Fur her, councils co ld be required to formally give due consideration to any requests to utilise ss33 and s36B made by mana whenua, to respond to mana whenua requests within given timeframe, and report on their decision making processes for giving due considera ion to these requests to a monitoring and oversight body (discussed further below). This body could even be given the power to overturn the decision if they found that the local authority had erred in its approach or consideration.

182. Third, as per the Wai 2358 recommendation, s33 could be amended so that transfers could be made, where appropriate, to hapū.

183. The above suggestions are only a part of the broader picture and something more comprehensive and integrated is required.

184. **The working group considers that there needs to be a rationalisation of RMA tools for mana whenua in a way that better integrates the tools and leads to a greater ability for mana whenua to influence decisions at an earlier stage in RM processes – whilst also reducing complexity for all involved. This would involve enhancing the existing**

instruments, and in the case of s33 and s36B removing barriers to their use, as well as having <u>one integrated process</u> for local authorities and mana whenua to agree upon these matters and the arrangements for their partnership(s).

185. Such an approach could also help to provide consistency within the RM system between settled and non-settled mana whenua and be a mechanism for delivering partnerships into the RM system. This would involve those parties needing to act in a more regular, formal, compulsory and proactive way – just as regional and territorial authorities are intended to act with each other in the system.

186. **As the basis for this approach the working group considers the Wai 262 recommendations on enhanced IMPs are a good place to start.**

187. Under the system envisaged in Wai 262 the Waitangi Tribunal considered enhanced IMPs to be "lynchpin of a Treaty-compliant RMA system"[51]. Their model would see IMPs prepared by iwi in consultation with local authorities and that this process would identify s33 and s36B opportunities for formal negotiation with councils, plus heri age protection authority opportunities in respect of iconic areas for the iwi. MWaR arrangement content could also be added to the list of things that would be d scussed or be modified to be the legal implementation tool for the nhanced IMP process. Further, as well as heritage protection authority opportunities the discussion about legal entity status could be had in respect of iconic taonga for par icular mana whenua groups.

188. Overall these plans would set out the iwi's general RM priorities in respect of taonga and resources within their rohe.

189. Once an iwi finished its enhanced IMP ntegrated process a formal statutory negotiation would take place between an iwi and a local authority (or group of local authorities in a region) to confirm it. This would be a genuine negotiation and compromises may be made. Wai 262 proposes that once agreed the IMP would have the same status under the RMA as any district or regional plan or po icy statement.

190. Where the parties cannot agree, Wai 262 recommends three pathways forward:

- first they may agree to d sagree – in which case the relevant IMP provision will still be a relevant consideration for RMA decision-making, albeit not binding. This may be like the current 'take into account' provision and retaining a provision that keeps the current weighting for IMPs that haven't been through the enhanced IMP process could be a key method to still give current IMPs some status until th y go through the new process.
- second they may refer the matter to formal mediation by the Environment Court or via an alternative agreed process.
- third either or both parties may refer the matter to the Environment Court for final determination. This would hopefully be a last resort option.

191. The content requirements in the current MWaR provisions could be included and expanded upon for an enhanced IMP process, so that when councils and mana whenua are entering into the integrated consultation process there are some matters which will need to be discussed and agreed/disagreed upon, including mana whenua aspirations for s33 and s36B matters. There are other advantages to the MWaR process as well that should be included as part of the integrated process, including the ability for mana whenua to initiate the process and perhaps the s58T review and monitoring

[51] p.116, Wai 262

requirements depending on how this would interact with any new arrangements for monitoring and system oversight of Treaty performance (discussed below).

192. One area that would need further work to address is what should happen if there are competing IMPs in an area, e.g. where two or more iwi and/or hapū have an overlapping claim to mana whenua status. How would a local authority reconcile issues in this circumstance, particularly as it is not for the Crown or local authorities to determine matters of who holds mana whenua over an area? This issue would need to be dealt with, so that the process doesn't end in a resource intensive battle in the Courts.

193. **The working group recommends that the integrated enhanced IMP process is another area where the details are worked through in a co-design process with Māori post the Panel's final report, including addressing the issue of where there are competing IMPs.**

194. IMPs are a valuable representation of local knowledge and provide a te ao Māori view of the system and what is working and not-working. IMPs also can contain valuable spatial information and can identify sites, areas and outcomes significant to Māori. **The working group considers enhanced IMPs could be a valuable input into spatial planning processes and a legislative link should be made between IMPs and spatial plans in any spatial planning legislation.**

A more effective role for Māori at the strategic end of the system

195. As discussed in the problem definition section, the RM system tends to be 'bottom-heavy' in regards to Māori involvement. Mana whenua have had fewer opportunities to have a role at the strategic end of the RM system as too much effort is expended too far down the decision-making ladder.

196. The current RM system and Treaty settlements have resulted in some roles for mana whenua at the strategic end of the system. It will be important in the new RM system to not take backward steps and to maintain or improve upon current arrangements – particular for arrangements that have resulted from Treaty settlements which can't be undermined as a result of the review[2].

197. That being said, there remains a key opportunity in the RM review process to provide for a more effective strategic role more generally by developing and/or encouraging governance arrangements that could make this happen – particularly if we see partnerships as a key tenant of a future RM system.

198. The primary benefit of doing so is that if mana whenua are more involved at the strategic end of the system this involvement will result in strategic RM decisions that are more consistent with te ao Māori and provide for better outcomes for Māori. This in turn should reduce the need for mana whenua to be as active at the bottom end of the system and be a more efficient and effective way for councils, central government and mana whenua to engage.

199. There are two aspects to this area that this paper explores: arrangements for Māori involvement in the development of proposed spatial plans and broader arrangements for Māori involvement at the strategic end of the system.

[52] Cabinet Paper establishing the review

Arrangements for Māori involvement in the development of spatial plans

200. Strategic planning in the form of strategic and integrated spatial plans is a key focus of the review process. As the Panel's issues and options paper outlines, "spatial planning would encompass consideration of economic, environmental, social and cultural wellbeing. It would also need a long-term time horizon, and a focus on integration of environmental protection, land and natural resource use and infrastructure decision-making, including funding and financing. It could provide an opportunity for Māori to participate in strategic decision-making about resource management issues"[53].

201. The development of spatial plans requires layers of governance, management and practitioner arrangements, and there could be a role for Māori involvement at all of these layers.

202. In regards to governance arrangements for spatial planning, there are also many phases of governance including the development, implementation and then monitoring and review of spatial plans. There could also be a role for Māori involvement at all of these stages, however this report has primarily focussed on the development stage.

203. If mana whenua are at the governance table along with central and local government to provide direction on the development of these spatial plans, having the ao Māori and western world-views represented at the top of the system, these spatial plans would be a melting pot for finding common ground and enabling joint values and principles to be embedded at the core of the RM system. It would hopefully follow that the jointly developed spatial plans would have a strong influence on lower order regulatory and funding plans under the RMA, LGA and Land Transport Management Act (LTMA).

204. There are a number of different models of governance that have been used for the development of spatial plans in Aotearoa to date with different levels of involvement for mana whenua ranging from no involvement to some involvement, to co-governance. Spatial planning has been primarily conducted on a voluntary basis thus far in Aotearoa and hence the level of commitment and resources put towards these exercises could be expected to be less than if spatial planning became mandatory. This would in turn make it easier for councils to involve mana whenua in the development of these plans, and make it more attractive for mana whenua to be involved in these processes as well.

205. **The working group considers that the governance arrangements for spatial planning must include a role for mana whenua.**

206. Appendix 2 provides an overview of governance arrangements from a desktop scan of spatial planning processes that have occurred in Aotearoa to date from the perspective of their involvement of Māori in the governance of the development of those plans.

207. Common to all of the spatial/strategic planning processes identified that have involved mana whenua in the governance arrangements were partnerships between different councils and/or central government agencies. Most of the spatial planning processes that didn't involve mana whenua in the governance arrangements were conducted by a single council. This indicates that where intra-regional partnerships were involved, mana whenua involvement was much more likely.

208. Those councils that didn't involve mana whenua in the governance arrangements also tended to be relatively smaller in size (and financial resourcing) than those that did. This

[53] p.28, Resource Management Review Panel. 2019. Transforming the resource management system: Opportunities for change – Issues and options paper.

indicates that resourcing and capacity are key to ensuring mana whenua involvement in the governance arrangements.

