7 Urban planning and the Treaty of Waitangi

Key points

- Māori have diverse interests in urban development, arising from:
  - cultural connections with ancestral lands, expressed through rangatiratanga and the obligation of kaitiakitanga;
  - a desire to "create great urban spaces and places for Māori to be Māori";
  - being owners and developers of urban land; including being collective owners as a result of Treaty settlements over the last several decades; and
  - being urban residents with a desire for prosperity and wellbeing.
- Māori designers and planners have developed and promoted a set of principles for a "Māori cultural landscape strategy" that reflect values and knowledge based in Māori culture and custom.
- New Zealand's planning law contains diverse provisions that recognise and protect Māori interests arising from the Treaty of Waitangi. Planning legislation requires local authorities to engage with iwi and Māori communities in developing and administering plans. Other never- or little-used provisions allow devolution of planning to iwi and hapū authorities, or for them to join with councils in managing particular areas or aspects of planning.
- Some recent Treaty settlements have provided for iwi, local authorities and central government agencies to co-govern the management of natural features such as rivers and mountains. Such arrangements have helped build relationships between iwi and local authorities and develop capability on both sides. Engagement of these iwi in other planning processes has strengthened.
- Over the last 25 years, Māori engagement in planning processes and the protection of Māori interests has grown through practice guided by legislation and case law. From a Māori perspective, engagement has been most successful when based on building positive relationships that allow Māori to participate early and strategically in planning.
- Despite ongoing development in the relationships between councils and Māori on planning, practice remains uneven across the country. A significant barrier is that some councils and some Māori groups have insufficient capacity to engage effectively with each other.
- The current framework for recognising and actively protecting Māori Treaty interests in the environment should be carried forward and strengthened by:
  - giving Māori a statutory role in the stewardship of the planning system through a National Māori Advisory Board on Planning and the Treaty of Waitangi;
  - providing clearer guidance (through a National Policy Statement on Planning and the Treaty of Waitangi) on the active protection of Māori Treaty interests in the environment; and
  - providing guidance in particular on the recognition and protection of sites of significance to Māori; co-governance arrangements for such sites when appropriate; the involvement of mana whenua in spatial planning and the recognition of Iwi Management Plans; planning provision for papakāinga and other kaupapa Māori development; and support for the development of iwi and hapū capability to participate in planning.

Planning legislation in New Zealand recognises and protects Māori interests arising from the principles of the Treaty of Waitangi. More broadly, Māori have interests in urban development that flow through into planning. These interests are diverse and developing rapidly. This chapter identifies the main interests that Māori have in urban development and more particularly in urban planning. It describes the current legislative framework for protecting Māori interests in environmental and urban planning, and how this has played out in practice. The chapter identifies some of the growing successes and enduring weaknesses in local authority engagement with Māori in environmental and urban planning. This chapter and other chapters (in particular Chapter 13 and Chapter 14) make recommendations to address these weaknesses.

This chapter and other parts of the report dealing with Māori perspectives on and interests in urban planning have benefited from engagement with iwi and other mana whenua groups and with Māori urban planning and design professionals. In particular, the Commission has benefited from ongoing engagement with Ngā Aho, the network of Māori design professionals, and Papa Pounamu, the Māori interest group within the New Zealand Planning Institute. Ngā Aho and Papa Pounamu led and reported on a wānanga on urban planning in June 2016 (Ngā Aho & Papa Pounamu, 2016a) and subsequently reviewed the Commission's Draft Report (Ngā Aho & Papa Pounamu, 2016b). The Commission met with Ngā Aho and Papa Pounamu in October 2016 to discuss their review and its implications for this final report, and as a result commissioned a further review of relevant drafts.

The Commission received extensive comments on Māori issues in submissions, in particular from councils and from Ngāti Whātua Ōrākei (sub. DR76). The Commission has considered all these views in the context of the wider inquiry to arrive at the findings and recommendations on Māori interests in urban planning in this chapter and elsewhere in this report.

7.1 Māori and urban development

The land now occupied by most New Zealand cities, particularly the largest, was inhabited or otherwise used by Māori before European settlement (Ryks et al., 2014). Some, such as Maungakiekie (One Tree Hill in Auckland) were substantial settlements of 5 000 to 7 000 people (Blair, 2010, p. 51). Yet competition for valuable land close to ports and trading opportunities, and an arable hinterland led to most Māori land in these places passing into the hands of settlers soon after their arrival (Ryks et al., 2014). Ngāti Whātua, for instance, no longer possessed most of its lands on the Auckland isthmus by 1850 (Blair, 2010).

Yet Māori did not lose their connections with the lands occupied by the new settlements. Professor Hirini Matunga, for instance, talked of the connections between Ngāi Tahu and land in Christchurch.

> Imagine a Ngai Tahu woman in Christchurch, walking up Colombo Street, avoiding the traffic, oblivious to the people around her, striding determinedly past the Christchurch Cathedral. She walks up Hereford Street and then rests by the Otakaroro (Avon River) where her ancestors caught tuna, and where tourists now go punting. Rested, she follows the banks of the river through Victoria Square, past the Town Hall to Otautahi (originally a kainga near the Kilmore Street Fire Station). She then walks up to Papanui, where her ancestors for centuries extracted syrup from the ti or cabbage tree… She traverses the same path her ancestors travelled over one hundred and fifty years earlier, [temporally] separated, but spatially linked. Multiply this story a thousand times across all the cities in Aotearoa and one gets a fuller sense of the two histories, and two realities that permeate our cities. One dominating, the other dominated. (Matunga, 2000a, p. 66)

