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**CROWN AND IWI CO-MANAGEMENT:
A Model for Environmental Governance
in New Zealand?**



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GLOSSARY

Ahi ka – right of occupation and use

Kaitiaki – a steward

Kaitiakitanga – stewardship

Kawa – customs / protocols

Kotahitanga – unity

Mahinga kai – food gathering places

Mana – authority / power / prestige / influence

Mana whakahaere – inherited rights / control

Mana whenua – territorial rights / possession and occupation of tribal lands

Mātauranga Māori – indigenous knowledge

Mauri – life force

Mokopuna – children / grandchildren / descendants

Noa – ordinary, everyday, free from restrictions of tapu. In an environmental context this might be an abundant resource.

Rahui – ritual prohibition or ban

Rohe – tribal boundaries

Tangata Whenua – people belonging to the land

Taonga – treasure / highly prized

Tapu – sacred, dedicated, protected, not the ordinary or everyday.

Tihei mauri-ora – the sneeze of life

Tikanga – rules/ methods

Tūpuna – ancestors

Utu – reciprocity / revenge

Waahi tapu – literally ‘sacred place’; places of significance to iwi, hapu or whanau where tapu is applied.

Whakapapa – traditional relationships

Whakatauki – environmental / geographic landmarks that identify iwi and hapū boundaries

EXECUTIVE SUMMARY

The Waikato-Tainui ‘deal’¹ resulted in a unique settlement whereby Iwi and the Crown (local government appointees) co-manage the Waikato River through the 10 member Waikato River Authority. Using the Waikato River deal as a case study, this policy project operationalizes the concept of co-management. It develops a model of co-management and using comparative institutional analysis evaluates it against status quo environmental management in New Zealand. This comparison is undertaken in order to address two government policy failings: the need to offer substantive Māori representation in environmental governance and institute a stronger model of sustainability. The findings reveal that the co-management model effectively addresses the policy failings of the status quo system and offers an attractive governance alternative which is based on the notion of indigenous environmental ethics.

¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Other Iwi involved in the co-management of the waterway are Raukawa Trust Board, Te Pumautanga O Te Arawa, the Tuwharetoa Maori Trust Board, and the Maniapoto Trust Board.

Author Reflections

*'Who writes? For whom is the writing being done?'*²

At the outset of this report it is necessary to identify myself (the author) as a Pākehā. I do this to alert the reader to my 'situatedness'³ as a researcher. *All* research carries the biases of the researcher(s). Rather than deny our subjectivity, researchers and analysts have an ethical obligation to acknowledge this and reflect on how it may affect our work. The subject of this report is environmental co-management. This report analyses the idea in a New Zealand context and in reference to Māori worldviews, values, traditions and culture. In exploring the value of indigenous ecological wisdom for environmental governance it was necessary to avoid perpetuating the appropriation of indigenous knowledge and experience by 'outsiders' and in doing so silence the indigenous voice.⁴ To the greatest extent possible evidence on the indigenous experience was drawn from indigenous and Māori authors. I make no claims to expertise and forthrightly acknowledge what might be a crude representation of a truly important worldview. For whom do I write? For tangata whenua and for the environment. I do not think this duality would be begrudged by Māori, for reasons that should become clear. Finally, like most policy analysts I write for betterment and change. Rather than an end in itself this report is merely a beginning. It aims to contribute to the discursive space, carved out by Māori – and growing – about how to give effect to their role as kaitiaki. It aims to call attention to two government failings; the failure to adequately include Māori in environmental governance, and, in failing to enable kaitiakitanga, the failure to ensure a healthy environment. From this position it aims to explore the opportunities of a system which seeks to pass on a healthy environment for future generations of New Zealanders.

Ki te kore te putake e makukungia,

E kore te rakau e tupu

If the roots of the tree are not watered, the tree will never grow

² Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples* (Dunedin: University of Otago Press, 1999), 37.

³ See; Brooke Ackerley and Jacqui True, *Doing Feminist Research in Political and Social Science* (Basingstoke: Palgrave Macmillan, 2010).

⁴ See; Smith.



"The river's been waiting so long... we'll all need to have our friends, all the councils ... everyone working for one goal."

Lady Raiha Mahuta⁵

INTRODUCTION

Persistent environmental despoliation in spite of the intricate system of environmental governance has frustrated Māori. The traditional role of tangata whenua as kaitiaki has been continually undermined and their cultural values viewed as mystical but with little practical value for environmental governance. So when environmental issues have arisen in Treaty of Waitangi settlement negotiations, co-management – that is, Maori insistence on their participation in environmental management – has seemed like an attractive alternative to status quo environmental governance. This report begins with a discussion of Māori culture and reflects on the value of indigenous ecological wisdom for achieving sustainability. It describes the co-management arrangement that has been established for the Waikato River and catchment area among local authorities and Waikato River iwi. From this case study a model of co-management is developed. Rather than propose a specific design of co-management this analysis has identified key principles of the system and assessed what these might achieve. Through comparative

⁵ Late wife of Sir Robert Mahuta and Waikato-Tainui River Settlement Co-negotiator. Lady Mahuta died just days before the empowering legislation was passed in Parliament. Quoted in: Yvonne Tahana, 'Waikato waterways co-management settlement could apply elsewhere' *NZ Herald* (18 December 2009).

institutional analysis the model and the status quo are compared against environmental, economic, social and cultural criteria. The analysis reveals the deficiencies of the current system and the advantages that the co-management model offers, as both a settlement option and also as a broadly implemented governance alternative. Finally the report concludes with a recommendation for moving forward with the model of co-management through the establishment of a bi-cultural working group to investigate options for design and implementation.

CONTEXT

Mātauranga Māori

The Māori worldview is reflective of a common indigenous link to land and environment that has given rise to the term 'ethnoecology'.⁶ 'While there are significant differences between indigenous peoples in their historic and recent experiences, there are also remarkably similar ways of understanding nature and their part in it.'⁷ Māori believe they are direct descendants of their environment; descendants of Ranginui and Papatūānuku, sky father and earth mother. Tane, their son, created 'his own dominion in the form of trees, birds, insects and other living things. He then sought to create human life and succeeded in combining elements of both Rangi and Papa. He fashioned a female figure (Hineahuone) from earth and breathed life – mauri – into her nostrils.'⁸ Everything has a mauri ('inherent life essence'⁹), and everything is linked through an 'ecological synergy spiral' that flows 'outwards and connects multiple threads' essentially linking everything and giving them shape and meaning.¹⁰ The practice of whenua kit e whenua – burying of placenta - exemplifies this connection. The word 'whenua' denotes

⁶ V. M. Toledo, "Indigenous Peoples and Biodiversity" in *Encyclopedia of Biodiversity*, edited by S. Levin (San Diego: Academic Press, 2001); James A. S. Musisi, "Cultural Diversity and the Environment: The Case for Indigenous Peoples," in *Indigenous Peoples, the Environment and Law*, edited by Lawrence Watters (Durham, NC: Carolina Academic Press, 2004), 5; Jack P. Manno, "Haudenosaunee Great Law of Peace: A Model for Global Environmental Governance," in *Democracy, Ecological Integrity and International Law*, edited by J. Ronald Engel, Laura Westra and Klaus Bosselmann (Newcastle Upon Tyne: Cambridge Scholars Publishing, 2010), 158-159; Russell Lawrence Barsh, "Indigenous Peoples," in *The Oxford Handbook of International Environmental Law*, edited by Daniel Bodansky et al. (Oxford: Oxford University Press, 2007), 835; Sheldon Kamieniecki and Margaret Scully Granzeier, "Eco-cultural Security and Indigenous Self-Determination: Moving Toward a New Conception of Sovereignty" in *The Greening of Sovereignty in World Politics*, edited by Karen T. Litfin (Cambridge, MA: MIT Press, 1998), 261; Linda Te Aho, "Attempting to Integrate Indigenous Traditional Knowledge of Waterways with Western Science: To Restore and Protect the Health and Well-Being of an Ancestral River," in *Kei Muri I te Awe Kōpara he Tangata Kē, Recognising, Engaging, Understanding Difference: 4th International Traditional Knowledge Conference 2010*, edited by Joseph S. Te Tito and Susan M. Healy (Auckland: Knowledge Exchange Programme, 2010); Te Puni Kōkiri, "Mauriora Ki Te Ao: An Introduction to Environmental and Resource Management Planning," (Wellington, 1993), 9.

⁷ Mason Durie, "Outstanding universal value: how relevant is indigeneity?" in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010), 241.

⁸ "Maori Values and Environmental Management," *The Natural Resources Unit of Manatu Maori* (1991).