209. Of the processes that did involve mana whenua in the governance arrangements, most had at least 20% of the membership comprised of mana whenua. Only one was a 50/50 co-governance arrangement process (Sea Change).

210. Co-governance, as a concept born of the Te Tiriti principle of partnership, generally only refers to a 50/50 split of membership between mana whenua and the Crown (in this case meaning both central and local government).

211. **The working group considers that co-governance would be the ideal governance arrangement for a spatial planning processes, i.e. mana whenua should have 50% of the representation on spatial planning governance committees. Ideally the chair of these committees should be appointed from the mana whenua representatives.**

212. **The working group considers that where there should be mātāwaka representation (or Māori in an area that aren't mana whenua) that this should be provided for as part of the central/local government 50%.**

213. **The working group considers that, as per many of the spatial planning arrangements looked at, mana whenua should be able to choose their own process for deciding who their representatives are on the governance groups.** Guidance could be developed by central government for this area and could help mana whenua work through issues such as overlapping claims and interests to resources.

214. **The working group considers that the governance groups for spatial plans should be directed to strive for consensus wherever possible.** An established pragmatic process in place for how to move forward if consensus can't be achieved.

215. There are many pragmatic consensus models, an example of which is provided in Appendix 3. **The working group hasn't reached a view as to whether a consensus model should be set nationally for all spatially planning governance groups or whether groups should be left to use/develop their own models, within the broad parameters of striving for consensus.**

Broader arrangements for Māori involvement at the strategic end of the system

216. There are also other strategic parts of the RM system where an effective role for Māori could be established. Ideas in this area have been suggested by many parties.

A national co-governance institution

217. In their Wai 2358 report the Waitangi Tribunal recommended that "a national co-governance body should be established with 50/50 Crown–Māori representation, to ensure that Treaty principles and Māori values, rights, and interests are fully incorporated in freshwater policy and management. The details should be arranged between the Treaty partners"[54]. This body could be expanded to be broader than just freshwater, or could have an organisational structure with a number of sub-committees for different aspects of environmental management.

218. The Environmental Defence Society has suggested an independent Futures Commission could be established that could include alongside or within this commission a Tikanga

[54] p.560, Waitangi Tribunal. 2019. The Stage 2 Report on the national Freshwater and Geothermal Resources Claims (Wai 2358 report). Wellington: Waitangi Tribunal.

Commission, having a watchdog and review role over the RM system from a Māori perspective.

219. The Productivity Commission recommended the establishment of a National Māori Advisory Board on Planning and the Treaty of Waitangi in their *Better Urban Planning* report. They propose that the Board should be established under statute and:

- "monitor how the planning system gives effect to the principles of the Treaty of Waitangi
- advise central government agencies (with stewardship responsibilities for the planning system) on policies, regulations, processes and methods that will best give effect to the principles of the Treaty of Waitangi
- carry out a Treaty of Waitangi audit of the planning system every ve years"[55]

220. A national co-governance body of some kind with responsibilities relating to the Treaty and the RM system would fulfil a role of providing system monitoring and oversight and could undertake monitoring of Treaty performance (see the section on this below). A national body would have the advantage of being able to consider issues of national importance and/or issues that are in common between multi le regions o Aotearoa.

221. Further, if the weighting of 'give effect to' was given to the Treaty clause in the new RM system, the national intuition could have a role in ensuring the implementation of this clause occurred.

222. If a national institution were set up it may be necessary to give it some teeth to be able to influence or even issue direction to change, elsewise it wou d run the risk of becoming just another national advisory body whose recommendations could be ignored if it was convenient to do so.

223. **The working group has not reached a view on whether a co-governed national institution should be established to provide, among other duties, a role ensuring implementation of the Treaty clause in a new RM system. Exploring this idea further should be someth ng that is done as part of the subsequent co-design process.**

Regional institutions for regional partnerships

224. Alternatively, regional strategic bodies could be established to provide for ways for mana whenua to be represented in an advisory capacity (non-elected) on planning commit ees (e.g., co governance committees) within each region where mechanisms aren't already in p ace r couldn't be extended to function as such. Regional councils could be required to establish these entities. Their purpose could be to advise and recommend on RM issues and decisions.

225. In some areas of the country[56], co-governance committees with 50% membership from mana whenua and 50% from local authorities have been established to deal specifically with RM functions. These are committees of council but include an equal number of appointments from mana whenua.

226. For some of these committees, if their recommendations to full Council are rejected the issue needs to go back to the co-governance committees so that the eventual outcome

[55] New Zealand Productivity Commission, 2016, p. 454.

[56] Examples of these types of committees currently operating include: Wellington Regional Council's Te Upoko Taiao committee, Hawkes Bay Regional Council's Regional Planning committee, and the Waikato Regional Council's Healthy Rivers/Wai Ora committee for co-governance of the Waikato river catchment.

is decided upon by both the local authorities and mana whenua without the ability of full Council to change those positions after-the-fact.

227. **The working group considers that regional co-governance institutions (50/50) should be established in relation to RM functions of regional councils.**

Mātauranga Māori tohunga in the strategic setting of environmental limits and targets

228. There could also be a role for mātauranga Māori tohunga (experts in Māori knowledge and understandings) in the strategic setting of environmental limits and targets.

229. The Environmental Limits and Outcomes working group is considering whether national direction that sets environmental limits and targets should be required to incorporate and reflect Māori values and, where appropriate, take an approach that is consistent with, reflects, or aligns with te ao Māori (such as has been done with the draft national policy statements on indigenous biodiversity and freshwater). They are also considering whether there could also be a requirement that mātauranga Māori be an input into the setting of target and limits as part of a broader role for Māori.

230. **The Treaty and te ao Māori working group considers that there should be involvement from experts in mātauranga Māori to inform the setting of environmental limits and targets.**

231. One example of how this could work is the Technical Leaders Group that was set up to support the Healthy Rivers/Wai Ora plan change process in the Waikato region. This group contained one expert from each of a variety of technical areas that were important to understand in order to set the water quality limits and targets that were a key focus of the Healthy Rivers/Wai Ora process. One of these areas of expertise was mātauranga Māori. The expert in mātauranga Māori contributed to the limit and target setting process by providing knowledge on the factors affecting food gathering, swimming and the special characteristics of the Waikato and Waipa Rivers and their tributaries from a Māori perspective[57].

232. Mātauranga Māori thus informed and supplemented the biophysical science expertise in order to determine the appropriate attributes, and what level the attribute desired states should be set at and thus influenced the limits and targets required to achieve those desired attribute states

233. Mātauranga Māori also informed the desired social, economic and cultural outcomes to be achieved and this was also an area that influenced the integrated assessment of the impacts and effects of the Healthy Rivers/Wai ora proposed package.

Monitoring and system oversight of Treaty performance

234. An idea that was raised in Wai 2358 and in Minister Davis's letter on the RM review scope would be to require robust monitoring of local (and/or central) government performance in relation to the Treaty.

235. This section of the report just considers monitoring of Treaty performance in relation to RM. However, there are a number of broader monitoring considerations in the RM system including beyond ensuring Te Tiriti is adhered to, including ensuring spatial plans are achieving outcomes and more general monitoring of environmental performance (in terms of both mātauranga and biophysical measures).

[57] http://www.waikatoregion.govt.nz/assets/WRC/WRC-2019/TR201842.pdf

236. There are also broader Treaty monitoring considerations than just RM. Whilst the role of monitoring of Treaty performance more generally is broader than the scope of the review, some of the ideas discussed below are drawn from ideas from others that relate to a more general role for Treaty performance monitoring and are therefore relevant to that broader Treaty monitoring role.

237. Monitoring of Treaty performance could identify which government agencies and councils are doing well/poorly at fulfilling obligations to Māori in the RM system. Further, if the Treaty clause in the RMA was enhanced to 'give effect to' Te Tiriti and its principles, monitoring could help identify how councils are implementing this clause

238. Monitoring would provide a transparency and accountability mechanism to the Treaty Partners. This could in and of itself help to lift performance, but could also be used as a way to share best practice and success stories or identify agencies/councils that need assistance in order to meet their Treaty responsibilities. There has been little to no monitoring of the effectiveness or otherwise of Treaty settlements for achieving RM desired outcomes. Further monitoring could help identify effective processes developed during the implementation of Treaty settlements that could be used more widely.