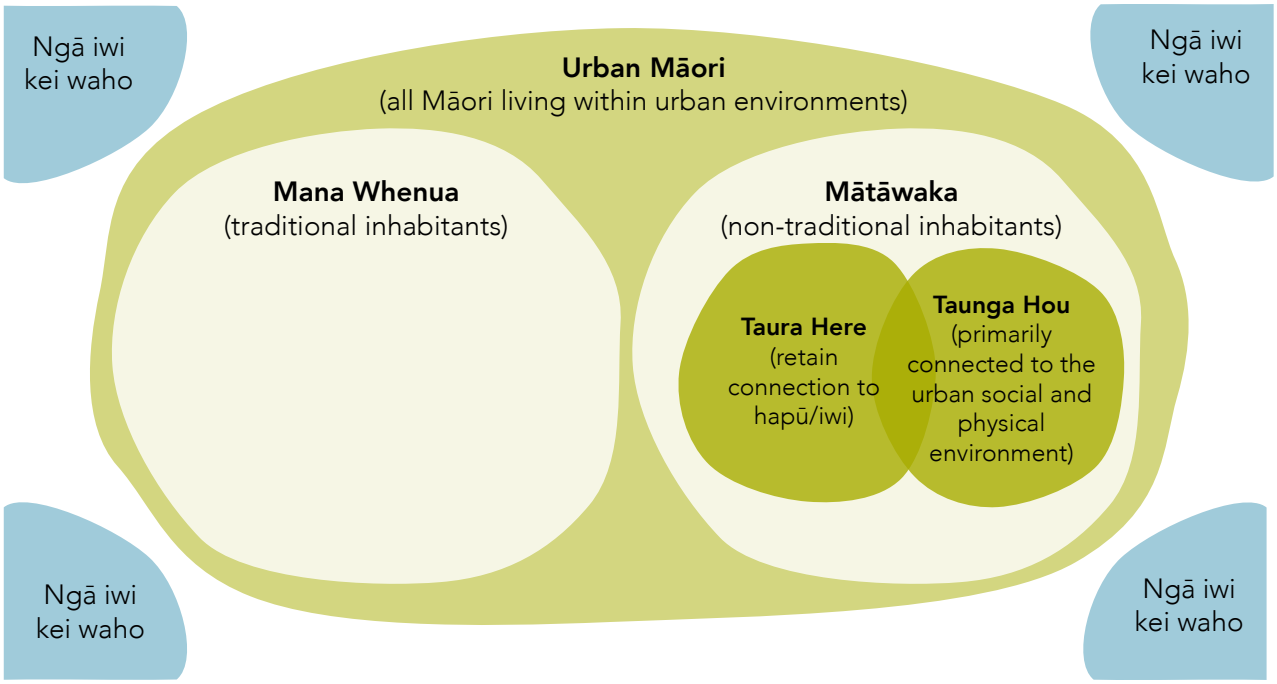
Most Māori lived outside the developing colonial settlements during the 19th century and first half of the 20th century. By 1896 the total Māori population, at around 42 000 and largely rural, was greatly outnumbered by a settler population of over 700 000 (Ryks, et al., 2014; Statistics New Zealand, 2016). In 1926 84% of Māori lived in rural areas. As the Māori population recovered, and with their rural land base already mostly lost, Māori began migrating into the cities from the 1950s to look for better living opportunities and employment. By 2006 85% of Māori lived in urban areas (Statistics New Zealand, 2006).

Urban Māori are a diverse group

Substantial Māori migration into New Zealand cities and the differing development experiences of migrants have created a highly heterogeneous urban Māori population. Understandably, Māori have a wide range of aspirations for how cities will contribute to their wellbeing.

Ryks et al. (2014) identify three main groups among urban Māori (based on migration patterns and relationships with iwi and hapū of origin) (Figure 7.1).

Figure 7.1 Conceptualising urban Māori



Source: Ryks et al. (2016) p. 30.

Notes:

1. Ngā iwi kei waho – iwi whose rohe is outside the urban area in question.

Briefly, urban Māori (all Māori living in urban areas) comprise mana whenua (iwi and hapū who hold traditional mana over the land they reside in) and mātāwaka (those who do not hold traditional mana over the land they reside in). In turn, mātāwaka comprise taura here (those who retain a link with iwi and hapū outside the area in which they reside) and taunga hou. Taunga hou ("new anchorage") is a coined term that refers to "those people who are of *Māori* descent and *Māori* ethnicity but who, through choice or circumstance, do not link back to their own *iwi/hapū*" (Ryks et al., 2016, p. 31).

In 2013, the proportions of mana whenua and mātāwaka (comprising taura here and taunga hou) varied greatly across New Zealand's main cities (Table 7.1). In Auckland and Wellington, in particular, taura here greatly outnumber mana whenua. In two cities, Hamilton and Christchurch, mana whenua mostly comprise members affiliated to a single iwi. In contrast, the Māori Plan for Tāmaki Makaurau (Auckland) recognises 19 mana whenua groups – each with different but overlapping interests in the urban environment (Independent Māori Statutory Board, 2012).

Table 7.1 Urban Māori within Auckland, Hamilton, Wellington and Christchurch, 2013

	Mana whenua	Mātāwaka		Total
		Taura here	Taunga hou	
Auckland	19 527	84 633	18 279	122 439
	16%	69%	15%	100%

	Mana whenua	Mātāwaka		Total
		Taura here	Taunga hou	
Hamilton	14 136	17 571	5 286	36 993
	38%	48%	14%	100%
Wellington	3 009	37 833	6 168	47 010
	7%	80%	13%	100%
Christchurch	8 151	15 003	4 290	27 444
	30%	55%	16%	100%

Source: Ryks et al. (2016).

Notes:

1. Due to rounding, numbers may not total to 100%.

Many Māori have affiliations across a number of iwi; many also identify as members of other ethnic groups in addition to being Māori. The depth and extent of their engagement with te ao Māori (the Māori world) also varies considerably (Cunningham, Stevenson & Tassell, 2005). While Māori are overrepresented in poor social and economic outcomes, they collectively cover a wide range of economic, social and educational backgrounds.

In sum, urban Māori, like the broader population, are likely to have a variety of interests in urban development. Because of the connection with specific locations, differences in approach across mana whenua groups, and differences in the scope of their kaitiakitanga interests (Box 7.1), Māori interests in urban development tend to be local.

Māori have a variety of interests in urban development

Different groups of urban Māori have both different and common interests in the urban environment. This section discusses some of the more prominent interests.

Mana whenua interests in urban development

Mana whenua have a particular set of interests because of their ancestral occupation and longstanding relationship with the landscape. These interests give rise to ongoing rights and responsibilities as kaitiaki (Box 7.1). The Resource Management Act 1991 (RMA) specifically recognises this relationship (section 7.3). Similarly, the Court of Appeal has recognised a Treaty principle that Māori retain rangatiratanga over their resources and taonga; while the Waitangi Tribunal has recognised the Crown has a duty to act reasonably, honourably and in good faith to protect rangatiratanga in exchange for the Māori cession of sovereignty (Box 7.3).

Box 7.1 **What is kaitiakitanga?**

Kaitiakitanga "denotes the obligations of stewardship and protection … [and] is most often applied to the obligation of whānau, hapū and iwi to protect the spiritual wellbeing of natural resources within their mana" (New Zealand Law Commission, 2001, p. 40).[61] Kaitiakitanga, in turn, is closely linked to

> …mana, which provides the authority for the exercise of the stewardship or protection obligation; … tapu which acknowledges the special or sacred character of all things and hence the need to protect the spiritual wellbeing of those resources subject to tribal mana; … [and] mauri, which recognises that all things have a life-force and personality of their own. (p. 40)

[61] The New Zealand Law Commission (2001, p. 40) noted that "Kaitiakitanga is a term coined in relatively recent times to give explicit expression to an idea which was implicit in Māori thinking but which Māori had hitherto taken for granted".