⁹ Morris Te Whiti Love, "A Study Based on the Traditional and Modern Aspects of Water and Waste Management from a Maori Perspective," *A Report for the Ministry for the Environment* (1992), 4.

¹⁰ Durie, 242,239.

both land and placenta or afterbirth. Likewise tūrangawaewae is a term linking individuals with a site or location. It conveys the link between people and the place from which their individual and collective identity is derived and constantly alluded to.



Tuhoe trace their origins to the ancient union between Te Maunga (the mountain) and Hinepūkohurangi (the mist maiden).¹¹ Their place, Te Urewera is also who they are as a people.

Photo: G. Norman (2010)

All elements of the natural world are linked through whakapapa, their common heritage from a common ancestor, and all these elements are taonga.¹² The value assigned to taonga exists irrespective of humans – they are intrinsically valuable.¹³ Hence, Māori envision themselves as a part of the ecosystem, ‘belonging to nature rather than ascendant to it.’¹⁴ Humans possess mauri-ora, a higher order than mauri, which confers

¹¹ Rangi Mataamua and Pou Te Rangiaua Temara, “Ka mate kāinga tahi, ka ora kāinga rua. Tūhoe and the environment – The impact of the Tūhoe diaspora on the Tūhoe environment” in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010), 97.

¹² Nganeko Kaihau Minhinnick, *He Tohu Whakamahara Ki Nga Mokopuna Me Nga Uri Whakatupu O Kai Whare*, (Auckland: Author Published, 1989).

¹³ Te Puni Kōkiri.

¹⁴ “Maori Values and Environmental Management,” (1991).

on them the responsibility of kaitiaki and the preservation of the mauri of other living things.¹⁵

Kaitiakitanga is an inherited commitment and obligation of the tangata whenua, to safeguard and care for the environment for tūpuna and mokopuna, and for future generations.¹⁶ The role of the kaitiaki is spiritual – they are the assistants of the gods – and their role carries mana. Kaitiaki are tasked with preserving the mauri of taonga in the area of which they hold mana whenua, their ancestral lands and seas, according to the tikanga and kawa of the tribal rohe.¹⁷ The role of the Kaitiaki includes imposing rahui, a temporary restriction on a resource; for replenishment, to stop unsustainable use, or when an accidental death has occurred.¹⁸ Similarly, kaitiakitanga is about maintaining access to, and use of waahi tapu, and ensuring their protection.¹⁹ The concept of utu is important to understanding kaitiakitanga; the environment provides, and for this people must maintain its integrity. If this is not achieved mana is lost.²⁰

Whither Co-Management? The Waikato-Tainui Deal

The idea of co-management is not a new one. Co-management (also called joint management) refers to a system of decision-making which involves two or more parties. Many examples of domestic and international co-management arrangements exist (see Appendix A).²¹ It is part of a broader worldwide trend of indigenous peoples calling attention to the contributions of their knowledge and methods to environmental governance.²² The co-management arrangement between the Waikato River Iwi and local government is a recent and apt example of this trend.

¹⁵ "Maori Values and Environmental Management," (1991).

¹⁶ Rachael Selby, Pātaka Moore and Malcolm Mulholland eds., *Maori and the Environment: Kaitiaki* (Wellington: Huia Publishers, 2010), 1.

¹⁷ Environment Waikato Internal Technical Report No. 3, "Maori Perspectives Of The Environment: A Review of Policy Submissions Made by Iwi to Environment Waikato," (October 2003), 4.

¹⁸ Environment Waikato Internal Technical Report No. 2, "Maori Perspectives Of The Environment: A Review of Environment Waikato Iwi Environmental Management Plans," (September 2003), 6.

¹⁹ Environment Waikato (October 2003), 4.

²⁰ Margaret Mutu, "Ngāti Kahu kaitiakitanga," in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcolm Mulholland (Wellington: Huia Publishers, 2010), 14-15

²¹ Te Rina Warren, "Ngā Pae o Rangitikei – a model for collective hapū / iwi action" in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcolm Mulholland (Wellington: Huia Publishers, 2010); Rotorua Lakes Strategy Co-Management Options Report, "Co-Management Options," (October 2001), 18-27.

²² Melissa Cragg, "The Application of Custom to Contemporary Māori Resource Development," in *Kei Muri I te Awe Kāpara he Tangata Kē, Recognising, Engaging, Understanding Difference: 4th International Traditional Knowledge Conference 2010*, edited by Joseph S. Te Tito and Susan M. Healy (Auckland: Knowledge Exchange Programme, 2010), 99; Minhinnick; Clinton L. Beckford et al., "Aboriginal Environmental Wisdom, Stewardship and Sustainability: Lessons from the Walpole Island First Nations, Ontario Canada" *The Journal of Environmental Education* 41 (2010): 239; Ronald Niezen, "The New Politics of Resistance" in *The Indigenous Experience: Global Perspectives*, edited by Roger C. A. Maaka and Chris Andersen (Toronto: Canadian Scholars' Press, 2006); Franke Wilmer, "Taking Indigenous Critiques Seriously: the enemy 'R' us," in *The Greening of Sovereignty in World Politics*, edited by Karen T. Liftin (Cambridge, MA: MIT Press, 1998).



Map1 : The Waikato River, tributaries and catchment area

Source: Environment Waikato Website <<http://waikatoregion.govt.nz/Environmental-information/Rivers-lakes-and-wetlands/healthyrivers/Waikato-River/How-clean-is-the-Waikato-River/>> [accessed 10 October 2011].

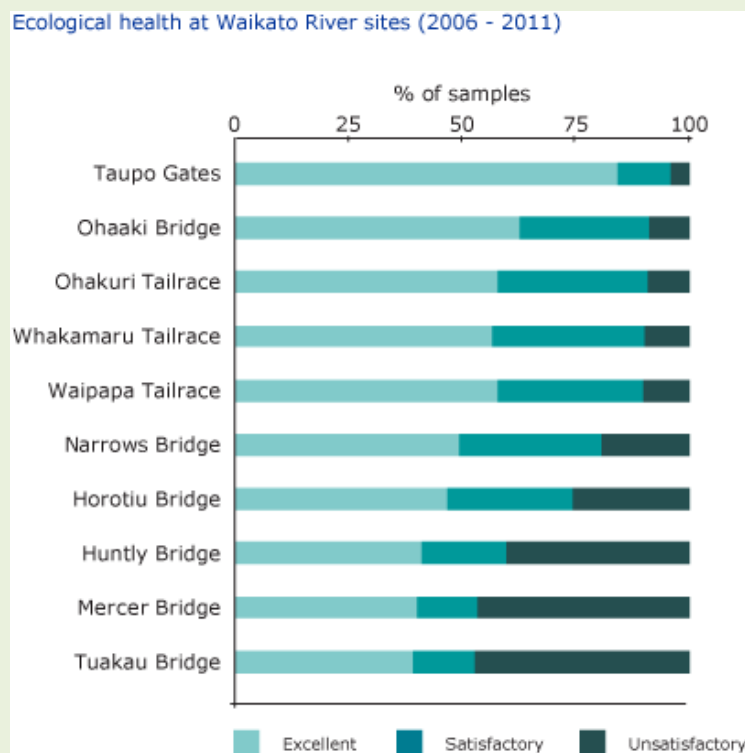
The Waikato river is Tainui's tūpuna. They state, 'our relationship with the river and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.'²³ 'The river is the physical embodiment of the mana and mauri of the tribe.'²⁴ Mana whakahaere embodies the authority that Waikato-Tainui and other River tribes have established in respect of the Waikato River over many generations, to

²³ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 8.

²⁴ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Preamble, para 1.

exercise control, access to and management of the Waikato River and its resources in accordance with tikanga (values, ethics and norms of conduct).²⁵

However, human activities have degraded the health and well-being of the Waikato River.²⁶ Roughly 78% of Environment Waikato monitoring sites fail to meet guidelines for satisfactory water quality. E-coli bacteria (from animal and human faeces) and arsenic are at such levels that it is not safe to swim or drink directly from the river.²⁷ Water quality declines from its “excellent” source at Lake Taupo to the coast at Port Waikato. The health of the river reduces steadily as sources of pollution and nitrogen are added to the flow of water through the intensively farmed lower catchment area.²⁸



Graph 1: The graph shows that water quality is “good enough” for plant and animal life although this declines along the length of the river.²⁹

²⁵ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Preamble, para 2.

²⁶ Guardians Establishment Committee, *Waikato River Independent Scoping Study* in Te Aho (2010).