239. Further, this could have broader implications for compliance, monitoring and enforcement (CME). For agencies and councils that consistently perform poorly – monitoring could identify compliance issues and could lead to some manner of enforcement action in order to address poor performance.

240. Further information on the need for Treaty-based monitoring and what the literature says on this topic is provided as Appendix 4

241. There are two aspects to monitoring of Treaty performance worth particularly exploring further in this report. Firstly, who should be monitored and who should be undertaking the monitoring, and secondly what specifically should be monitored and what mechanisms are required in order to get the necessary monitoring data.

242. In regards to who should be monitored, it is either local and/or central government: central government as the Treaty partner and local government as its delegate.

243. **Overall, the working group considers that both central and local government should be monitored as to their Treaty performance.**

244. In terms of who should be undertaking the monitoring, it is either central government, mana whenua or an independent entity.

245. If it was central government undertaking the monitoring this would likely mean that a specific government agency (e.g. MfE or TPK) would be tasked with monitoring the Treaty performance of local government, and a specialist government agency (e.g. TPK) would be tasked with monitoring the Treaty performance of central government agencies.

246. The key benefit of central government being the one undertaking the monitoring then is that it could leverage off monitoring already undertaken. Further there is some merit in the idea of central government as a Treaty partner monitoring the local authorities it has delegated Treaty related tasks to and ensuring that its own performance is up to standard. However, there is a potential issue perceived or otherwise with central government undertaking monitoring, particularly of itself, in that it may not be seen to be to be able to hold itself and local government to account without independence.

247. Another option for who could monitor Treaty performance is mana whenua in a particular area. Alternatively, an institution could be established to bring together Māori and undertake monitoring as a specific purpose, as per the Independent Māori Statutory Board (IMSB) model for Auckland.

248. If there were to be regional IMSBs the current Auckland IMSB model of appointments is worthy of consideration.

249. Board membership is by way of a selection and appointment process. The Minister of Māori Development invites mana whenua[58] to form a selection body. Each mana whenua group that receives the notice may choose one person to be its mandated representative on the selection body. This body meets several times to select the nine board members.

250. Seven members represent mana whenua and two members represent mātāwaka. The selection body appoints the mātāwaka members, but there are requirements including public notification and taking into account the views of mātāwaka.

251. Mana whenua undertaking the monitoring function has some attractive features in that it would provide a means for mana whenua to hold central and local government to account for their Treaty commitments – as some already do. Further, mana whenua are best placed to articulate how the obligations, particularly regarding Article 2 of Te Tiriti, that directly affect them should be given effect to. However, there may also be a perception issue that, as a Tiriti Partner, mana whenua may not be independent enough from the situation.

252. Finally, there is an option that a dedicated independent institution should be established, for example a Parliamentary Commissioner for Te Tiriti, or added as a new function to an existing independent institution (e.g. the Parliamentary Commissioner for the Environment or Environmental Protection Authority) to independently monitor Treaty performance as an 'outside agent' from Treaty Partners.

253. As an example, the Productivity Commission recommended the establishment of a National Māori Advisory Board on Planning and the Treaty of Waitangi in their *Better Urban Planning* report. They propose that the Board should be established under statute and:

- "monitor how the planning system gives effect to the principles of the Treaty of Waitangi
- advise central government agencies (with stewardship responsibilities for the planning system) on policies, regulations, processes and methods that will best give effect to the principles of the Treaty of Waitangi
- carry out a Treaty of Waitangi audit of the planning system every five years"[59].

254. An independent institution would have some advantages in that there would be less perception issues. Further the institution may be able to have some teeth in that it could potentially take action beyond 'naming and shaming' if it was given enforcement functions and tools. However, the institution would likely be the most expensive option.

255. **The working group has not formed a full opinion on who should be undertaking the monitoring of Treaty performance. Exploring this idea further should be something that is done as part of the subsequent co-design process.**

256. Regarding what specifically should be monitored and what mechanisms are required in order to get the necessary monitoring data, there several questions to consider:

- What is the main purpose of monitoring? Possibilities:

[58] There are 19 tribal authorities recognised as representing mana whenua interests in Auckland.

[59] New Zealand Productivity Commission, 2016, p. 454.

- To know what methods are/aren't effective
- To know whether Crown and its delegates are upholding the Treaty
- To identify pain points and gaps
- Hold up/amplify great approaches/opportunities for more investment
- Avoid new breaches of the Treaty

- What is being monitored? Is it a sector-wide project, a council-by-council requirement?
- What is the scope of monitoring? Effectiveness of participation tools? Effectiveness of RMA plans in upholding Treaty Principles?
- How do tangata whenua participate in developing a framework for monitoring? To what extent can they lead or co-manage it?
- What is done with the results of monitoring? Who is accountable and how are they kept accountable? How are additional requirements identified through monitoring resourced?
- What is the relationship between SoE monitoring, Treaty principles monitoring, and policy effectiveness monitoring? When do poor indicators from SoE monitoring become a Treaty issue?

257. If a NPS for how to give effect to Te Tiriti and its principles was promulgated the monitoring could focus on compliance with that NPS (at least for local government). Depending on what the NPS covered it may also be desirable to monitor other things such as:

- what engagement with Māori has occurred/not-occurred
- perceptions from the Treaty Partners on compliance with Treaty obligations and relationship agreement promises, i.e. one set of perceptions from mana whenua and one from central/local government
- local government activities (or not as the case may be) regarding RMA tools such as ss 33, 36B and 56L

258. Alternatively there could be a legislative change made to s35 to require more local authority self-monitoring of important performance metrics or to s32 evaluation reports so that councils would be required to explain how engagement with Māori, and IMPs, have informed policies and plans. These could then be audited and assessed by the party undertaking the monitoring as to their adequacy at giving effect to Te Tiriti and its principles.

259. **The working group considers that given the nature of this issue and the many factors to consider regarding what specifically should be monitored and what mechanisms are required in order to get the necessary monitoring data, that this should be a topic to be co-designed with Māori following the Panel's final report alongside the development of the proposed NPS.**

Capacity and support

260. The problems in the RM system for Māori extend across all aspects of the system and are interdependent. Simply addressing legislative issues will be insufficient to achieve results without also addressing implementation, capability and resourcing issues.

261. Alongside regulatory change it will be important that the capacity and capability of Māori and councils to carry out their obligations is also addressed. A significant reason for local and central government not being effective at implementing Te Tiriti obligations, monitoring and generally not being able to develop better relationships with mana whenua is that very little resourcing is provided for those roles.

262. Financial resourcing for Māori is an important part of providing for capacity and capability. However public funding generally comes with needing public accountability in order to identify the public benefits that the funding delivers on. This isn't necessarily a stumbling block though as there would be a number of public benefits to resourcing Māori. For example, resourcing kaitiaki to fulfil their role as kaitiaki would both produce public benefits to the environment as well as specific benefits in regards to better outcomes for Māori.

263. Capacity and support issues contributes significantly to restricting the ability of Māori to effectively participate in the current RM system and we should work to ensure that it doesn't also become a feature in any new system.

264. There are several sources (e.g. Ngā Aho, Papa Pounamu, Wai 262, Wai 2358, Productivity Commission, Minister Davis's letter on the RM review scope, and feedback from previous hui with Māori) that have canvassed a number of ideas relating to capacity and support including:

- Developing funding mechanisms to assist Māori funding the development of IMPs. This idea could be expanded to instead fund Māori engaging with and undertaking the enhanced IMP process discussed in an earlier section of this report. The funding could come from a number of sources, for example a contestable fund, central government grants, local government grants, and/or amending s36 of the RMA to enable local authorities to fix charges payable on consumptive environmental uses (with the some of this funding going to the development of these documents).
- Directly funding Māori engagement with councils for RMA processes to ensure that under-resourcing no longer prevents Māori or local government from participating effectively in RMA processes. Funding for this could come from a number of sources, e.g. central government, resource rental charges, etc.
- Central government funded advisors to sit within councils and advise and assist the council to build capability and capacity to engage with Māori. This could be limited to smaller councils as larger councils may have the capacity to fund advisors themselves.
- Developing mechanisms and providing opportunities for mana whenua with significant experience and success in their involvement in the RM system to share their knowledge with other groups with less experience. This would develop mechanisms and provide opportunities for those mana whenua groups to share their knowledge in order to build the capability and capacity of less experienced mana whenua groups to be involved further in the RM system. There are already a number of tools that have been developed[60], however resources to increase awareness of these tools and to continue developing these tools among practitioners and kaitiaki are limited.