Kaitiakitanga forms one of two foundational and interlinked concepts within Māori thinking on environmental management. The other is whanaungatanga – the organisation of concepts and relationships through whakapapa or familial connections. As the Waitangi Tribunal explains:

> Kaitiakitanga is really a product of whanaungatanga – that is, it is an intergenerational obligation that arises by virtue of the kin relationship. It is not possible to have kaitiakitanga without whanaungatanga. In the same way, whanaungatanga always creates kaitiakitanga obligations. (Waitangi Tribunal, 2011, p. 105)

Because the relationship Māori have with the environment is described in terms of whakapapa, the claim that particular Māori groups have to kaitiakitanga is based on this sense of relationship. In Māori cosmology, no distinction is made between human ancestors and whenua, maunga or awa from which one descends or (to put it in the appropriate cultural context) "can whakapapa to".

Because of ancestral relationships, Māori may have a kaitiaki relationship with an environmental feature that they have no legal title to (native title claims excepted) (Box 7.4).

Ryks et al. noted of mana whenua interests that:

> A pressing theme for mana whenua has been attempts to regain their distinct status, to build new social and economic institutions, and to preserve remaining traditional resources, such as land and waterways. (2014, pp. 6–7)

Similarly the Waikato District Council submitted:

> [One of the] greatest interests that Māori have expressed [is] in the care of the natural and cultural environment and the resources. In particular in our district there is a focus on protecting and restoring water quality in our waterways and surface water bodies, as well as safeguarding our remnant natural areas and the coast. (sub. 2, p. 10)

Of particular, but not sole, importance to mana whenua is the expression and active protection of Māori values, rights and interests in mahinga kai, wāhi tapu and wāhi taonga (Ngā Aho & Papa Pounamu, 2016b). Lenihan (2014) explained that "mahinga kai" refers to the "customary gathering of food and natural materials and the places where those resources are gathered" (p. 4). Wāhi tapu are sites imbued with an element of sacredness or restriction, such as sites associated with creation stories, rituals, historical occupation, human remains, and geographical markers of identity. "Wāhi taonga are 'places treasured' due to their high intrinsic values and critical role they have in maintaining a balanced and robust ecosystem (e.g. spawning grounds for fish, nesting areas for birds, freshwater springs)" (p. 11).

As a result of Treaty settlements, mana whenua groups have again become significant owners of land and buildings in some New Zealand cities. They have often separated their commercial and iwi development interests into different entities under the umbrella iwi organisation. The high value of some urban land has placed a premium on iwi commercial interests as a means to provide a return for iwi members on resources transferred as part of settlements.

Auckland Council submitted:

> A high proportion of Māori land and Treaty settlement land also has important environmental elements within the sites. It will be important within any future urban planning framework that an appropriate balance is achieved between enabling development on these sites, recognising the need for land to be developed to support social, cultural and economic wellbeing and protecting environmental tāonga. (sub. DR86, p. 18)

The broader interests of urban Māori

The Independent Māori Statutory Board (IMSB) has identified the aspirations of Māori in Auckland. In particular, the Māori plan for Tāmaki Makaurau sets out a vision: "Te Pai me te Whai Rawa o Tāmaki Māori – Healthy and Prosperous Tāmaki Māori" (IMSB, 2012, pp. 12–13). Key directions and desired outcomes are set

out under five Māori values that cover four domains (environment, economic, social, and cultural). The five values are:

- whanaungatanga – expressed through the relationships developed between whānau and their communities;
- rangatiratanga – expressed through autonomy, leadership and participation;
- manaakitanga – expressed through the responsibility to provide hospitality and protection;
- wairuatanga – expressed as distinctive identity or the spirituality of a place; and
- kaitiakitanga – expressed as guardianship to ensure a sustainable future for all.[62]

Professor Hirini Matunga told the Commission that the planning system needs to create places where Māori can be Māori in urban spaces (pers. comm., 26 April 2016). Waa (2014) sums up the benefits of urban development for Māori: "The key outcome of our model [for understanding how cities can promote wellness among Māori] is that 'cities are able to sustain a way of life that collectively Māori have reason to value'" (p. 1). Yet the Greater Wellington Regional Council (GWRC), recognising the diversity of Māori views, suggests that it will be challenging to secure a *collective* view on a preferred way of life (sub. DR80).

Auckland Council submitted:

> Māori are increasingly becoming urban based, with Auckland having the world's highest Māori population. Auckland is home to nearly 25% of New Zealand Māori. With a youthful demographic (half of the Auckland Māori population are under the age of 20), the future design of the urban planning system will have a significant impact on how Māori live, work and play, but also on how Auckland and New Zealand reflects Māori identity and recognises their valuable current and future contribution towards the continued growth and progress of the country.
>
> A recent engagement survey of Auckland rangatahi [youth] made it clear rangatahi are proud of their culture and identity. They want to see it becoming more visible and better reflected in their communities and they need improved accessibility to the full range of opportunities Tāmaki Makaurau offers. A fit for purpose future urban planning framework would better enable these outcomes (sub. DR86, p. 5).

Improving social and economic outcomes for Māori

Unsurprisingly, urban Māori, like other groups, are interested in improving a wide range of social and economic outcomes associated with the urban environment. Many have a particular focus on addressing Māori overrepresentation among individuals and families experiencing socio-economic and educational disadvantage. Often central government policies and services have a major influence on outcomes in these areas, while urban planning makes a lesser, though not negligible, contribution. Land-use planning may have an even more minor role than broader urban planning in shaping these outcomes (Chapter 2 and Chapter 3). Yet hard distinctions between environmental and social and economic outcomes seem to run against the grain of Māori values:

> …ecological restoration in the city should not be separated from the social and cultural restoration of the human communities that inhabit the city, particularly those who have been most disenfranchised by it. (Matunga, 2000a, p. 70)
>
> For Māori (and other indigenous peoples) their interest in urban development is not solely, or even largely, economic, but includes other dimensions of wellbeing. This is because the negative impacts of colonisation and migration have not just been felt in economic terms but in social and health terms as well … Therefore, a major driver for full Māori participation in urban planning and development is achieving equity across the social, economic, and political spectrums. Love (2010) conceptualises this as a desire among Māori for a 'cultural footprint' in the city. (Ryks et al., 2014, p. 12)

[62] Different Māori sources on urban development use varying sets of values or principles. For instance, Awatere et al. (2008) use four of the IMSB's five values (omitting rangatiratanga) and adding kotahitanga (unity and collaboration), mauritanga (mauri means "life-force" and design should take into account the existing mauri of an environment and maintain or enhance the mauri within a community), orangatanga (protection and enhancement of health and wellbeing), and mātauranga (Māori knowledge and understanding).