²⁷ Environment Waikato Website <<http://waikatoregion.govt.nz/Environmental-information/Rivers-lakes-and-wetlands/healthyivers/Waikato-River/How-clean-is-the-Waikato-River/>> [accessed 10 October 2011]; Yvonne Tahana, “Deal to streamline River management” *NZ Herald*, 3 December 2009.

²⁸ Environment Waikato Website <<http://waikatoregion.govt.nz/Environmental-information/Rivers-lakes-and-wetlands/healthyivers/Waikato-River/How-clean-is-the-Waikato-River/>> [accessed 10 October 2011].

²⁹ *Ibid.*

The hydro dams along the upper River mean that the River flow is five times slower than what would occur naturally. The flow modification affects the quality of the water because a slower flow and warmer water in the summer months causes extensive eutrophication: the growth of free-floating algal cells (called phytoplankton).³⁰ The photographs illustrate the colouration changes due to eutrophication from the clearer waters at Huka Falls to the River where it passes through Hamilton City.



The Huka Falls, just north of Lake Taupo, the Source of the Waikato River
Source: G. Norman (2010)



Waikato River at the Malcolm Street Beach, Hamilton City.
Source: V. Norman (2011)

³⁰ *ibid.*

In 1995 Waikato-Tainui and the Crown reached a Treaty settlement that addressed the historical confiscations of tribal lands in the 1860s. Since the Resource Management Act 1991 (RMA) came into effect, Waikato-Tainui have been involved as respondents in many consent hearings, seeking conditions which would protect the River.³¹ Tainui's concerns over the state of the River and their claims in relation to it were set aside from the settlement for further negotiations. These commenced in 1999, led by Sir Robert Te Kotahi Mahuta on behalf of Waikato-Tainui. The impetus for the iwi's claim was their concern over the polluted state of the River and their lack of involvement in management of the waterways.³² Following Sir Robert's death, negotiations recommenced in 2005, leading to the deed of settlement and the Kingitanga Accord between the Crown (during the labour government) and Waikato-Tainui dated 22 August 2008.³³ On 17 December 2009 the Crown and Waikato Tainui signed a revised deed of settlement. Other Iwi involved in the deal were Raukawa Trust Board, Te Pumautanga O Te Arawa, the Tuwharetoa Māori Trust Board, and the Maniapoto Trust Board.

The deal was given recognition in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. Together they establish a statutory body called the Waikato River Authority (previously called the Guardian's Establishment Committee). The Authority consists of 10 members, five representing the local authority and five representing iwi. The relationship is guided by certain principles of cooperation, good-faith, openness and honesty, and the overarching goal of restoring and protecting the River for future generations.³⁴ The Authority holds monthly meetings, generally open to the public, and must monitor efforts and report to the Crown and Tainui every 5 years.³⁵

³¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Preamble, para 14.

³² April Bennett, "Uncharted waters – recent settlements as new spaces for enhancing Māori participation in fresh-water management and decision making" in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010).

³³ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Preamble, para 15.

³⁴ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 44.

³⁵ Waikato River Authority Website <http://www.waikatoriver.org/about-the-waikato-river-authority/what-we-do/> [accessed 24 October 2011]; Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 23.



Map 2: Waikato River Authority Catchment Area

Source: Waikato River Authority Website < <http://www.waikatoriver.org/about-the-waikato-river/catchment/> > [accessed, 24 October 2011].

A powerful feature of the Waikato-Tainui Act is the ‘vision and strategy’ set out in its second schedule (see Appendix B). It is effectively binding on all national, regional and district policy and decisions for the management of the River. The Authority sets the direction for achieving the vision and strategy and promotes and integrated, holistic, co-ordinated approach for managing the River.³⁶

³⁶ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 22.

The deal also created the Waikato River Clean-up Trust, a \$210 million fund to clean up the River over 30 years. The object of the Trust is the restoration and protection of the health and wellbeing of the Waikato River for future generations.³⁷ The Authority is Trustee and in October of this year it invited applications for funding of clean-up projects, with a total of \$6 million available for the first year.³⁸ Waikato-Tainui will also receive \$30 million for capacity building.

An Integrated River Management Plan must be prepared within three years of the settlement.³⁹ The purpose of the plan is to achieve an integrated approach between Waikato-Tainui, relevant departments, relevant local authorities, and appropriate agencies for the management of aquatic life, habitats, and natural resources within the Waikato River, consistent with the overarching purpose of the settlement.⁴⁰ A Joint Management Agreement must be made between each local authority and the Trust within 18 months of settlement.⁴¹ The Agreement is the basis for each local authority and the Waikato River Authority to work together to carry out their duties, functions and powers such as enforcement and resource consents.⁴²

ANALYTICAL STRATEGY

Increasingly, commentators are saying that co-management arrangements ‘herald a newfound maturity in the relationships between iwi and local government in managing environmental resources.’⁴³ The Waikato example, and the present issues with Tuhoë and Te Roroa (see Appendix A) demonstrate the salience of co-management in the on-going debate about how to structure New Zealand’s environmental governance. Thus it is necessary to interrogate the appropriateness of co-management, and in doing so develop a clearer understanding of these issues going forward. This project used comparative institutional analysis to evaluate the status quo (current system of environmental governance and management) and a model of co-management derived from the Waikato-Tainui example. Chiefly, the comparison sought to establish whether

³⁷ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 32(3).

³⁸ Waikato River Authority, Media Release, 1 October 2011. < <http://www.waikatoriver.org/wp-content/uploads/2011/09/Media-Release-Historic-day-for-Waikato-River-Authority.pdf> > [accessed 24 October 2011]

³⁹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 36; The plan consists of components: a conservation component, a fisheries component, a regional council component, which must be agreed on by the Trust and the corresponding Minister, or council.

⁴⁰ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 35(2).

⁴¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 41.

⁴² Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 43.

⁴³ Veronica M. H. Tawhai, “Rāwaho: In and out of the environmental engagement loop,” in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010), 77.

the co-management model adequately addressed the policy failings of the status quo system. Evaluative criteria are drawn from environmental, economic, social and cultural policy goals. Because many of the outcomes of the co-management model are predicted and generalised, the evaluation of the options is open to contestation. However, in each instance evaluation of the systems was formed from a realistic and logical reading of the evidence. To the extent that evidence and outcomes change, further analysis will be valuable and should be encouraged.

COMPARING THE SYSTEMS

The Status Quo

New Zealand has a system of environmental governance that spans from central government to local authorities. *Diagram 1* illustrates the functions at various levels of governance. The role of Māori as kaitiaki has been historically undermined, but there is now a strong statutory basis for the inclusion of Māori interests in environmental decision-making (see Appendix C).⁴⁴ This basis began with the 1977 Town and Country Planning Act. The important relationship of Māori people and their culture and traditions with ancestral lands was included as a matter of national importance to be recognised and provided for.⁴⁵ However, questions of law, arisen over the definition of ‘ancestral lands’, restricted the efficacy of the provision until a landmark case in 1989.⁴⁶ Following on from the resource management law reform process in the 1980s, the Resource Management Act 1991 (RMA) gives the strongest recognition of Māori interests in environmental matters and facilitates their participation at operational level.⁴⁷ It includes Māori interests as matters of national interest.⁴⁸ Relevant to achieving the ‘sustainable management’ purpose of the act, s 7 stipulates that persons exercising powers and functions under the act ‘shall have particular regard to’ kaitiakitanga, the ethic of stewardship, intrinsic values of ecosystems, and maintenance of the quality of the environment.⁴⁹ S 8 further states that the principles of the Treaty of Waitangi shall be taken into account by persons exercising powers and functions under the Act. Similar

⁴⁴ Rachael Selby and Pātaka Moore, “Nōku te whenua o ōku tūpuna: Ngāti Pareraukawa kaitiakitanga,” in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010), 40.

⁴⁵ The Town and Country Planning Act 1977, s 3(1)(g);

⁴⁶ Derek Nolan, *Environmental and Resource Management Law* (Wellington: Lexis Nexis NZ, 2005), 824-826; *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 (CA).

⁴⁷ Nolan, 827

⁴⁸ Resource Management Act 1991, s 6.