[60] See for example p. 25 Ngā Aho and Papa Pounamu, 2016. Taonga Tuku Iho. Expression of Māori values in 'urban' planning. Better Urban planning Wānanga.

- Developing guidance (or promoting existing guidance further) that summarises legal obligations relating to Māori and identifies opportunities for Māori engagement in the RM system. This would involve developing better guidance, or promoting the existing guidance further if that was deemed sufficient, in order to provide information to those organisations who have legal obligations to Māori about those obligations, with the ultimate aim of better ensuring those obligations are met.
- Targeted capacity and capability building for all RM practitioners who are involved with Māori engagement in areas such as te ao Māori knowledge-building. This could include matters such as: commissioner training and accreditation, iwi practitioner training, te ao Māori knowledge-building for central and local government staff, and assisting kaitiaki to develop the technical expertise necessary to effectively participate in RM processes.

265. **The working group considers that it would be beneficial to progress all of the ideas discussed above. Additionally it would be beneficial to consider capacity and support for mana whenua who would be involved in any spatial planning processes, including what support would be required and the costs of central government funding that support.**

266. **The working group also proposes that consideration should be given as to whether a clause should be added to the RMA that specifies that where Māori are required to undertake duties and functions under the Act that their reasonable costs shall be provided for by local authorities.**

Other options not fully considered and why

267. The primary reason other options have not been fully considered is due to a lack of time to do so. The working group has prioritised its time to looking at the key opportunities for better aligning the RM system with te ao Māori. However, many of these other options appear to have merit on the face of them and it would be worth exploring them further, perhaps via the broad co-design process following the delivery of the Panel's final report and/or through the provision of MfE advice if time permits.

268. Other options not fully considered include:

- A firmer position on defining te reo Māori terms in legislation, including a definition for "cultural landscapes" or whether definitions of te reo Māori terms currently in the Act, such as kaitiakitanga, should stay or be amended
- Enable more effective participation of Māori Land Court judges in Environment Court proceedings where appropriate
- Include a requirement for expertise in tikanga Māori on independent hearing panels and remove barriers for effective Māori participation on independent hearing panels
- Encourage and provide non-legislative guidance on differing partnership arrangements (e.g. co-governance arrangements) between mana whenua and local government, especially in relation to RM processes

Overall recommended package

269. The working group's overall recommended package of options is a mutually reinforcing set of proposals. The package builds from the recommendations made in regards to Part 2 and the Treaty clause, flows through into the enhanced IMPs integrated process, which in turn links to the spatial planning process and a more effective role for Māori at the strategic end of the system. These proposals are all reinforced by more comprehensive monitoring, system oversight and resourcing of Māori engagement in the RM system to remove capacity and support issues.

270. **The working group considers that the overall recommended package, as a whole, is likely to best address the problems and meet the policy objectives of the RM review.**

271. The working group considers that the RMA should remain an integrated statute that provides for both environmental protection and development within environmental limits, however the purpose of the RMA needs to change and shift away from the current sustainable management purpose.

272. The working group considers that it is possible, and essential, to have te ao Māori perspectives embedded, visible and reflected in the purpose of a future system, and this could work together with western perspectives.

273. The working group considers that the purpose should contain te reo Māori kupu so that te ao Māori perspectives are reflected and embedded in the core of the system.

274. The working group considers that the directing phrase 'whakamana i te taiao' should be added to the purpose statement, and the concept 'te mana, te tapu me te mauri o te taiao' should be added as a subpart of the purpose statement, so that the new s5 reads:

5 Purpose

The purpose of this Act is to *whakamana i te taiao,* to promote and enhance the quality of the *natural and built environment*, which will in turn support the *wellbeing* of present and future generations by ensuring that:

(a) the use, development and protection of *natural and physical resources* is *sustainable* and is undertaken in compliance with prescribed environmental limits;

(b) indigenous *biological diversity* and the health of ecosystems are enhanced and restored;

(c) te mana, te tapu me te mauri o te taiao are recognised, provided for and enhanced;

(d) positive outcomes for the natural and built environments are identified and promoted; and

(e) the adverse effects of activities on the natural and built environments are avoided, remedied or mitigated."

275. Making these changes to Part 2 would enable te ao Māori to be reflected in the purpose statement, i.e. what the goal is overall, and in the subpart of the purpose statement, i.e. what needs to happen in order to achieve the goal.

276. The phrase 'whakamana i te taiao' would be defined in the s2 interpretation section. Ideally the specifics of defining this phrase would occur through a co-design process and the Panel could recommend that this process be undertaken. However, if the Panel did wish to include an interim definition of 'whakamana i te taiao', a definition has been provided by the working group:

Whakamana i te taiao means the need to recognise, restore, uplift and enhance the mana of the environment.

277. The working group considers that concept 'te mana, te tapu me te mauri o te taiao' should be further expanded upon in an NPS. The working group considers that this should be a mandatory NPS and that the Minister be directed in the legislation to co-design this NPS with Māori. This could done in the same NPS as that proposed in the Panel's section 9(3)(f) on Te Tiriti and its principles.

278. Lastly, in regards to Part 2, the working group considers that 'in regards to freshwater, te mana o te wai' should be inserted as an outcome under the natural environment outcomes heading, perhaps as (b)(i). This would link the primary goal of the NPS FM to the new purpose of the RM system

279. The working group considers the inclusion of the need to whakamana i te taiao is consistent with aim of the review: to improve environmental outcomes and better enable urban and other development within environmental limits.

280. When the working group refers to the need to whakamana i te taiao it does not consider that this necessitates 'environmental protection at all co ts'. Rather it recognis s, in the same vein as environmental limits and continuous improvement, that development needs to be constrained to a 'safe space', as to go below that space (in the long term) would likely negatively impact both te taiao and te tangata.

281. **The proposed options regarding changes proposed above to Par 2 of the RMA would assist with achieving the policy objective o better aligning the RM system with te ao Māori perspectives.**

282. The working group recommends that the Panel strongly consider increasing the weighting given to the Treaty clause in the RM system We think it would be appropriate to replace 'take into account' with 'give effect to'.

283. The working group recommends that the Treaty clause be altered to read "To achieve the purpose of this Act, those performing functions under it must give effect to *Te Tiriti o Waitangi* and its principles".

284. The working group would suggest that the definition of 'Te Tiriti o Waitangi' in this clause would be the same as the current definition in the interpretation section.

285. On balance the working group considers that a mandatory NPS would be the best approach to provide further guidance and direction on how to give effect to Te Tiriti o Waitangi and its p inciples. The Minister should be directed in legislation to co-design the NPS with Māori.

286. **The proposed options regarding the Treaty clause would assist with achieving the policy objectives of ensuring that Te Tiriti o Waitangi and its principles are upheld and given appropriate weighting by decision makers throughout the RM system and ensuring that the principle of partnership is embedded into RM decision making for the majority of RM decisions.**

287. The working group considers that there needs to be a rationalisation of RMA tools for mana whenua in a way that better integrates the tools and leads to a greater ability for mana whenua to influence decisions at an earlier stage in RM processes – whilst also reducing complexity for all involved.

288. This would involve having one integrated process for local authorities and mana whenua to agree upon relevant matters and arrangements for their partnership(s).

289. As the basis for this approach the working group considers the Wai 262 recommendations on enhanced iwi management plans (IMPs) are a good place to start

and that the details of the integrated enhanced IMP process are worked through in a co-design process with Māori post the Panel's final report, including addressing the issue of where there are competing IMPs.

290. The working group considers that enhanced IMPs could be a valuable input into spatial planning processes and a legislative link should be made between IMPs and spatial plans in any spatial planning legislation.