> …framing of discussions of urban planning in economic terms undermines the integrity of mātauranga Māori as a conceptual underpinning to urban planning which aims to respect environmental, cultural and social outcomes. (Ngā Aho & Papa Pounamu, 2016a, p. 9)

Similarly, Matunga (2016) identifies the broad outcomes of Māori resource management and planning as:

- environmental quality and quantity;
- Māori social cohesion and wellbeing;
- Māori economic growth and distribution;
- Māori cultural protection and enhancement; and
- iwi Māori political autonomy and advocacy.

Regional Public Health and the New Zealand Centre for Sustainable Cities submitted:

> In our view, attention should also be paid to how planning processes can reinforce or address existing inequities, including the marginalisation of Māori interests. It is reasonable for local government, in our view, to take a leadership role in this process. … Māori interests in urban planning are broad, ranging from advancing self-governance to economic development to improving environmental, social, and cultural outcomes, often through long-term, not-for-profit investment. Many Māori organisations are actively planning for urban development, using assets including land returned under Treaty settlement to meet the needs and aspirations of their people. (sub. 35, p. 3)

Auckland Council submitted:

> Development of Māori and Treaty settlement land is a high priority for mana whenua. Those living on their whenua also need to have accessible educational, recreational, employment, business, and cultural opportunities. Together these reinforce Māori identity and strengthen support networks and opportunities for achievement (sub. DR86, p. 6)

Yet, while land-use planning sets a context for and can influence these broader social and economic outcomes, it is not the most salient instrument available to government to address them. Chapter 3 discusses how land-use planning is related to broader social and economic goals, and the broader central and local government policies designed to achieve them. The current chapter is primarily focused on Māori participating in land-use planning and on recognising and actively protecting Māori interests in the physical environment.

Mātāwaka and urban development

Mātāwaka have particular issues associated with distance from their iwi bases, and emerging affiliations in the urban environment.

> Among the challenges faced by mātāwaka (and especially taura here) has been the cultural dislocation brought about by distance from their own iwi and government policies that attempted to discourage the establishment of cultural enclaves within the urban environment … mātāwaka from the outset have created new structures that include tribally affiliated organisations, pan-tribal organisations, sports groups, churches and, for some, gangs … One of the key types of pan-tribal organisations … are urban Māori authorities that represent the interests of mātāwaka. (Ryks et al., 2014, p. 7)

Auckland Council submitted:

> Matāwaka make up approximately 84% of the Tāmaki Makaurau Māori population. Any future urban planning framework needs to provide guidance on how matāwaka will have a presence within a future urban planning framework. (sub. DR86, p. 5)

Professor Hirini Matunga told the Commission that the RMA (by shifting the focus to iwi) had, in effect, disenfranchised the large number of urban Māori who were not mana whenua. He argued that the urban–rural distinction was artificial, as taura here (mātāwaka) go back and forth between both (pers. comm., 24 April 2016). He later added that there is a need for "[r]ecognition that mataawaka and taurahere also have a desire to live 'as Maori' in the urban context and therefore must be provided for" (sub. 52, p. 2).

> [M]ātāwaka Māori, many long-standing city residents, have been excluded from Treaty settlements in the city they live in, as well [as] from … the resulting relational, economic and cultural benefits [that] settlements have brought …Durie (2009) suggests that once substantive Treaty claims have been settled there will be a shift away from claimant iwi towards collectives that reflect a broader picture of Māori society as it exists today. This would require urban authorities to interact with Māori in a very different way, requiring them to balance mātāwaka and mana whenua perspectives. Given that some local authorities are still struggling to fully include local iwi in urban development this conceptual and operational shift could pose a challenge. (Ryks et al., 2014, pp. 8–9)

Auckland Council (sub. 86, p. 10), as well as Ngā Aho and Papa Pounamu (2016b), recommended more work on the respective roles of mana whenua and mātāwaka in the planning system. The role of mātāwaka in land use and resource management planning raises issues about how to interpret Treaty principles that jurisprudence has not, to the Commission's knowledge, so far addressed definitively. Yet, as Auckland Council notes, the importance of mātāwaka in some New Zealand cities identifies them as a group who need to be effectively engaged in planning processes. Chapter 8 recommends that Councils use a wider range of consultation and engagement methods than at present, particularly to engage those whose voices and interests tend not to be heard under current practices.

Te Aranga principles for a Māori cultural landscape strategy

Māori have an interest in seeing their culture (values, narratives and aspirations) reflected in the urban landscape. Cities are home to the large majority of Māori; Māori have ancestral ties to the lands on which cities are developing; and New Zealand cities are the only urban spaces where these ties hold. Māori designers have worked for many years to develop approaches to urban design that reflect Māori values. Auckland Council has incorporated one set of principles – the Te Aranga Principles – into its Urban Design Manual (Auckland Design Manual, 2016) (Box 7.2).

Box 7.2 **Te Aranga Principles**

Māori design professionals developed the Te Aranga principles in 2006 in response to the New Zealand Urban Design Protocol (MfE, 2005a). The principles were formulated at a hui at Te Aranga marae in Flaxmere. "The resultant Te Aranga Māori Cultural Landscape Strategy … represented the first concerted and cohesive effort by Māori to articulate Māori interests and design aspirations in the built environment." The hui participants deliberately chose the term "Māori cultural landscape", as the alternative "urban design" "did not resonate with a connected Māori worldview".

The seven outcome-oriented Te Aranga principles complement core Māori values, such as rangatiratanga, kaitiakitanga and manaakitanga, which guide processes. The Te Aranga principles comprise:

1. Mana – The status of iwi and hapū as mana whenua is recognised and respected.
1. Whakapapa – Māori names are celebrated.
2. Taiao – The natural environment is protected, restored and/or enhanced.
3. Mauri Tu – Environmental health is protected, maintained and/or enhanced.
4. Mahi Toi – Iwi/hapū narratives are captured and expressed creatively and appropriately.
5. Tohu – Mana whenua significant sites and cultural landmarks are acknowledged.
6. Ahi kā – Iwi/hapū have a living and enduring presence and are secure and valued within their rohe.