⁴⁹ Resource Management Act 1991, s 7.

mention of the principles of the Treaty are included in the Conservation Act 1987 and the Local Government Act 2002 (see Appendix C). Also, in order to take appropriate account of the principles, local authorities must develop and maintain processes for Māori to contribute to decision-making processes.⁵⁰

In preparing or changing regional policy statements, regional and district plans, local authorities must ‘take into account’ planning documents that have been prepared by iwi.⁵¹ If these planning documents relate to areas for which iwi have customary marine title, they must be ‘recognised and provided for’ by the local authority.⁵² The RMA allows for shared functions and powers between iwi and local authorities through joint management of any duty or function in ss 30 and 31.⁵³ The New Zealand Coastal Policy Statement gives guidance as to how tangata whenua values toward the coastal environment should be protected. Similarly, the Marine and Coastal Area (Takutai Moana) Act 2011, recognises, to a certain degree, kaitiakitanga and the right of iwi to participate in conservation processes in the marine and coastal area. As well as certain protected customary rights it provides for iwi involvement in resource consent grants and the ability to lodge planning documents which councils must ‘recognise and provide for’.⁵⁴

⁵⁰ Local Government Act 2002, ss 14(1)(d), 81.

⁵¹ Resource Management Act 1991, ss 61(2A), 74(2A).

⁵² Resource Management Act 1991, s 61(2A)(b)(i).

⁵³ Resource Management Act 1991, s 36B-E.

⁵⁴ “Fresh,” *Chancery Green Publication*, May 2011.

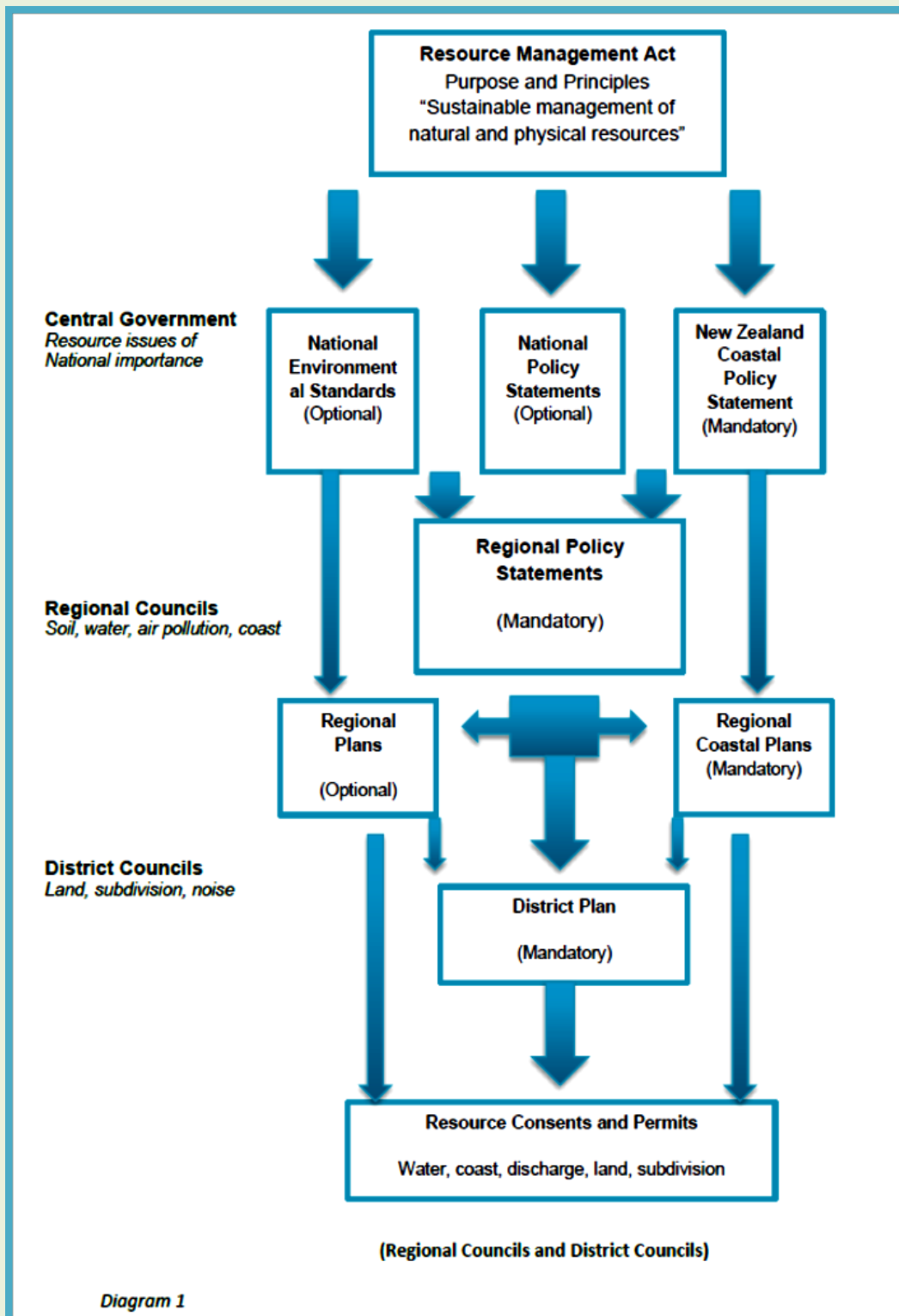


Diagram 1

A Co-Management Model

The 1998 report of the Parliamentary Commissioner for the Environment noted the desire among Māori to move beyond consultation, and a typically reactive role, to proactive strategic involvement in planning and management.⁵⁵ In the New Zealand context a possible alternate name that captures the essence of the co-management system could be *kotahitanga management*. The design of co-management arrangements can vary as *diagram 2* illustrates. Generally it includes certain characteristics; shared power and joint decision-making, shared responsibility, cooperation and consensus, and drawing on a range of knowledge systems.⁵⁶

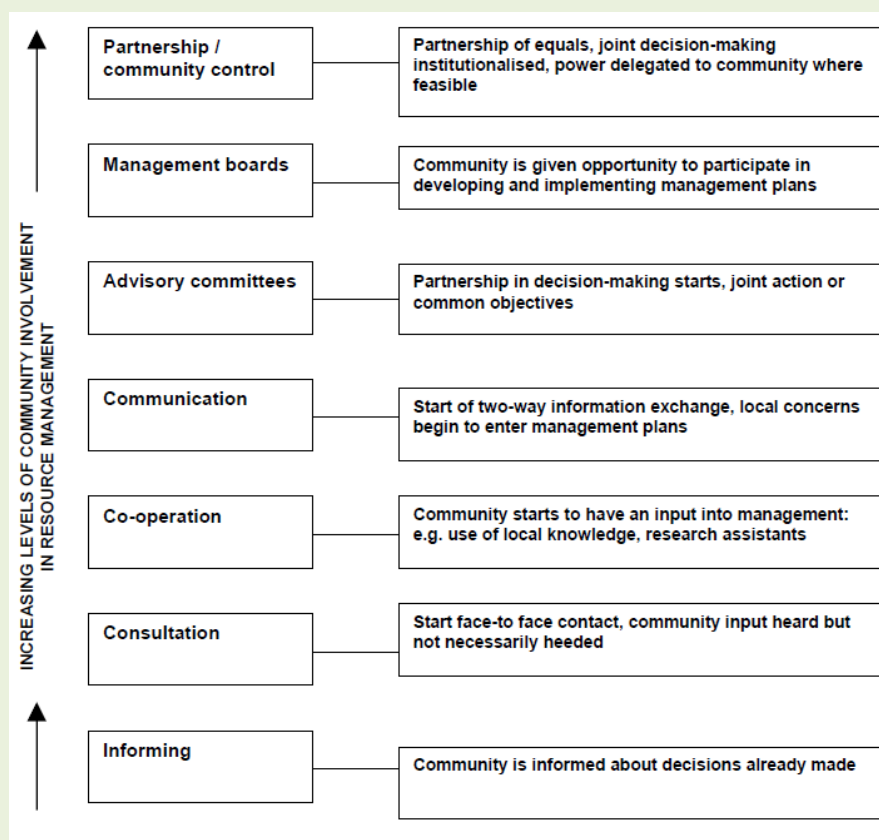


Diagram 2 – Models of Co-Management

Source: “Co-management: Case Studies Involving Local Authorities and Māori,” *Local Government New Zealand*, January 2007.

⁵⁵ Parliamentary Commissioner for the Environment, “Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management,” (Wellington, June 1998), 114.

⁵⁶ “Co-management: Case Studies Involving Local Authorities and Maori,” *Local Government New Zealand*, January 2007. For methods of cultural assessments see; Gail Tipa, “Cultural opportunity assessments: Introducing a framework for assessing the suitability of stream flow from a cultural perspective” in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010); “Using the Cultural Health Index: How to assess the health of streams and waterways,” (Wellington: Ministry for the Environment Publication, 2008); Te Kipa Kepa Brian Morgan, “The Mauri Model Decision-Making Framework: Robust Decision-Making for Community Cultural Mosaics,” in *Kei Muri i te Awe Kāpara he Tangata Kē, Recognising, Engaging, Understanding Difference: 4th International Traditional Knowledge Conference 2010*, edited by Joseph S. Te Tito and Susan M. Healy (Auckland: Knowledge Exchange Programme, 2010).