291. **The proposed options regarding an integration of RMA tools centred on enhanced IMPs would assist with achieving the policy objectives of ensuring Māori have a more effective role in the strategic end of the system and reducing the barriers to development on papakāinga, and barriers to Māori housing more generally**

292. The future RM system should provide for a more effective role for Māori at the strategic end of the system, including as part of the governance arrangements for spatial planning.

293. The working group considers that the governance arrangemen s for spatial planning must include a role for mana whenua.

294. The working group considers that co-governance would be the ideal governance arrangement for a spatial planning processes, i.e. mana whenua should have 50% of the representation on spatial planning governance comm ttees. Ideally, the chair of these committees should be appointed from the mana whenua representati es.

295. The working group considers that where there should be of mātāwaka representation that this should be provided for as part of the central/local government 50%.

296. The working group considers that mana whenua sho ld be able to choose their own process for deciding who their representatives are on the governance groups. However, guidance could be developed for this area and could help mana whenua work through issues such as overlapping claims and interests to resources.

297. The working group conside s that the governance group for spatial plans should be directed to strive for consensus wherever possible. However, it is recognised that this may not always be possible and there should be an established pragmatic process in place for how to move forward if consensus can't be achieved.

298. In regards to other roles for mana whenua at the strategic end of the system, the working group considers that regional co-governance institutions should be established in elation to RM functions of regional councils.

299. Fur her, the working group considers that there should be involvement from experts in mātauranga Māori in any processes to inform the setting of environmental limits and targets.

300. The working group has not reached a view on whether a co-governed national institution should be established to provide, among other duties, a role ensuring implementation of the Treaty clause in a new RM system. Exploring this idea further should be something that is done as part of the subsequent co-design process.

301. **The proposed options regarding governance roles for mana whenua in the development of spatial plans, regional co-governance institutions and the involvement from experts in mātauranga Māori in the setting of environmental limits and targets, would assist with achieving the policy objectives of ensuring Māori have a more effective role in the strategic end of the system and ensuring principle of partnership is embedded into RM decision making for the majority of RM decisions.**

302. In order to support the above changes the working group considers that both central and local government should be monitored as to their Te Tiriti performance.

303. The working group has not formed a full opinion on who should be undertaking the monitoring of Te Tiriti performance. Exploring this idea further should be something that is done as part of the subsequent co-design process.

304. The working group considers that given the nature of this issue and the many factors to consider regarding what specifically should be monitored and what mechanisms are required in order to get the necessary monitoring data, that this should be a topic to be co-designed with Māori following the Panel's final report alongside the development of the proposed NPS.

305. **The proposed options regarding monitoring of Te Tiriti performance would assist with achieving the policy objective of ensuring that Te Tiriti o Waitangi and its principles are upheld and given appropriate weighting by decision makers throughout the RM system.**

306. Regarding capacity and support issues the working group considers that it would be beneficial to progress all of the options discussed in the capacity and support section of this report. Additionally it would also be beneficial to consider capacity and support for Māori who would be involved in any spatial planning processes, including what support would be required and the costs of funding that support.

307. The working group also proposes that consideration should be given as to whether a clause should be added to the RMA that specifies that where Māori are required to undertake duties and functions under the Act that their reasonable costs shall be provided for by local authorities.

308. **The proposed options regarding capacity and support would assist with achieving the policy objective of working towards improving capacity and capability for Māori to better engage and participate in the RM system**

309. Finally, the working group recommends that the Panel consider including in their final report a list of ideas that could be co-designed with Māori, post June 2020, in order to ensure that any system changes filter through and influence the entire system. Some of the working groups recommendations above discuss ideas for co-design but for convenience the specific ideas the group recommends for co-design are included in Appendix 1.

The Treaty and te ao Māori working group's overall recommended package

Problem statement:

The status quo resource management (RM) system is insufficient to provide for an effective role for Māori and to deliver better outcomes for Māori.

What needs to be achieved to fix the problem?

How should the objectives best be achieved?

Objectives:

- Better align the RM system with te ao Māori perspectives
- Te Tiriti o Waitangi and its principles are upheld and given appropriate weighting by decision makers throughout the RM system
- Māori have a more effective role in the strategic end of the system
- The principle of partnership is embedded into resource management decision making for the majority of RM decisions
- Reduce barriers to development on papakāinga, and barriers to Māori housing more generally
- Work towards improving capacity and capability for Māori to better engage and participate in the RM system

THE WORKING GROUP'S OVERALL RECOMMENDED PACKAGE

Part2:

Changes to s5 will embed te ao Māori perspectives in the core of the system and can complement western perspectives to support the overall purpose of the RM system.
This will be achieved by the inclusion of the need to whakamana i te taiao … by ensuring that:
…
(c) te mana, te tapu me te mauri o te taiao is recognised, provided for and enhanced.

The Treaty clause

Changes to the existing Treaty clause will ensure Te Tiriti and its principles are upheld and given appropriate weighting by RM decision makers.

The NPS would implement the specific changes made to Part 2.

NPS

A NPS on how to give effect to Te Tiriti and its principles and that expands upon the concept of te mana, te tapu me te mauri o te taiao will provide guidance and direction to all RM decision makers and help ensure that the changes to Part 2 filter throughout the system.

Would be a key mechanism for giving effect to the te ao Māori outcomes in Part 2.

Would ensure Te Tiriti and its principles are is given effect to.

Would ensure the NPS is given effect to.

Enhanced Iwi Management Plans

One integrated process, centred on enhanced IMPs, that rationalises the RMA tools that are particularly relevant to mana whenua interests will: feed valuable information into the spatial planning process; explicitly pinpoint how local authority plans and processes will take into account the interests of mana whenua as expressed in the enhanced IMPs; identify how iwi/hapū and local authorities will work together via mana whakahono ā rohe arrangements; and identify opportunities for s33 transfers and s36B joint management agreements for particular taonga.

Co-design process

Collaboratively refine and co-design the details of these policy options with Māori.

Monitoring of Treaty performance

Central and local government will be monitored as to their performance in regards to giving effect to Te Tiriti and its principles. This will provide transparent oversight as to whether the desired outcomes are being achieved. If they aren't assistance could be provided or other action taken as necessary in order to ensure that Te Tiriti and its principles are being upheld.

Would feed into spatial plans.

Regional spatial strategies

Co-governance of the development of regional spatial strategies will ensure that mana whenua interests are provided for and te ao Māori perspectives are recognised.

Would ensure local authorities are fulfilling the Treaty obligations delegated to them.

Implementing capacity and support initiatives

A suite of capacity and support initiatives will be implemented to ensure that resourcing barriers to not prohibit Māori from engaging in the RM system. These initiatives will include:

- Developing funding mechanisms to assist mana whenua engaging with and undertaking the enhanced IMPs process
- Directly funding mana whenua engagement with councils for RMA processes
- Central government funded advisors to sit within councils and advise and assist the council to build capability and capacity to engage with Māori
- Developing mechanisms and providing opportunities for mana whenua with significant experience and success in their involvement in the RM system to share their knowledge with other groups with less experience.
- Developing guidance (or promoting existing guidance further) that summarises legal obligations relating to Māori and identifies opportunities for Māori engagement in the RM system.
- Targeted capacity and capability building for all resource management practitioners who are involved with Māori engagement.

Capacity and support initiatives will ensure the effectiveness of these options.

Would provide direction to the lower ordering of plans.

Lower ordering of plans

Regional/district plans will need to be consistent with the regional spatial strategies. This will mean that the higher level goals of mana whenua are reflected in the policies, objectives, methods, rules and consent conditions of the lower ordering of plans.

Regional co-governance committees

Regional co-governance committees for RM matters will ensure that the lower ordering of plans give effect to the mana whenua interests and te ao Māori perspectives contained in the regional spatial strategies.

Appendix 1 – Suite of ideas for co-design

The working group recommends that the Panel consider including in their final report a list of ideas that could be co-designed with Māori, post June 2020, in order to ensure that any system changes filter through and influence the entire system.

Changes at the system level are only as good as the changes they affect throughout the system and the significance of this kaupapa means co-design between Māori and the Crown is appropriate for the development of these ideas.