Each principle describes in more detail the outcomes sought and how to apply the principles. The principles stress the importance of establishing Treaty-based relationships and providing a platform for working relationships where mana whenua values, worldviews, tikanga, cultural narratives and visual identity can be appropriately expressed in the design environment. Among other things, applying the principles entails:

- using ancestral names to enhance "sense of place" connection and re-inscribing ancestral names, local tohu and iwi narratives into the design environment;
- engaging design professionals and artists mandated by iwi/hapū;
- protecting or enhancing the presence of local flora and fauna as key natural landscape elements;
- identifying, managing, protecting and enhancing significant sites (including wāhi tapu, maunga, awa, puna, mahinga kai and ancestral kainga); and
- acknowledging the environment after the Treaty of Waitangi settlement, where iwi living presences can include customary, cultural and commercial dimensions.

Source: Auckland Design Manual (2016).

The Te Aranga principles build on mātauranga Māori (Māori knowledge and understanding). Mātauranga is knowledge generated through long-term occupation of an environment, and is specific to each whānau, hapū and iwi. Like all bodies of knowledge, Mātauranga Māori is evolving and dynamic. At all times, however, mātauranga Māori is founded upon tikanga, Māori worldviews, and an intimate relationship with the environment. As a result "Māori creative practitioners can play a central role in translating concepts of mātauranga Māori into the contemporary context" (Ngā Aho & Papa Pounamu, 2016a, p. 20). The GWRC supported the Te Aranga principles (sub. DR80).

Māori are reporting successful outcomes from processes that draw on mātauranga Māori in urban design, often as an adjunct to Māori engagement in more formal planning processes (eg, Ngā Aho & Papa Pounamu, 2016a). The boundary between what is covered by land-use planning legislation and what is not is inevitably somewhat blurry. Chapter 8 discusses the place of urban design in land-use planning, including approaches that reflect Māori values.

Other approaches to evaluating urban development from a Māori perspective

Māori designers and planners have developed a number of approaches to evaluating urban development from a Māori perspective. Awatere et al. (2008, p. 55) noted that "a one size fits all" model or tool is not appropriate as tangata whenua "want to assert their own values and traditions in relation to their built environment and see themselves reflected in the contemporary landscape".

Awatere et al. used Kepa Morgan's mauri model as an example of an assessment tool. Broadly, mauri refers to the life-force that every natural and physical object contains. The mauri model provides a flexible tool to assess whether a proposed development enhances or denigrates the mauri of an environment. The model uses a five-point scale to assess change on a range of dimensions selected for the purpose of the particular assessment (Mauriometer, 2016). Awatere et al. recommended undertaking any assessment as a collaborative process that allows whānau/hapū/iwi values to be incorporated.

Papakāinga and other kaupapa Māori developments

A number of participants explained the interest that Māori (both mana whenua and mātāwaka) have in developing papakāinga and other kaupapa Māori housing, marae areas and associated community facilities (Waikato District Council, sub. 2; Greater Christchurch Urban Development Strategy, sub. DR83; Auckland City Council, sub. DR86; Christchurch City Council, sub. DR90; Whanganui District Council, sub. DR95; Bay of Plenty Regional Council, sub. DR111; LGNZ, sub. DR113; Te Matapihi He Tirohanga mō Te Iwi Trust, pers. comm., 12 January 2017). As Hoskins explained:

> 'Papakāinga' refers to 'papa' or Papatuanuku as the ancestral earth mother and 'kainga' as the village communal living environment. Today the term is used to define both an ancestral land base as well as a collection of dwellings occupied [by] Māori connected by common kinship or kaupapa, located in reasonable proximity to each other and normally relating to a marae or other communal area or building. While traditionally papakāinga are generally conceived of as being rural in nature, with 83% of

> Māori now urbanised, increasingly such developments will desirably be developed in urban and peri-urban areas. (2012, p. 1)

Planning regulations and the reluctance of some councils to provide infrastructure (and the nature of some Māori land title) have posed barriers in the past to Māori aspirations to develop papakāinga and other kaupapa Māori residential developments. For instance, the density of housing desired by Māori developers may exceed zoning provisions. However, over time, some councils have revised plans to recognise and make it easier to develop papakāinga (Awatere et al., 2008; Blair, 2010; Livesey, 2010; Hoskins, 2012). Ngāti Whātua Ōrākei, for example, have used part of the lands returned to them in Treaty settlement to begin developing a papakāinga on an ancestral site in Ōrākei. A land swap under the settlement provided suitable land for a papakāinga, and the district plan now provides for a papakāinga zone.

Other urban papakāinga or kaupapa Māori housing areas are being or have been developed in Māngere, Tauranga, Wellington and Waimakariri, for example (Awatere et al., 2008; Livesey, 2010; Hoskins, 2012; Wellington City Council, sub. DR68; Greater Christchurch Urban Development Strategy, sub. DR83; Christchurch City Council, sub. DR90; Bay of Plenty Regional Council, sub. DR111; LGNZ, sub. DR113).

Yet issues relating to papakāinga and kaupapa Māori developments remain.

Auckland Council (sub. 86, p. 11) submitted:

> The range of issues council has identified in relation to papakāinga development which may warrant further consideration include but are not limited to:
>
> - how best to enable and support papakāinga development across a range of different land types (i.e. Maori land, Treaty settlement land, general titled land)
> - how best to enable and support papakāinga development by mana whenua, matāwaka, marae, iwi, hapū and whanau where there is not necessarily an ancestral link to the land
> - the merits of enabling more consistency in approaches by local government towards papakāinga development (and how that might be effected)
> - the implications, impacts and outcomes for Māori and the wider community of treating papakāinga development as extending beyond housing, to include educational, employment, business and cultural aspects, both on and off-site
> - if additional resourcing and support for the development of papakāinga might be required. Such support could include funding, and the provision of technical and professional advice. (sub. DR86, p. 11)

Bay of Plenty Regional Council (sub. 111, p. 3) submitted:

> SmartGrowth, Housing NZ and Te Puni Kōkiri have developed a 'toolkit' and seminars to support tangata whenua [as they] navigate planning and building issues unique to the beneficiaries of multiply owned land.
>
> But there are many other challenges. BOPRC has representation on the Papakāinga housing development forum and provides ongoing resource consents pre application advice – as examples of ways we help Māori develop their land.
>
> We consider policy should be enabling. However, the challenges to developing multiply owned Māori land generally lie outside the RMA and require broader assistance. Existing tools such as the nationally recognised SmartGrowth Papakāinga Housing toolkit are supported. (sub. DR111, p. 3)

Te Matapihi He Tirohanga mō Te Iwi Trust has been conducting research on the effectiveness of papakāinga provisions in district plans. In particular the Trust has looked at provisions in six operative plans in districts in which papakāinga had recently been built. Common features of plans include provision for higher density development, provision for development across a land block or series of land blocks (rather than consenting on a house-by-house basis), and adjustments to setbacks and separation distances to facilitate communal space. The Trust identified four common limitations to existing papakāinga provisions.