Using the recent Waikato-Tainui Deal, and drawing on other examples of similar arrangements it is possible to sketch a broad model of co-management and compare this to the status quo system of environment management.

A model of co-management based on the Waikato-Tainui arrangement:

AIMS

The restoration and protection of the resource (e.g. the health of the River and protection of the River):

- 1) to sustain ecosystems; and
- 2) to sustain communities and to provide for future generations

STANDARD OF RESTORATION

- To the level that is safe for humans. This denotes the highest level of ecological health and the restoration of traditional resource uses (e.g. people can safely swim and take food from the River)
- Public access to a healthy environment or resource (e.g. the River)
- No-compromise ecological health / zero degradation standard

APPROACH

- Integrated, holistic, co-ordinated management approach
- Combining mātauranga maori with scientific methods
- Sharing expertise and knowledge
- Cooperation among all stakeholders
- Precautionary approach
- Target setting
- Establishment of best practice standards
- Recognition and protection of waahi tapu
- Environmental education / stewardship ethics - active promotion and fostering of knowledge and understanding of the river in the whole community.

GOVERNANCE

- Governance structure and management guided by a vision and strategy
- Management body with equal iwi and local authority representation
- Jointly created planning documents
- Jointly-elected Chairperson
- Consensus decision-making
- Regular public meetings
- Monitoring and reporting to iwi, government, and public
- Outreach (e.g. public education, capacity building)

THE POLICY ALTERNATIVES MATRIX

EVALUATIVE CRITERIA	POLICY ALTERNATIVES	
	Status Quo	Co-management Model
Achievement of environmental outcomes	<p>Variable across local authorities</p> <p>Rules based – permitted and non-permitted activities: environmental standards variable across Councils</p> <p>Conservationist approach (exclusion of people)</p>	<p>Consistent ecological emphasis</p> <p>Ethical basis is consistent</p> <ul style="list-style-type: none"> - translated into particular resource vision and strategy - target setting <p>Holistic approach</p> <p>Long-term ecosystem health/</p> <p>Precautionary approach</p> <p>Restoration to standard for resumption of traditional uses</p>
Prevention of environmental degradation	<p>Reactive</p> <p>Weighing environment against other factors</p>	<p>Proactive</p> <p>Zero-degradation (ecological bottom line)</p>
Encouragement sustainability	<p>Nominal encouragement of environmental consciousness e.g. recycling</p> <p>Complexity of the system a barrier to public's perception of their own role as environmental stewards</p>	<p>Recognition of environmental integrity</p> <p>Kaitiakitanga / stewardship</p> <p>Environmental health integral to human wellbeing</p> <p>Inclusive system</p>
Gives effect to the Principles of the Treaty of Waitangi	<p>Variable effect given to Principles</p> <p>Lack of consistency</p> <p>Effect often achieved through judicial proceedings</p>	<p>Principles the basis for management arrangement</p> <ul style="list-style-type: none"> - Partnership – good faith cooperation through co-management and joint decision-making - Recognition of Māori culture and practice – Systems built around mātauranga Māori and modern scientific methods - Active protection of taonga
Efficacy of the working relationship	<p>Often conflicting commitments /goals / objectives</p>	<p>Mutual commitments / goals / objectives</p>
Efficiency of the system	<p>Ad hoc consultation</p> <p>Susceptible to delays</p>	<p>Established and consistent management framework</p>

Economic benefits / Cost-effectiveness	<p>Short-term</p> <p>Cost savings for polluters</p> <p>Short-term revenue generation</p>	<p>Long-term</p> <p>Sustainable use of healthier natural resources e.g. food gathering</p> <p>Reduces the delays and costs of:</p> <ul style="list-style-type: none"> - consultation - litigation
Social benefits	<p>Short-term</p> <p>Social benefits from possible increased revenue</p> <p>Social benefits for persons granted consents</p> <p>Limitation of human enjoyment of resources</p>	<p>Long-term</p> <p>Employment and training for ethno-ecological sustainable management</p> <p>Capacity building</p> <p>Education</p> <p>Recreational use of healthy natural resources</p>
Cultural benefits	<p>Some cross-cultural dialogue</p> <p>Some established cross-cultural working relationships (variable / intermittent)</p>	<p>Enduring cross-cultural dialogue</p> <p>Encourages transmission of mātauranga Māori</p> <p>Inter-iwi dialogue and cooperation</p> <p>Cross-cultural learning</p> <p>Restoration of kaitiakitanga, rangatiratanga, and mana</p>

A MODEL FOR ENVIRONMENTAL MANAGEMENT?

Simultaneous sustainability and cultural inclusion outcomes

Local authorities, who in large part carry out the functions and decision-making set out in the RMA, operate in reference to a sustainable development ‘quadruple bottom line’⁵⁷ wherein they must ‘promote’ and balance four factors.⁵⁸ The purpose of their role is ‘to enable democratic local decision-making and action by, and on behalf of communities and ‘to promote the social, economic, environmental, and cultural well-being of

⁵⁷ Nolan, 45.

⁵⁸ Local Government Act 2002, s3(d).

communities, in the present and for the future.’⁵⁹ Note that this ‘purpose of local government’ is different from the sustainable management purpose of the RMA. The RMA stipulates that social, cultural and economic gains must be achieved alongside sustainable objectives.⁶⁰ The Local Government Act does not clarify where the emphasis must lie in this calculus, leaving it instead to the discretion of local authorities.⁶¹ From a kaitiakitanga and sustainability perspective, councils have a tendency to focus on process rather than environmental outcomes.⁶² And often, short term political considerations such as balancing the budget and encouraging business, underlie ‘sustainable development’ decision-making.⁶³ Too frequently the calculus reflects western values toward the environment and the privileging of economic ‘benefits’.

The co-management model is drawn from mātauranga Māori and gives effect to kaitiakitanga and the values and methods therein. Co-management encourages a relationship with the environment based on reciprocity. A conservationist approach of setting aside portions of the environment, effectively separating humans and nature does not encourage the management dynamic that is necessary for a balance between human use and ecological integrity. A co-management approach to the environment is based on a consistent ethical framework; form may vary according to peoples and resources, but the fundamental tenets of environmental management are fixed and inderogable, as is stipulated in Māori culture. This is borne from an understanding of long-term cause and effect, recognition of the mauri of all things, and responsibility across time and space. In effect this means that the co-management model is pro-active environmental management, rather than mitigation of negative effects and acceptance of environmental trade-offs for certain immediate socio-economic benefits.

Despite a putative network of legislated inclusiveness, the formal requirements of statutes, the common law relating to consultation and the realities of environmental governance are not always effectively or adequately synchronised.⁶⁴ Around 70 to 80 percent of Councils have established some kind of consultation process with Māori, but

⁵⁹ Local Government Act 2002, ss 10(a), (b).

⁶⁰ Resource Management Act, s 5.

⁶¹ Resource Management Act, s 14(1)(h); S77(1)(b)(1) - During decision-making the authority must assess, ‘the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region.’

⁶² Parliamentary Commissioner for the Environment, iii.

⁶³ Selby and Moore, 53.

⁶⁴ See comments; Parliamentary Commissioner for the Environment, 114.

the exact form and quality of such arrangements vary widely.⁶⁵ Even with the realisation that consultation is necessary, dialogue still occurs on an ad hoc basis without established and reliable participatory frameworks.⁶⁶ It is generally expected that these statutory provisions and the principles of the Treaty, oblige more than simply minimum consultation, and that local authorities should ‘develop on-going collaborative relationships with Māori to support both the consultation provisions and the provisions to consider aspects of Māori values and culture when taking key decisions.’⁶⁷ However, the power to decide how best to ‘take into account’ and ‘provide for’ Māori values, culture and traditions and how to facilitate Māori participation and contributions to local authority decision-making processes, lies with the authority itself, and is variable and inconsistent across locales.⁶⁸ Mutu states that there is still ignorance (real or intentional) of the statutory requirements.⁶⁹ This reality gap is often cited by frustrated iwi.⁷⁰ Ostensibly, the legal framework is failing to affect genuine inclusion and consideration of Māori cultural and environmental interests, a fact acknowledged by local authorities themselves: ‘our findings suggest that, while Environment Waikato have systems in place to attend to the needs of Non-Māori constituents, a greater understanding of the needs of tangata whenua constituents is required.’⁷¹ In fact the values that are included in legislation for decision-makers to consider, and the management priorities that derive from them, can only be authoritatively determined by tangata whenua.⁷²

The effect of the status quo system is that even with systematic consultation, environmental governance is still on the Crown’s terms. Māori are constantly ‘waiting their turn’ to have their say about the environment they managed for a thousand years prior to colonisation.⁷³ Co-management moves away from cultural consideration in an assimilationist setting and re-creates a genuinely co-created governance structure and management style. It is the vital paradigm for incorporation of indigenous knowledge

⁶⁵ Chris Finlayson, “Shared governance of healthy river at the heart of Treaty Deal,” *NZ Herald*, 18 May 2010; “Local Authority Engagement with Maori” *Local Government New Zealand Publication*, 2004; “Co-management: Case Studies Involving Local Authorities and Maori,” *Local Government New Zealand*, January 2007, 8.