Further, time has limited what the working group and the Panel have been able to consider to only the key matters relating to improving the RM system to better align with te ao Māori, but there are a number of additional matters that are also worthy of further exploration.

Cabinet has noted "that the Minister for the Environment will direct officials to look for appropriate opportunities to collaboratively refine and co-design policy options with Māori during the next phase of the review".

Some iwi, notably Ngāi Tahu and Waikato-Tainui, have commented that co-design is their expectation regarding RM reform and that they have been disappointed with the lack of co-design with the current Resource Management Bill. The comprehensive RM system reform process is an opportunity to respond to requirements in Treaty Settlements and obligations in MfE's relationship agreements.

The Panel's final report could list a number of suggestions for a subsequent co-design process to build on the system changes recommended in the Panel's final report.

Suite of ideas that could be co-designed with Māori

- A National Policy Statement which provides guidance and direction on how to give effect to Te Tiriti o Waitangi and its principles and on the concept of 'te mana, te tapu me te mauri o te taiao'. This could include statutory guidance and requirements:
    - how to recognise, provide for and enhance te mana, te tapu me te mauri o te taiao within the context of Part 2
    - how to give effect to Te Tiriti o Waitangi and its principles, including the principles of partnership, participation and protection in regards to resource management
    - on the implementation and interpretation of the te ao Māori outcome provisions in Part 2
    - procedural and engagement principles to reinforce requirements for Māori to be involved in decision making where their rights and interests are affected
    - what specific measures of Treaty performance should be monitored, how this information will be collected and reported on, and what the consequences should be of poor performance in this area

- The specifics of the one integrated process, centred on enhanced IMPs, for mana whenua and local authorities that will rationalise the current RMA tools. This could include:
    - how to feed the valuable information contained in the IMPs into the spatial planning process
    - general guidance and expectations for how to explicitly pinpoint how local authority plans and processes will take into account the interests of mana whenua as expressed in the enhanced IMPs
    - the development of best practice guidance for how to identify how mana whenua and local authorities will work together via MWaR
    - guidance and expectations on how to identify opportuniti s for s33 transfers and s36B joint management agreements for particular taonga.
- The details of regional co-governance committees including what parts of the arrangements should apply across the board and what parts should be left flexible to be determined on a case-by-case basis in each region in partnership with the mana whenua of that region.
- Consider further the options for who should undertake the monitoring of Treaty performance for both central and local government and whether regional and/or national institutions (either existing or new) ar best placed to undertake this monitoring.
- Use and definitions of Māori terms and kupu, including whether the definition of iwi authority should be kept or changed and whether a definition of hapū is required. This co-design process could consider the pros and cons of defining Māori terms in statute and the value of grea er clarity versus greater flexibility. Other terms could also be considered as part of this process including a definition of cultural landscapes and whether the current definition of kaitiakitanga is the best it could be
- Consideration of issues relating to the courts and independent hearing panels for an on-the-g ound perspectiv This could look at issues such as:
    - whether more effective participation is needed of Māori Land Court judges in Environment Court proceedings
    - whether more is needed to require expertise in tikanga Māori on independent hearing panels and to remove barriers for effective Māori participation on independent hearing panels
- C -develop non-legislative guidance on how to do best practice partnership arrangements between Māori and local government, especially in relation to planning processes.
- The development of an enduring and continuous process to identify areas where there are established system biases and barriers that frustrate Māori aspirations in the RM system, and develop tailored solutions to these issues. This could draw on feedback already heard and received from hui with Māori.

Appendix 2 – Strategic planning governance arrangements and involvement of Māori

This appendix provides an overview of governance arrangements from a desktop scan of strategic/spatial planning processes that have occurred in Aotearoa to date from the perspective of their involvement of Māori in the governance of the development of those plans.

Auckland Spatial Plan

1. The Auckland Spatial Plan (also known as just the Auckland Plan) is the only spatial plan currently required to be produced in Aotearoa. The Local Government (Auckland Council) Act doesn't contain any specific requirements for Māori participation beyond the general LGA requirements. Auckland Council would have discretion to involve Māori under s80(1) of the Local Government (Auckland Council) Act a either part of the 'communities of Auckland' or 'other parties (as appropriate)' if they so choose, but there is no specific legislative requirement to involve Māori in he development/revision of the spatial plan.
2. However, the Independent Māori Statutory Boar (IMSB – set up unde the Auckland Council Act as well) has the ability to put up to 2 members on to counc l committees that relate to resource management issues These members have full voting rights and therefore, in an indirect sense, Māori could be involved in th council committee that would be governing any revisions to th Auckland Spatial Plan
3. The Royal Commission that recommended that Auckland Council be required to prepare a spatial plan didn't appear to make any recommenda ions that required Māori participation in the development of the spatial plan beyond the existing LGA requirements. The Royal Commission did however recommend 3 Māori seats for the Auckland Council, one which would be appointed by the mana whenua board and two that would be ward seats elected by those choosing to take part in the Māori electoral role, i.e. open for mana whenua r mātāwaka. However this recommendation was not taken up.

Future Proof

4. Fut re roof is a stra egic partnership between Waikato Regional Council, Hamilton City Council, Waipa Distr ct Council, Waikato District Council, tangata whenua representatives and the New Zealand Transport Agency (NZTA).
5. The Future Proof Strategy (which contains many elements of the Panel's definition of spatial planning) was adopted by the partners on 30 June 2009 and launched by Prime Minister John Key and Kingi Tuheitia on 8 September 2009. The strategy has subsequently been updated in 2017 and a second phase of updates is currently underway to address the requirements of the National Policy Statement on Urban Development Capacity, and the Government's Urban Growth Agenda. It is anticipated that the Phase 2 update will be completed in 2020.
6. Future Proof is governed by the Future Proof Implementation Committee. The Committee is made up of two elected members from each partner council and three representatives nominated by tangata whenua - one from the Tainui Waka Alliance, one from Waikato-Tainui and one from Ngā Karu Atua o te Waka (Future Proof tangata whenua reference group). The Committee has additional representation from the New

Zealand Transport Agency and the Waikato District Health Board. Hence this committee has a 23% membership comprised of tangata whenua.

7. The Committee also has membership for the Hamilton to Auckland Corridor Plan programme. This membership includes Central Government, Auckland Council and Tāmaki Makaurau iwi representation from the Auckland Mana Whenua Kaitiaki Forum and is chaired by an independent chairperson. This committee has a 33% membership comprised of tangata whenua. The Committee receives advice from Ngā Karu Atua o te Waka, a forum providing input on matters relevant to tāngata whenua. It also receives input from the Waikato Plan and Future Proof Strategic Partners Forum

SmartGrowth

8. SmartGrowth provides a unified vision, direction and voice for the future of the western Bay of Plenty. The SmartGrowth strategy is focused on implementation and Future Thinking. It has a 50-year horizon with particular focus on the next 20 years.

9. Collaboration and partnership sit at the heart of the SmartGrowth way of working. The three partner councils, Bay of Plenty Regional Council, West rn Bay of Plenty District Council and Tauranga City Council and tangata whenua provide governance oversight to SmartGrowth via a joint committee. Government agenc es particularly the NZ Transport Agency, play important roles in all a pec s of SmartGrowth's work.

10. The governance arrangements include an independent chair, three members from each council, four tangata whenua members, one DHB member and one NZTA member. Hence this committee has a 27% membership comprised of tangata whenua.

11. The tangata whenua representatives consist of one member appointed by the Tauranga Moana Tangata Whenua Collective (TCC), one member appointed by the Partnership Forums (WBOPDC), and two members elected by the Combined Tangata Whenua Forum (CTWF).

12. The CTWF has membe ship comprising the Tauranga Moana Tangata Whenua Collective (TCC) and iwi/hapū members of Partnership Forums (WBOPDC). The Forum actively engages and par icipates at the gov rnance, management and operational levels of the partnership. In 2012 the Forum prepared the Aspirational Plan to help tangata whenua respond o a range of proposals, activities, policy directions, strategies and plans in the wester Bay of Plenty. The Aspirational Plan articulates the cultural, social, environmental, economic and political aspirations of Māori. It is underpinned by the Treaty of Waitangi and is informed by range of cultural ethic and principals.