- Papakāinga development is not specifically provided for in urban areas, and neither is communal house development for Mataawaka communities.

- Papakāinga development is often restricted to Māori land, and not specifically provided for on general land which may be owned by Mana Whenua.
- Some papakāinga provisions include rules relating to who may occupy dwellings.
- Many plans include a specific set of provisions relating to Māori land, but only a small number of more recent plans include specific provisions enabling development on land returned under Treaty settlement.
- Some plans only provide for marae and residential activities, but definitions of 'papakāinga' or development on Māori land in more recent plans reflect an understanding of the need for a wider range of economic and social activities to support housing. (pers. comm., 12 January 2017)

The Trust commended to the Commission the 'best practice' guide that Rau Hoskins prepared for Auckland Council as part of the development of the Proposed Auckland Unitary Plan (PAUP) (Hoskins, 2012).

The Commission recommends that a future planning system should provide for a National Policy Statement (NPS) on Planning and the Treaty of Waitangi (section 7.6). The NPS should include guidance on provisions in Plans for papakāinga and kaupapa Māori developments, to help remove unnecessary barriers to such developments. Such guidance should, nevertheless, respect differences in local tikanga and preferences and allow accordingly for appropriate local variations in practice.

R7.1

In a future planning system, the government should (through the proposed National Policy Statement on Planning and the Treaty of Waitangi) provide guidance to local authorities on planning provisions for papakāinga and other kaupapa Māori residential and non-residential developments, whether situated on Māori land or elsewhere.

Because there are differences in local tikanga and preferences, guidance should encourage local authorities to reach agreement with mana whenua and other local Māori communities in their district on planning for kaupapa Māori developments.

Summary – Māori interests in urban planning

Auckland Council provided a helpful review of Māori interests in urban planning:

> It is vital the inquiry and resulting urban planning framework recognises the direct impact it has on Māori – whether this is by enabling development of Māori and Treaty settlement land, providing healthy and affordable housing, making travel accessible to everyone, influencing Māori experiences within our communities, and how Māori values and culture is reflected in our surroundings. (sub. DR86, p. 17)

F7.1

Māori have a broad range of interests in urban development arising from connections with ancestral lands, a desire to live in spaces identifiably Māori, their individual and collective ownership and development of urban land, and their desire for prosperity and wellbeing. Some of these interests require policies that go beyond urban land-use planning.

7.2 The Treaty in legislation and jurisprudence

Māori aspirations for the built environment, expressed in the Te Aranga principles, start with the importance of establishing Treaty-based relations (Box 7.2). The Māori search for a Treaty-based partnership long pre-dated the greater recognition of the Treaty in New Zealand law over the last four decades (Durie, 2009). Before 1975, breaches of the Treaty by the Crown were not justiciable – capable of being decided by a court. In 1986 the Government determined that all future legislation should be enacted against the backdrop of the Treaty.

Provisions in statute, Treaty settlements and evolving jurisprudence have now brought the Treaty of Waitangi closer to the mainstream of government policy and administration. This section briefly describes

how statute and evolving jurisprudence recognise the Treaty and iwi and Māori interests. Section 7.3 outlines current provisions in planning laws for the recognition of iwi and Māori interests, and describes how Treaty settlements have provided for Māori engagement in planning processes. It gives some examples of how statutory provisions have played out in planning practice.

The Waitangi Tribunal

The Waitangi Tribunal was established by the Treaty of Waitangi Act 1975. The Tribunal inquires into claims that the Crown has breached the principles of the Treaty, causing prejudice to Māori (Treaty of Waitangi Act 1975, section 6(2)). The Tribunal has no binding powers of decision, but may recommend to the Crown that it make reparations where a claim is upheld (Treaty of Waitangi Act 1975, sections 6(3) and 6(4)). The Tribunal's interim and final reports often facilitate the claimants and the Crown entering into direct negotiations for Treaty settlements.

When first enacted, the Treaty of Waitangi Act covered only acts or omissions of the Crown from 1975. The Act was amended in 1985 to extend the Tribunal's jurisdiction to the signing of the Treaty on 6 February 1840. Most of the Tribunal's work concerns historical grievances.

The Tribunal has been pivotal for the airing of Māori grievances and facilitating redress for historical Treaty breaches. It has also been playing an important role in bringing to the attention of non-Māori New Zealanders "aspects of traditional knowledge about urban land and water, its deep history, uses and management …" (Ryks et al., 2014). The Tribunal determines its own procedure.

The Treaty in legislation and jurisprudence

As a result of references in statute, Treaty jurisprudence has developed as a distinct body of administrative law. In its *Regulatory institutions and practices* inquiry (NZPC, 2014b), the Commission identified 36 (at that time) principal acts with references to the Treaty or Treaty principles.[63] Three important points are noted below.

- Almost all statutes with Treaty clauses contain regulatory provisions of some kind.
- Most references to the Treaty or to Treaty principles are in statutes governing physical resources and the environment, where Māori have strong iwi and hapū relationships, often involving kaitiaki relationships – including land, water, important sites, wāhi tapu and other taonga.
- The statutes create obligations on a range of parties, and many are not the Crown, such as obligations on local government, Crown entities, Officers of Parliament and a body corporate. This reflects the view that the Crown cannot delegate its Treaty obligations and responsibilities, but is obliged to translate these into policy and procedural requirements for other bodies (including local authorities).

Even if a statute does not contain a Treaty reference, courts may find that the Treaty and its principles are a consideration that a decision maker must take into account. The courts have found that the Treaty is "part of the fabric of New Zealand society [and] is part of the context in which legislation which impinges upon its principles is to be interpreted" (*Huakina Development Trust v Waikato Valley Authority*, p. 210). The courts also apply a general presumption of statutory interpretation that Parliament will legislate in line with the principles of the Treaty (Legislation Advisory Committee, 2014).

The principles of the Treaty

Sometimes legislation refers to the "Treaty"; sometimes it refers to the "principles of the Treaty". Legislators use references to the "principles of the Treaty" for two broad reasons. First, "[I]t is the spirit and intent of the Treaty which is important, rather than its bare words …consistent with the constitutional significance of the Treaty and broad, open textured reading of such documents" (Palmer, 2001, p. 208). A focus on the spirit of the agreement, rather than a more limiting and legalistic focus, promotes a more positive relationship between Māori and the Crown. Second, reference to the Treaty principles better copes with the historical

[63] This excluded Treaty Settlement Acts or references to Waitangi Day.

nature of the Treaty. New issues and ways of managing them emerge, and the Treaty relationship between the Crown and Māori has evolved and will continue to evolve.