⁶⁶ Parliamentary Commissioner for the Environment, 116.

⁶⁷ “Treaty of Waitangi and Local Government,” *POL Min* (01) 26/17 (Cabinet Policy Committee), 4.

⁶⁸ Local Government Act 2002, s81(2).

⁶⁹ Margaret Mutu, “Barriers to Tangata Whenua Participation in Resource Management,” in *Whenua: Managing Our Resources*, edited by Merata Kawharu (Auckland: Reed Books, 2002), 75-76.

⁷⁰ Environment Waikato (October 2003), 7; Parliamentary Commissioner for the Environment, 116; Margaret Mutu (2010), 19.

⁷¹ Environment Waikato (October 2003), 9.

⁷² Parliamentary Commissioner for the Environment, 114.

⁷³ Selby and Moore, 41.

into environmental management. Social and environmental values affect practice - what damage is done and how impacts are perceived. Indigenous ecological wisdom, and Māori attitudes toward, and methods for, environmental management offer a way of infusing strong sustainability into New Zealand's environmental governance. 'Sustainable management of New Zealand's natural and built environments depends as much on the values and beliefs of individuals and communities, as it does on specialist knowledge about environmental effects or resource use efficiencies.'⁷⁴ In order to take fully utilise the knowledge of tangata whenua we need a system that addresses these issues. Co-management combines kaitiakitanga with modern scientific methods without privileging western epistemology. The cogency of co-management is testament to the fact that scientific attitudes towards the environment are insufficient to affect sustainability. Sustainability is a method and an attitude and it must have a sound basis in values. Co-management recognises and attends to this.

Research involving Māori and non-Māori indicates that those persons concerned with resource management feel there are enough tools in existing statutes to include Māori concerns and knowledge, however the *implementation* of these tools 'leaves much to be desired'.⁷⁵ The statutory provisions for environmental and cultural considerations are the subject of litigation, academic and judicial commentary.⁷⁶ In order to give effect to these statutory provisions, Māori have often had to initiate proceedings on environmental decisions. Even with the help of pro-bono lawyers the cost of litigation is a major barrier to action.⁷⁷ The costs of ad hoc consultation and litigation reduce the efficiency of the status quo from a government *and* iwi perspective. The irony of course, is that iwi and indeed many environmentalists who are fighting for better recognition of their cultural or environmental values are in the least capable financial situation to do so.

Likewise, Māori are also very concerned that many consent applications are not notified, a decision which is at the discretion of the local authority.⁷⁸ If Māori choose to challenge a resource consent through legal channels a developer might still continue the activity

⁷⁴ Parliamentary Commissioner for the Environment, iii.

⁷⁵ Lisa Kanawa, Janet Stephenson and Marg O'Brien, "Beyond Consultation: Getting Good Outcomes for Everyone in Cross-Cultural Resource Consent Practice" in *Kei Muri I te Awe Kāpara he Tangata Kē, Recognising, Engaging, Understanding Difference: 4th International Traditional Knowledge Conference 2010*, edited by Joseph S. Te Tito and Susan M. Healy (Auckland: Knowledge Exchange Programme, 2010), 178.

⁷⁶ Nolan, 827-829.

⁷⁷ Mutu (2010), 32.

⁷⁸ Resource Management Act 1991, s 95A; Parliamentary Commissioner for the Environment.

unless an injunction is granted. By the time a decision is reached the damage may be done. Thus, for the public, co-management helps to clarify what is to be expected from environmental governance. With a strongly ethical basis to decision-making, certain contingencies for compromise on the environment are eliminated.

From a Māori perspective a lack of clarity about local government processes, and the feeling that Māori inclusion is 'token', has given rise to a lack of confidence in status quo procedures and a pursuant lack of participation.⁷⁹ Even where Councils do encourage Māori input into planning, time constraints and the cost and expertise required for preparing iwi plans or submissions has 'caused limitations on [iwi's] ability to provide sufficient feedback.'⁸⁰ The co-management model addresses these concerns. The establishment of an efficient and decisive system of management which includes Māori and local authorities achieves equity objectives and reduces transaction costs. Co-management builds relationships and trust which also increases efficiency.

The environment is not an abstraction, it is not the 'other', its fundamentality is felt in every aspect of human existence: economic, social, political, spiritual. 'Implementing kaitiakitanga is as much about managing resources of the environment as it is about managing people... [it] is not simply an 'environmental ethic' then, but rather a socio-environmental ethic. It is about relationships between humans and the environment, humans and their gods and between eachother.'⁸¹ From a social and cultural point of view the co-management model ensures that the benefits of the environment and resources are more equitably shared. Polluters cannot enjoy the savings that their activities generate in the face of other people's inability to enjoy nature. The benefits of a healthy environment and indeed a more holistic attitude are immense, and to a large degree unimaginable from our current position.

Māori responsibilities as kaitiaki for the areas over which they hold mana whenua exist regardless of whether these are codified in a legal framework, and regardless of who

⁷⁹ Tawhai, 85-90; Christine Cheyne and Veronica M. H. Tawhai, *He wharemoa te rakau, ka mahue : Maori engagement with local government : knowledge, experiences, and recommendations* (Palmerston North: Massey University School of People, Environment, and Planning, 2007).

⁸⁰ Environment Waikato (October 2003), 8; Mutu (2002), 75-76.

⁸¹ Merata Kawharu, "Environment as marae locale" in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010), 227.

‘owns’ the land. No Pākehā law can change this responsibility.⁸² Undermining the environment undermines Māori existence, not just in economic terms, but in the social and metaphysical sense also. Often the view of indigenous ecological wisdom is criticised as a romanticised version of ‘the noble savage’. It is true that ‘circumstance and fate have dragged Māori into the 21st century, with many traditions, beliefs, practices, values and ideas discarded and replaced with new ideals and modern methods.’⁸³ As Maatamua and Temara state, ‘if we remove romanticism, clear the mist... and ask Tūhoe members to reveal their interaction with their environment openly and honestly, we would see that it is rather limited.’⁸⁴ The realities of this ‘Māori diaspora’⁸⁵ mean that many young people are drifting away from these unique and important values.⁸⁶

Crucially then, the co-management model is empowering for Māori. This report has discussed much about mātauranga Māori and traditions of kaitiakitanga. However, Co-management is not only a means to situate mātauranga Māori as a fundamental part of environmental management, it is also a means of reviving and preserving culture. Ngāti Pareraukawa has a plan to instil a Māori world view in the children so that they will naturally continue the role of kaitiaki.⁸⁷ Through co-management there are opportunities for capacity-building in Māori communities. It also provides a context for knowledge sharing and improving whanau, hapu, iwi and inter-iwi relationships. No longer a dislocated voice, the fact that Māori would be a part of environmental governance – no longer merely ‘included’ or ‘consulted’ but *essential to it* - could reduce disenfranchisement. Co-management goes some way to restoring the rangatiratanga and mana of iwi, and in doing so it can encourage a new generation of Māori leaders.

There are also unparalleled opportunities for education and cross-cultural learning about sustainability and kaitiakitanga for children and communities. Admittedly co-management is a significant departure from status quo environmental governance and it

⁸² Mutu (2010), 15.

⁸³ Mataamua, 106.

⁸⁴ Ibid, 106.

⁸⁵ See; Tawhai.

⁸⁶ Kawharu, 235.