Chr stchurch Urban Growth Strategy

13. The *Gre ter Christchurch Urban Development Strategy* (the Strategy) is a broad-scale, long-term land use strategy for the greater Christchurch area prepared under the LGA. It aims to provide a basis for managing growth in the region in a proactive, integrated and sustainable manner. The strategy was development by a partnership of Christchurch City Council, Selwyn District Council, Waimakariri District Council, Environment Canterbury and tangata whenua.

14. The Partnership has subsequently developed a complementary strategy called *Our Space 2018-2048: Greater Christchurch Settlement Pattern Update* that outlines land use and development proposals to ensure there is sufficient development capacity for housing and business growth across Greater Christchurch to 2048.

15. The Partnership now comprises of the councils in the Greater Christchurch area (Christchurch City Council, Environment Canterbury, Selwyn District Council,

Waimakariri District Council), iwi (Te Rūnanga o Ngāi Tahu), and government organisations (NZTA, Canterbury DHB, the Greater Christchurch Group (part of DPMC), and Regenerate Christchurch).

16. The Partners have set up a joint committee, the Greater Christchurch Partnership Committee (GCPC), with representatives from each Partner's organisations to lead and coordinate the projects. Three members of the committee are from each council and Ngāi Tahu, one from the DHB. DPMC, NZTA and Regenerate Christchurch each have on non-voting member on the committee. Hence this committee has 19% of the voting membership comprised of tangata whenua.

Sea Change – Tai Timu Tai Pari

17. Sea Change was a marine spatial planning exercise for the Hauraki Gulf undertaken in partnership between mana whenua, Auckland Council, Waikato Regional Council, DOC, MPI and the Hauraki Gulf Forum.

18. The structure of Sea Change involved a collaborative Stakehold r Working Group (to develop proposals), a Project Steering Group (to provide governance) and a Project Board (to provide strategic management). Mana whenua were involved in all of these groups.

19. In regards to the Project Steering Group, this reflected a Te Tiriti o Wa tangi/Treaty of Waitangi partnership model, with eight mana whenua representatives, including a Mana Whenua-selected co-chair (Paul Majurey), work ng with eight central and local agency representatives to provide governance and strategic oversight of the project and outcomes. Hence this group had 50% of the membership comprised of mana whenua.

20. The Project Steering Group had two key jobs: providing leadership during the Sea Change – Tai Timu Tai Pari process and, ultimately, recommending to councils and other agencies how the plan can e put into practice.

Other strategic planning processes that didn't appear to involve Māori in the governance arrangements for their development

21. The Dunedin Spatial Plan – Dunedin Towards 2050 didn't appear to involve Māori in the governance arrangements fo the development of the spatial plan, with the development and governan e appearing to be solely lead by the Dunedin City Council. However they did consult with central government, Otago Regional Council, tangata whenua and community organisations and plan to build on and expand collaboration with these groups in the first review of the spatial plan. Kāi Tahu ki Otago was also commissioned to provide content for the Spatial Plan from an iwi perspective.

22. Wellington Towards 2040: Smart Capital was developed in 2011 and focuses on the future development of Wellington over the next 30 years. Work on developing the strategy took place over two years and whilst this involved the expertise and input of many people from Wellington, Māori did not appear to be involved in the governance arrangement for the spatial plan.

23. The Nelson Urban Growth Strategy was a strategic planning process that began in 2003 which involved contracting ecological specialists Boffa Miskell to work on a draft policy for public consultation. This consultation occurred in 2005 which included various public meetings. It does not appear that Māori were specifically involved in either the governance for the development of the strategy or as specific part of the consultation.

24. Gisborne Council is in the midst of developing a spatial plan - Tairāwhiti 2050. Tairāwhiti 2050 is a long term, integrated strategy that sets the direction for regional development,

planning, investment and decision-making. A draft of the plan has been developed and Māori did not appear to be involved in the governance arrangements for developing the draft plan. However to develop the plan the Council consulted with targeted groups, including iwi, and there are more hui to come with rangatahi, townships, iwi and hapū. They are considering a Joint Agency Steering Group that would include key partners, Activate Tairāwhiti, Tairāwhiti Roads, Eastland Community Trust and Iwi.

25. The Heretaunga Plains Urban Development Strategy (HPUDS) is the result of a collaborative approach by the Hastings District Council, Napier City Council and Hawke's Bay Regional Council towards managing urban growth on the Plains from 2015 to 2045. The joint Strategy was first adopted in 2010, then a reviewed version re-adopted by the three councils in early 2017. The strategy does appear to have involved Māo i in the governance arrangements for the development of the plan. However, the HPUDS implementation working group includes membership that has two representatives of mana whenua, plus three members and the chief executive of each of the three partn r councils. Hence, this group has 14% membership of mana whenua.

26. The Whangarei District Growth Strategy: Sustainable Futures 30/50 was produced in response to growth in the district over the period 2001-2008. It was adopted by the council in 2010. This Strategy was been developed in a collaborative and integrated way. Input was been provided by experts across the Coun il and external agen ies. Māori did not appear to be involved in the governance arrangements for the de elopment of this strategy. However the council does have a strategic partnership forum with Māori, Te Kārearea, which is made up of hapū representatives of the major hapū groupings from within the district. Together, these representatives advocate for hapū of Whangarei. They meet in their own forum, nam d T Huinga, to discuss common issues that are then brought to Te Kārearea. The purpose of this partnership is to build the relationship between Council and Whangare hapū and to develop stronger partnerships, over time.

Appendix 3 – An example of a pragmatic consensus model

The below model was used by the Collaborative Stakeholder Group (CSG) in the Healthy Rivers/Wai Ora water quality plan change to give effect to the Vision and Strategy for the Waikato River.

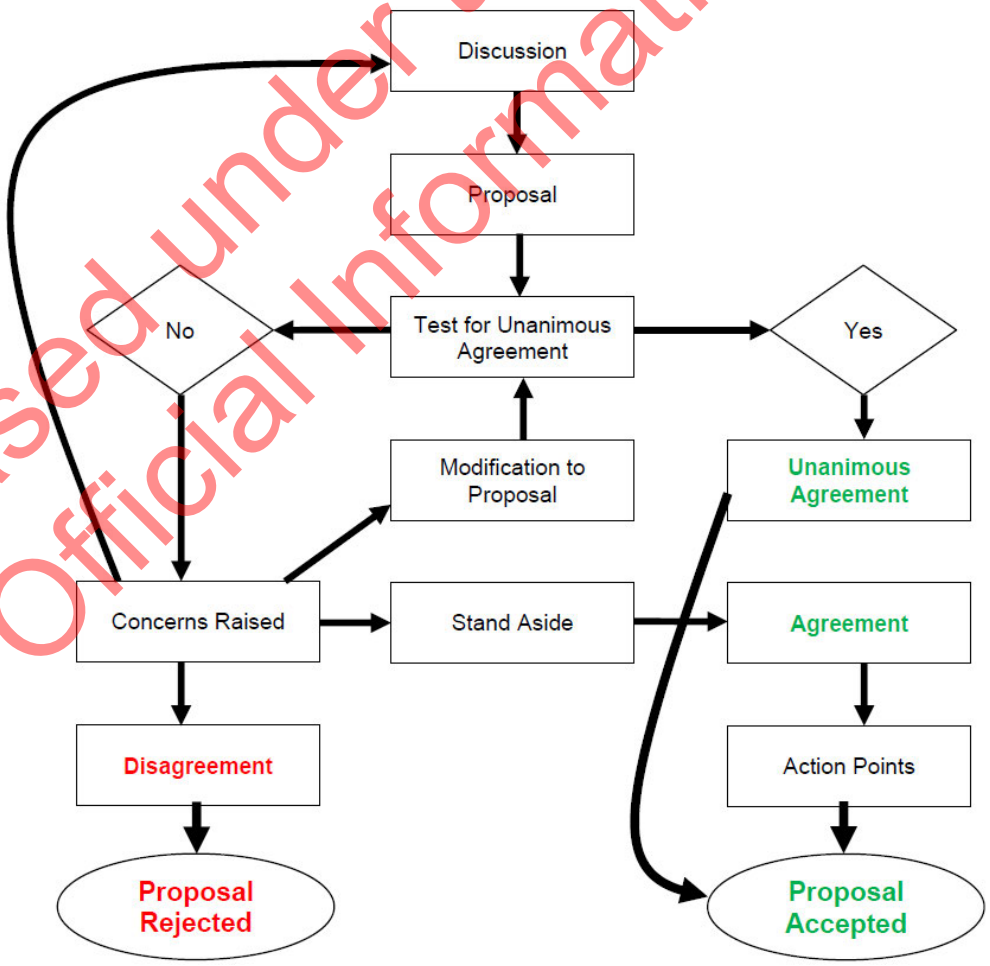
CSG decision making process

CSG members will base their decision making process on the following framework. They have defined consensus in the context of the Healthy Rivers Wai Ora project as "unanimous agreement".