The Court of Appeal, the Waitangi Tribunal and the Executive have all offered their views on the nature of the Treaty principles (Box 7.3).

Box 7.3 **Treaty principles – three views**

The Court of Appeal

- A relationship of a fiduciary nature that reflects a partnership imposing the duty to act reasonably, honourably and in good faith
- The Government should make informed decisions
- The Crown should remedy past grievances
- Active protection of Māori interests by the Crown
- The Crown has the right to govern
- Māori retain rangatiratanga over their resources and taonga and have all the rights and privileges of citizenship.

The Waitangi Tribunal

- Partnership
- Fiduciary duties
- Reciprocity – being the cession of Māori sovereignty in exchange for the protection of rangatiratanga, leading to the duty to act reasonably, honourably and in good faith
- Redress for past grievances
- Equal status of the Treaty parties
- The Crown cannot evade its obligations by conferring its authority on another body
- Active protection of Māori interests by the Crown
- Options – the principle of choice
- The courtesy of early consultation.

The Executive[64]

- The Government's right to govern
- The right of iwi to manage their resources
- Redress for past grievances
- Equality – all New Zealanders are equal before the law
- Reasonable cooperation by both parties.

Source: Parliamentary Commissioner for the Environment (PCE), 2002; NZPC, 2014b.

[64] First expressed by the Fourth Labour Government.

These lists are neither exhaustive nor conclusive. The Courts are an important authoritative source on the meaning of the principles, but have also said that, in interpreting the principles, weight should be given to the opinions of the Waitangi Tribunal (*New Zealand Māori Council v Attorney-General,* 1992).

The Court of Appeal has stated that the Treaty of Waitangi enacts a relationship akin to a partnership, and its central obligation is to act in good faith and work out answers in a spirit of honest cooperation (*New Zealand Māori Council v Attorney-General,* 1987). The principle of consultation can be regarded as particularly important. Without it, Māori interests and values can be overlooked when developing and implementing legislation. In 1989 the Court of Appeal found that the principle of good faith "must extend to consultation on truly major issues" (*New Zealand Māori Council v Attorney-General*, 1989). In some circumstances the Crown's obligations will go beyond consultation to include "active steps to protect Māori interests" (*Ngāi Tahu Māori Trust Board v Director General of Conservation*, 1995).

7.3 The Treaty and active protection of Māori interests in planning legislation

The RMA, Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA) are the three main statutes underpinning urban planning. This section summarises how the three statutes provide for recognition of the Treaty and active protection of Māori interests when making decisions about urban planning. The language of the requirements in the RMA, LGA and LTMA differ. While the RMA focuses on the participation of iwi in planning processes, the LGA and the LTMA talk about engagement of Māori more broadly.

Resource Management Act

The RMA was designed with objectives that include better recognition and active protection of Māori customary rights, taking into account the values and interests of Māori, and providing ways and means for Māori interests to be represented in the development of plans and in consent decisions (Gow, 2014; Sir Geoffrey Palmer & Roger Blakely, sub. 7). These objectives are reflected in numerous parts of the Act, including those listed below.

- Section 6 of the Act identifies "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" as a "matter of national importance", which "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".
- Section 7 states that "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" kaitiakitanga.
- Section 8 requires all persons exercising functions and powers under the Act to take into account the principles of the Treaty.
- Section 33 lets a local authority (subject to specified conditions) transfer one or more of its powers under the RMA to an iwi (among other public authorities).
- Sections 36B to 36E let a local authority (subject to specified conditions) enter into Joint Management Agreements (JMAs) with public authorities, iwi and hapū, to perform duties, powers and functions under the Act.
- Section 61 and section 66 provide that, when preparing a regional policy statement or a regional plan (respectively), a regional council must take into account any relevant planning document prepared by an iwi authority; section 74 has a similar provision for territorial authorities preparing a district plan.
- Schedule 1 of the Act requires local authorities to consult with tangata whenua through iwi authorities when developing plans and policy statements (clause 3); and to consider ways to facilitate iwi authorities engaging in consultation (clause 3B).

The Resource Legislation Amendment Bill 2015, as introduced to Parliament, would require councils to invite iwi to enter into Iwi Participation Arrangements (IPAs) every three years. The arrangements would set out "ways in which tangata whenua, through iwi authorities, participate in the plan-making processes under Schedule 1 of the RMA" (Parliamentary Library, 2015, p. 5). After further consultation, the government agreed to amend these provisions to provide for iwi to initiate the consideration of "Mana Whakahono a Rohe" – a Māori term to refer to IPAs (Freshwater Iwi Leaders Group, 2016).

Local Government Act and Land Transport Management Act

The LGA and LTMA include clauses acknowledging the Crown's obligations under the Treaty, and require councils to facilitate participation by Māori in decision-making processes. In the case of the LGA, these include obligations on councils to:

- provide opportunities for Māori to contribute to decision-making processes (section 14);
- establish and maintain processes for Māori to contribute to decision making (section 81(1)(a));
- consider ways in which they can foster the development of Māori capacity to contribute to decision-making processes (section 81(1)(b));
- provide relevant information to Māori (section 81(1)9c));
- have in place processes for consultation with Māori, in line with general principles for consultation (section 82(2));
- take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga (section 77(c)); and
- set out in the Long-Term Plan the steps that the local authority intends to take to foster the development of Māori capacity to contribute to decision-making processes (clause 8 of Schedule 10).

The LTMA, "to recognise and respect the Crown's responsibilities to take appropriate account of the principles of the Treaty of Waitangi ", sets out "principles and requirements that are intended to facilitate participation by Māori in land transport decision-making processes" (section 4). In particular, the LTMA requires:

- regional transport committees to consult in line with the principles set out in section 82 of the LGA (which include having processes for consultation with Māori) (section 18);
- Auckland Council, New Zealand Transport Agency (NZTA) or other "approved organisations"[65] to "do everything reasonably practicable to separately consult Māori affected by any activity proposed … that affects or is likely to affect…Māori land; or land subject to any Māori claims settlement Act; or Māori historical, cultural, or spiritual interests"(section 18G);
- NZTA and other approved organisations must ,"with respect to funding from the national land transport fund,—

  (a) establish and maintain processes to provide opportunities for Māori to contribute to the organisation's land transport decision-making processes; and

  (b) consider ways in which the organisation may foster the development of Māori capacity to contribute to the organisation's land transport decision-making processes; and

  (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b). (section 18H); and
- NZTA, if required by the Minister, to set out in its statement of intent the steps it will take to "foster the development of Māori capacity to contribute to the Agency's land transport decision-making process" (section 100(1)(f)).