⁸⁷ Selby and Moore, 45.

will take commitment to demonstrate the advantages of the approach and ensure that co-management does not become ‘another example of a powerful branding exercise’.⁸⁸

The Backlash

Arguments that co-management and joint Crown and iwi environmental governance produces a democratic deficit are a frequently cited critique. In the wake of the Waikato-Tainui Deal and pursuant promises of tightening controls on pollution, much of which is farm run-off, Don Nicholson, the head of Federated Farmers wrote an editorial in the New Zealand Herald newspaper. He stated that co-governance is a new and untried way of governing the nation’s resources, and that it is flawed and undemocratic.⁸⁹ Local Authorities are made up of democratically elected representatives. Co-management necessitates equal parts Māori and Council decision-makers. Detractors argue that Māori should aim to secure more influence through election to local government. The Local Electoral Amendment Act 2002 provides for *optional* Māori wards (in territorial authorities) and constituencies (in regional councils). While these provisions were assumedly an attempt to increase numbers of Māori in local authorities it has so far failed to affect the necessary engagement.

Recognising kaitiakitanga requires a change in attitude to the environment. Even where Māori comprise a proportion of an elected body their approach is assimilated into a dominant paradigm. As tangata whenua, the importance of including Māori in governance is a similarly important endeavour as that of maintaining vital democratic values. The benefits that democracy brings to governance are not lost in a co-management paradigm as the management bodies are still accountable to the public. Responsibility is a fundament of kaitiakitanga and to the extent that representatives cannot affect the aims of their role, they will lose mana and the basis for their authority. The disadvantages of democracy, in the form of short-term and politically expedient decision-making are minimised in a co-management model which is driven by an overarching vision and a long term strategy for holistic management for present and future generations.

⁸⁸ Te Aho, 331.

⁸⁹ Don Nicholson, “Flawed Concept of co-governance misrepresents Treaty,” *NZ Herald*, 11 May 2010.

Nicholson also states, ‘the hegemony of the “co-governance” model simply won’t produce the balance between social, economic, cultural and environmental considerations that modern resource management demands.’⁹⁰ In actuality, co-management and a firmly eco-centric approach to the environment is precisely *for* the social, economic and cultural well-being of people. The difference is that the emphasis is on intra-generational equity and inter-generational justice, as opposed to short-term gains.⁹¹



The Waikato River, Hamilton

Photo: V. Norman (2011)

⁹⁰ Nicholson(2010).

⁹¹ Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (Surrey: Ashgate, 2008), 11.

A WAY FORWARD

This project has sought to establish whether co-management is an attractive alternative to status quo environmental governance. From a sustainability, cultural, economic and social perspective it performs better than the current system. But issues around its implementation still remain. Rather than propose a specific design of co-management this analysis has identified key principles of the system and assessed what these might achieve. As yet, co-management has generally arisen from Treaty claims. For the Crown it offers an acceptable solution to Māori claims and achieves valuable cultural, social and environmental objectives. But beyond a Treaty settlement option co-management offers an attractive and necessary option for all environmental governance. Co-management refers to the joint management of particular resources, and in specific areas. Environmental co-governance, based on the same principles but across broad environmental policy, is an equally worthy pursuit at central government levels. Ideally the ethical impetus for environmental governance should flow from the bottom up and from the top down.

In a sense the hardest part of a sustainability normative agenda is not convincing others that we need better environmental outcomes and a change in attitude. The greatest challenge will be how to implement the idea of co-management and co-governance to maximum effect but without losing the essence of the approach. This is essentially the move to a 'strong sustainability'⁹² paradigm which draws on indigenous knowledge and operates through cross-cultural cooperation. More work is needed. Importantly, it is the mandate of indigenous peoples to carve out their role in governance. It's the role of all levels of government to step up, be receptive and facilitate this. And it is the role of all New Zealanders to mobilise for sustainability - for ourselves and future generations - and in doing so, recognise that our greatest means of achieving these goals begins with our attitudes and our choices.

⁹² See; Ibid.



Children still swim at the Wellington Beach jetty of the Waikato River in Hamilton, despite the pollution in the river.

Waikato Iwi aim to restore the health of the river so that it is safe for swimming and gathering food.

Photo: G. Norman (2010)

To conclude, this report proposes ‘A Way Forward’:

Establish a bi-cultural working-group to explore the option of co-management and make findings and recommendations to Parliament.

- Such a working group might be established under the umbrella of the Parliamentary Commissioner for the Environment and iwi representatives.
- It would call for input from iwi around New Zealand to identify their taonga and areas of kaitiakitanga.
- It would make recommendations for a National Policy Statement on sustainable management drawing on indigenous environmental values and bolstering the RMA.⁹³
- It would investigate ways of combining indigenous ecological wisdom with modern scientific methods.
- It would propose an implementation plan for environmental co-management at local level, and co-governance at national level.

⁹³ All regional policy statements and regional and district plans must give effect to national policy statements under the RMA.

APPENDIX A

Other Cases of Co-Management

Australia

Kakadu National Park, which includes Uluru and Ayers Rock is run by the traditional Aboriginal guardians and park managers.

Okahu Bay Reserve Board

In 1991 Ngati Whatua o Orakei were granted ownership of Bastion point and 60 hectares of parklands and beaches around Okahu Bay. The area is managed by the Reserve Board which includes Trust members (representing the Iwi) and Auckland Council representatives.⁹⁴

Owhia Harbour and Catchment

Owhia Harbour and catchment is managed through an integrated approach by the three councils and iwi groups.⁹⁵ A strategy was created that includes statutory and non-statutory implementation actions.⁹⁶

Te Arawa lakes settlement 2006

Settlement of historical grievances in relation to 14 lakes in the Rotorua district. Title to 13 of the 14 lakes is vested in a Trust (the Te Arawa Lakes Trust), who can regulate certain commercial activities however the water remains a public resource. Te Arawa can also influence policy in relation to the lakes, such as the preparation of planning documents.⁹⁷

Te Whiti Park

Te Whiti Park, owned by Hutt City Council and managed by a contractor, is the setting of another co-management arrangement. Te Runanganui O Taranaki Whanui ki Te Upoko o Te Ika a Maui have entered into an agreement with the Council establishing them as custodians in preparation for further management responsibilities in the future.⁹⁸

Ngā Pae o Rangitīkei

Ngā Pae o Rangitīkei are a collective of iwi and hapu that mobilised to address the common goal of protection of the Rangitīkei river and catchment area. Utilising shared knowledge the members signed a charter in 2005. The collective has since become a clear point of liaison for local authorities and has mobilised for activism and engagement of environmental issues.⁹⁹

⁹⁴ "Co-management: Case Studies Involving Local Authorities and Maori," *Local Government New Zealand*, January 2007, 14.

⁹⁵ Environment Bay of Plenty, Opotiki District Council, Whakatane District Council, Whakatohea, Upokorehe, Ngati Awa, Tuhoe. "Co-management: Case Studies Involving Local Authorities and Maori," *Local Government New Zealand*, January 2007, 12.

⁹⁶ "Co-management: Case Studies Involving Local Authorities and Maori," *Local Government New Zealand*, January 2007, 12.

⁹⁷ April Bennett, "Uncharted waters – recent settlements as new spaces for enhancing Māori participation in fresh-water management and decision making" in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010); Rotorua Lakes Strategy Report, "Co-Management Options," (October 2001).

⁹⁸ "Co-management: Case Studies Involving Local Authorities and Maori," *Local Government New Zealand*, January 2007, 11.

⁹⁹ Te Rina Warren, "Ngā Pae o Rangitīkei – a model for collective hapū / iwi action" in *Maori and the Environment: Kaitiaki*, edited by Rachael Selby, Pātaka Moore and Malcom Mulholland (Wellington: Huia Publishers, 2010).

Current Issues:

Tūhoe

2008 signed Terms of Negotiations for Treaty of Waitangi Claims – they want Te Uruwera National Park (currently managed by DOC) returned to the tribe.

Te Roroa and Waipoua

In August 2011 it was reported that the Government planned to turn Northland's Waipoua forest (the home of the giant Kauri Tane Mahuta), Trounson Kauri Park and Maitahi Wetland into New Zealand's 15th national park. Several hundred members of Te Roroa live at Waipoua and regard themselves as kaitiaki and ancestral guardians of the forest. Te Roroa have previously worked closely with DOC who manages the Waipoua, and they want to run the park jointly with the Crown, citing the co-management model effected by the Waikato-Tainui deal. DOC states that co-management is "beyond the scope" of the park plan. DOC seems to be of the view that a completed Treaty settlement removes Maori from inclusion in management.¹⁰⁰

¹⁰⁰ Andrew Stone, "Iwi fights park plan for forest," *NZ Herald*, 2 August 2011.