When the group has discussed the issue fully and a clear proposal is put forward for resolution, the proposal is tested with the whole group to see the level of agreement. The three possible responses to the question about agreement with the proposal are:

- I agree
- I stand aside (don't agree but understand and can live with the proposal)
- I disagree with the proposal.

The group will strive for unanimous agreement. The Chairperson will have an active role in assisting the group to decide upon when a sufficient level of agreement has been met, and in ensuring all voices are heard throughout the decision making process.



If, when tested, all members agree with the proposal, then a unanimous agreement is said to be achieved and the proposal is accepted.

If unanimous agreement is not achieved:

1. Those who have concerns must articulate them.
2. If the concerns are shared, then the proposal may be modified to alleviate them or the concerns explained away to the concerned member's satisfaction.
3. The proposal (either original or modified) is again tested for unanimous agreement. If all members agree with the proposal then a unanimous agreement is said to be achieved and the proposal is accepted.
4. If the proposal is not agreed unanimously but there are no members who disagree, i.e. some members choose to stand aside, then an agreement is said to be achieved and the proposal is accepted.
5. If the proposal is not agreed unanimously and there is a least one member who disagrees with the proposal then the group has to decide whether the level of disagreement is sufficient to warrant:
    a. further modifications to the current proposal
    b. disagreement and thus rejection of the proposal. This will result in further discussion, another potential solution and new proposal
    c. agreement and thus acceptance of the proposal.

Those who disagree must articulate their concerns and genuinely work with other group members to see whether these concerns can be alleviated through modifications to the proposal, or through increased understanding as a result of more information.

Those who stand aside accept the proposal despite having reservations or concerns and share the responsibility for the decision-making. The number of members who stood aside will be noted.

The group sometimes may decide to proceed with the proposal even though there are disagreements. In this case there would need to be a clear record of the identity of those disagreeing, their concerns and the reasons for these concerns. The Chairperson will have a key role in judging when to proceed.

Adapted by Twyfords and the Healthy Rivers Wai Ora Collaborative Stakeholder Group from Consensus Decision Making http://www.seedsforchange.org.uk/consensus.

Appendix 4 – Further information on monitoring of Treaty performance

1. There is a volume of literature available that promotes the need for Treaty-based monitoring and examines a variety of frameworks. Early work on this subject was prepared by the Parliamentary Commissioner for the Environment (PCE) in 2003, accompanied by case studies. Recent work by PCE includes examples of the use of mātauranga Māori in State of the Environment (SoE) indicators and data collection.

2. Waikato University is also a source of research into kaupapa Māori frameworks for measuring outcomes. Academic literature produced in 2009 under the PUCM (Planning Under Cooperative Mandates) programme includes a literature review on environmental performance outcomes and indicators for indigenous peoples, as well as recommendations for a framework of outcomes and indicators intended for iwi us

3. In theory, the RMA s35 monitoring requirements that local authorities are required to undertake should include all provisions which would give effect to Te Tiriti and its principles, particularly in the area of policy effectiveness, resource consen s, and exercise of protected customary rights. Indeed, examples are available online which include analysis of Treaty-related provisions.[61] However, s35 monitor ng is not done by every local authority, and those that do tend to focus on the state of the environment and/or a few aspects of a plan that are proposed for change.[62]

4. Several central government agencies have monitoring functions currently. TPK has a broad monitoring function under the Ministry of Māori Development Act 1991, which supports the state sector to achieve improved outcom s for Māori. This could be configured to be able to have an additional focus on monitoring for Treaty performance.

5. MfE runs the national monitoring system (NMS) which that collects data about Resource Management planning and implementation from local government on an annual basis. Basic data on iwi participation in the system has been collected for a number of years, including the lodgement of Iwi/hap planning documents, whether budget is committed to support iwi/hapū participation, and the number of relationship agreements with iwi. Last year data on Schedule 1 compliance with iwi engagement was added. In the 2019/2020 dataset, several new indicators have been added that will paint a more detailed picture of the state of iwi/hapū participation in resource management with local government. The list of these indicators include:

- s32 record of iwi advice and whether/how given effect (new for 19/20)
- Whether Iwi were consulted on appointment of commissioner (for plan change and consent hearings)
- Whe her resource consent application referred to iwi/hapū
  #FTE employed as iwi relationship managers/liaison officers
- Capability and capacity tools available for staff to take into account 6(e)(f)(g), 7(a) and 8 for planning/decision making

[61] Nelson City Council Efficiency and Effectiveness Review 2012/2013 includes a "Māori" chapter. http://www.nelson.govt.nz/assets/Environment/Downloads/Efficiency-Effectiveness-S35-FINAL-REPORT-APR2013.pdf

[62] In 2015 MfE staff made a list of which councils had section 35 reports on their website, and made further enquiries with councils that did not. Most of the 48 who did not stated they had not done any section 35 reporting. Some of these councils cited resourcing issues.

6. The NMS questionnaire does not provide the kind of qualitative data needed to understand the effectiveness of local government's implementation of the RMA, but it does provide basic indicators for whether/to what extent particular tools and processes are in use.

7. Measures could be added to the NMS to monitor for Treaty performance of local government. One suggestion provided in response to research questions is to co-design measures with local government and iwi that would be helpful to support continuing improvement for all parties.

8. Other agencies provide periodic monitoring of Treaty obligations in resource management, usually focussed on one aspect of iwi/hapū involvement (such as resource consents, or participation approaches). Local Government New Zealand (LGNZ) hosts a number of these kinds of reports. The purpose of these reports appear to center on sector-wide improvement via information sharing rather than accountability for any one agency. A particularly useful stocktake of Council/Māori participation arrangements was jointly done by LGNZ, TPK, and MfE in 2004 and again in 2015.[63]

9. The views of kaitiaki on working with local government have been recorded by TPK in 2012 and 2019.[64] While not an audit, these reports provide a window on the state of resource management participation and process from the point of view of iwi representatives.

10. Te Arawhiti, the office for Māori-Crown relations, maintains Te Haeata – a database of Treaty Settlements and their provisions to assist with their ongoing implementation. Specific post-settlement commitments are monitored by Te Kāhui Whakamana (post-settlement commitments unit), however these are taken up responsively rather than through a systematic monitoring programme.

11. In Auckland, the Independent Māori Statutory Board (IMSB) has a monitoring function.

12. The IMSB undertakes a 3 yearly audit on the Auckland Council group of agencies.[65] The IMSB commissions an external accounting firm (PWC) to prepare the audit, which is based on the inspection of key documents and interviews with relevant staff

13. The audit addresses Treaty obligations holistically across Auckland Council's governance, policies, and operations, focusing in the most recent report on the completion of 60+ actions from prior audits and internal Māori Responsiveness Plans. For this reason it is structurally different from s35 monitoring, but the audit actions and Māori Responsiveness plans do include resource management.

14. Fully independent audits of local government RMA implementation appear to be rare. IMSB's audit is the most independent in terms of how it is commissioned, though the Waikato Regional Council's series of independent technical reviews called *Māori Perspectives on the Environment* was likewise done at arms-length from the council that commissioned it.

[63] LGNZ 2017. Council/Māori Participation Arrangements. https://www.lgnz.co.nz/assets/Uploads/2dac054577/44335-LGNZ-Council-Maori-Participation-June-2017.pdf and

[64] The 2019/2020 survey of Kaitiaki by TPK is not yet published.

[65] Including Auckland Council and Panuku