APPENDIX B

Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

Part 1 – Preliminary Provisions

s 4 Purpose of Act

The purpose of this Act is to—

- (a) give effect to the settlement of raupatu claims under the 2009 deed:
- (b) recognise the significance of the Waikato River to Waikato-Tainui:
- (c) recognise the vision and strategy for the Waikato River:
- (d) establish and grant functions and powers to the Waikato River Authority:
- (e) establish the Waikato River Clean-up Trust:
- (f) recognise certain customary activities of Waikato-Tainui:
- (g) provide co-management arrangements for the Waikato River:
- (h) provide redress to Waikato-Tainui relating to certain assets

Schedule 2

Vision and strategy for Waikato River

1 Vision

(1) Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri. The river of life, each curve more beautiful than the last.

(2) Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

(3) In order to realise the vision, the following objectives will be pursued:

- (a) the restoration and protection of the health and wellbeing of the Waikato River:
- (b) the restoration and protection of the relationships of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships:
- (c) the restoration and protection of the relationships of Waikato River iwi according to their tikanga and kawa with the Waikato River, including their economic, social, cultural, and spiritual relationships:
- (d) the restoration and protection of the relationships of the Waikato Region's communities with the Waikato River, including their economic, social, cultural, and spiritual relationships:
- (e) the integrated, holistic, and co-ordinated approach to management of the natural, physical, cultural, and historic resources of the Waikato River:
- (f) the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River and, in particular,

those effects that threaten serious or irreversible damage to the Waikato River:

(g) the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within the catchment on the health and wellbeing of the Waikato River:

(h) the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities:

(i) the protection and enhancement of significant sites, fisheries, flora, and fauna:

(j) the recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental, and economic wellbeing requires the restoration and protection of the health and wellbeing of the Waikato River:

(k) the restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length:

(l) the promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities:

(m) the application to the above of both maatauranga Maaori and the latest available scientific methods.

2 Strategy

To achieve the vision, the following strategies will be followed:

(a) ensure that the highest level of recognition is given to the restoration and protection of the Waikato River:

(b) establish what the current health status of the Waikato River is by utilising maatauranga Maaori and the latest available scientific methods:

(c) develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and the latest available scientific methods:

(d) develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River:

(e) develop and share local, national, and international expertise, including indigenous expertise, on rivers and activities within their catchments that may be applied to the restoration and protection of the health and wellbeing of the Waikato River:

(f) recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River iwi (where they do decide) to promote their cultural, spiritual, and historic relationship with the Waikato River:

(g) recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community:

(h) actively promote and foster public knowledge and understanding of the health and wellbeing of the Waikato River among all sectors of the Waikato regional community:

(i) encourage and foster a "whole of river" approach to the restoration and protection of the Waikato River, including the development, recognition, and promotion of best practice methods for restoring and protecting the health and wellbeing of the Waikato River:

(j) establish new, and enhance existing, relationships between Waikato-Tainui, other Waikato River iwi (where they so decide), and stakeholders with an interest in advancing, restoring, and protecting the health and wellbeing of the Waikato River:

(k) ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review:

(l) ensure appropriate public access to the Waikato River while protecting and enhancing the health and wellbeing of the Waikato River.

The Operative Effect of the Vision and Strategy

The vision and strategy is deemed to be a part of the Waikato Regional Policy Statement, and the Council has responsibility to amend the Statement accordingly and remove any inconsistencies. For the time inconsistencies might exist, the vision and strategy will prevail.¹⁰¹

The vision and strategy prevails over any inconsistent planning documents (national, or coastal, policy statements) and local authorities cannot make any amendments to planning documents which would be inconsistent with the vision and strategy.¹⁰²

Councils and local authorities must review and remove any inconsistencies and ensure that all statements and plans give effect to the vision and strategy.¹⁰³

The councils can review resource consents and give notice of its requirement to alter a resource consent designation to be consistent with the vision and strategy.¹⁰⁴

The vision and strategy must also be included within various conservation management strategies and plans.¹⁰⁵

Broad duty for anyone carrying out functions or duties under various enactments, that effect the Waikato River to give particular regard to the vision and strategy.¹⁰⁶

There is to be a periodic review of the vision and strategy.¹⁰⁷

Other Matters

Resource Consents that relate to the Waikato River: Within 5 days of receiving a consent application the Council must notify the Authority and the Trust.¹⁰⁸

If a Council holds a hearing on the application the hearing committee must consist of equal numbers of Council appointed RMA decision-makers and Authority members, so

¹⁰¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 11.

¹⁰² Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 12.

¹⁰³ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 13.

¹⁰⁴ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 14.

¹⁰⁵ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 15.

¹⁰⁶ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 17.

¹⁰⁷ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, ss 18-19.

¹⁰⁸ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 27.

as to maintain the appropriate mix of skills, expertise and experience. Also the members of the hearing committee must appoint an independent chairperson.¹⁰⁹

The Trust *may* prepare a Waikato-Tainui Environmental Plan.¹¹⁰ Such a plan would have the effect of other iwi approved plans, and must be recognised by local or consent authorities.¹¹¹

The Council has certain rights relating to soil conservation and river control.¹¹² The Council and Trust must make a co-management agreement related to these rights, which has the overall goal of promote soil conservation and river control in a manner that is consistent with the restoration and protection of the health and wellbeing of the Waikato River for future generations.¹¹³

Certain customary activities are acknowledged and provided for also.

¹⁰⁹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 28.

¹¹⁰ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 39.

¹¹¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 40.

¹¹² Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 70.

¹¹³ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 80.

APPENDIX C:

THE LEGAL FRAMEWORK

RESOURCE MANAGEMENT ACT 1991

Part 1 — Interpretation and application

s 2 Interpretation

In this Act, unless the context otherwise requires,—

Kaitiakitanga

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

This definition was inserted as from 10 August 2005 by s4(1) Resource Management Amendment Act 2005 (2005 No 87)

[joint management agreement means an agreement that-

- (a) is made by a local authority with 1 or more—
 - (i) public authorities, as defined in paragraph (b) of the definition of “public authority”;
 - (ii) iwi authorities or groups that represent hapu; and
- (b) provides for the parties to the joint management agreement jointly to perform or exercise any of the local authority's functions, powers, or duties under this Act relating to a natural or physical resource; and
- (c) specifies the functions, powers, or duties; and
- (d) specifies the natural or physical resource; and
- (e) specifies whether the natural or physical resource is in the whole of the region or district or part of the region or district; and
- (f) may require the parties to the joint management agreement to perform or exercise a specified function, power, or duty together; and
- (g) if paragraph (f) applies, specifies how the parties to the joint management agreement are to make decisions; and
- (h) may specify any other terms or conditions relevant to the performance or exercise of the functions, powers, or duties, including but not limited to terms or conditions for liability and funding

Part 2 — Purpose and principles

s 5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act,

sustainable management

means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

s 6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
- (f) the protection of historic heritage from inappropriate subdivision, use, and development

(g) the protection of protected customary rights.

s 7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) Intrinsic values of ecosystems:
- (e) Repealed.
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon.
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

s 8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

CONSERVATION ACT 1987

Part 1 — Preliminary

s 4 Act to give effect to Treaty of Waitangi

This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

LOCAL GOVERNMENT ACT 2002

Part 1 — Preliminary provisions

s 3 Purpose

The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—

- (a) states the purpose of local government; and
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- (c) promotes the accountability of local authorities to their communities; and
- (d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.

s 4 Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Maori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Maori in local authority decision-making processes

Subpart 1 — Purpose of local government

s 10 Purpose of local government

The purpose of local government is—

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

Part 2 — Purpose of local government, and role and powers of local authorities

Subpart 2 — Role of local authorities and related matters

s 14 Principles relating to local authorities

(1) In performing its role, a local authority must act in accordance with the following principles:

(c) in taking a sustainable development approach, a local authority should take into account—

(i) the social, economic, and cultural well-being of people and communities; and

(ii) the need to maintain and enhance the quality of the environment; and

(iii) the reasonably foreseeable needs of future generations.

(d) a local authority should provide opportunities for Maori to contribute to its decision-making processes:

Part 6 — Planning, decision-making, and accountability

Subpart 1 — Planning and decision-making

Decision-making

s 77 Requirements in relation to decisions

(1) A local authority must, in the course of the decision-making process,—

(b) assess those options by considering—

(i) the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and

(c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

81 Contributions to decision-making processes by Maori

(1) A local authority must—

(a) establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes of the local authority; and

(b) consider ways in which it may foster the development of Maori capacity to contribute to the decision-making processes of the local authority; and

(c) provide relevant information to Maori for the purposes of paragraphs (a) and (b).

- (2) A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—
- (a) the role of the local authority, as set out in section 11; and
 - (b) such other matters as the local authority considers on reasonable grounds to be relevant to those judgments

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