[65] These include regional councils and territorial authorities.

Other legislation for Māori land and for the environment

Māori land comprises four types:

- customary land – land that Māori has always owned and that has never been assigned individual title;
- Māori freehold land - provided for and regulated under the Te Ture Whenua Act 1993 (TTWA) and its predecessors;
- general land owned by Māori; and
- Māori reserves - land officially set aside for cultural and communal purposes (Office of the Auditor-General, 2011b).

Thirty percent of Māori land is located in or near urban centres (NZPC, 2012a; OAG, 2011b). Regulatory barriers to Māori using their land to meet their aspirations, such as the development of papakāinga, are an important consideration for urban planning (section 7.1).

Te Ture Whenua Act

Māori customary and freehold land is governed by the TTWA. A key objective of the Act is for Māori land to be retained as taonga tuku iho (a treasure passed down from ancestors) in the hands of its owners and their whānau, hapū and descendants. The TTWA also aims to promote the use, development and control of Māori land by its owners (and their whānau, hapū and descendants). Yet the Act requires the Māori Land Court to examine and approve most dealings with Māori land.

A bill to reform the law relating to Māori land was introduced to Parliament in April 2016. The bill aims to establish new arrangements for the governance and use of Māori land that provide greater clarity for decisions and "more closely align legislative policy with the principle of rangatiratanga by facilitating the pursuit by Māori landowners of their aspirations for their land" (Parliament of New Zealand, 2016a, p. 2). The bill received its second reading in December 2016.

The Rangitikei District Council submitted that the Commission should consider the proposed reforms as part of its urban planning inquiry (sub. 10, p. 1). The Auckland IMSB told the Commission that the processes between the planning system and the TTWA needed streamlining (pers. comm., 16 March 2016). The Far North District Council submitted:

> Council is interested in how a new planning system could provide for the matters above [recognition and protection of Māori interests]. At a minimum, we support the greater alignment of the Te Ture Whenua Maori and Resource Management Acts to provide a streamlined process for the development of Maori land and recognition and protection of Maori interests. (sub. 45, p. 2)

Overlaps between the two areas of legislation appear to relate to the conditions under which Māori land may be developed, and by whom. Auckland Council supported work on "options for better aligning and streamlining the approvals processes for Māori land use changes". It noted: "Currently, land use changes must be approved by both the Māori Land court and councils in two separate processes" (sub. DR86, p. 12). Christchurch City Council argued that provisions under the RMA need to be flexible to accommodate processes under the TTWA, and incorporate provisions for the use of tikanga Māori to address adverse effects. Whanganui District Council (sub. DR95) and the Bay of Plenty Regional Council (sub. DR111) advocated more guidance to councils and more education on these issues; with a focus on collaboration to meet the aspirations of mana whenua and other Māori communities.

The Commission considers that legislation for a future planning system (Chapter 13) should, to the extent practicable, align with other legislation governing the use of Māori land. The proposed NPS on Planning and the Treaty of Waitangi (section 7.6) should provide guidance to local authorities on good practice in aligning processes.

Other environmental and land use legislation

In its *Using land for housing* report (NZPC, 2015a), the Commission noted provisions in the Housing Act 1955 that give the Governor-General power to use the Public Works Act 1981 (PWA) to take land required for

"State housing purposes". The taking of Māori land under this provision requires the consent of the Minister of Māori Affairs. Part 2 of the PWA has a more general provision for the taking of land (including Māori land) by the Crown or local authorities for essential works. A private members bill was introduced in Parliament in December 2015 to amend the PWA to protect Māori freehold and Māori customary land from being acquired by a Minister or local authority for public works. This would have meant that no Māori land could be taken without consent. The bill did not pass its first reading (Parliament of New Zealand, 2016b).

Other environmental legislation that contains provisions relating to the Treaty includes the Crown Minerals Act, 1991; the Housing Accords and Special Housing Areas Act, 2013; the Heritage New Zealand Pouhere Taonga Act, 2014; the Environmental Reporting Act, 2015; the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act, 2012; the Marine and Coastal Area (Takutai Moana) Act, 2011; and the Treaty of Waitangi (Fisheries Claims) Settlement Act, 1993 (Fox & Bretton, 2014).

Interpretation by the courts of Treaty and Māori interest provisions in planning legislation

The courts have generally interpreted current provisions in statute to protect Māori interests as requiring a balanced approach, which takes into account a range of possibly competing interests and considerations (Box 7.4).

> Recent trends in the Environment Court jurisprudence demonstrate an increasing sophistication in dealing with balancing Māori interests. The Court tends to override them only where the need to recognise and provide for other matters of national importance outweigh those considerations, where the purpose of the RMA under s 5 may be defeated or where there are no reasonable alternatives available as a means of mitigating any adverse effects. (Fox & Bretton, 2014, p. 9)

Box 7.4 **Jurisprudence on Māori ancestral land under the Resource Management Act**

Over the years, court decisions and legislative amendments have been clarifying the implications of recognising and providing for "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" under section 6 of the RMA.

The courts have found, first, that the term "ancestral lands" applies "to all land throughout New Zealand that could be regarded as ancestral by Maori, and not necessarily owned by Maori at the present day" (Palmer, 2016, p. 23, referring to *Royal Forest and Bird Protection Society Inc. v W A Habgood Ltd* (1987) 12 NZTPA 76 HC).

Yet, before 2005, the courts found they had no power to reverse planning decisions that did not recognise sites of particular importance to Māori and where the relevant plan had not recorded or notified the site (Palmer, 2016, pp. 23–24, referring to *Helmbright v Environment Court (No 1)* [2005] NZRMA 118, Baragwanath J., and *Ngati Maru Ki Hauraki Inc. v Kruithof* [2005] NZRMA 1, Baragwanath J.). Amendments in 2005 to clause 3 of Schedule 1 of the RMA required councils to be proactive in consulting iwi early in the planning process. This amendment provided Māori with better opportunities to identify sites of importance to be recorded in plans. The Resource Legislation Amendment Bill 2015, currently before Parliament, will strengthen these opportunities by requiring councils to invite iwi to enter into participation arrangements every three years (Parliamentary Library, 2015).

The courts may be required to evaluate the significance of an ancestral site and the nature of recognition under the district plan.

> A recent example of this determination is *Te Tumu Landowners Group v Tauranga City Council* [2014, NZRMA 317]. A dispute arose between the landowners and iwi as to the identification of a former pa site on an area, and the significance of the archaeological evidence. After consideration of the site, and history of usage, the Court accepted that the site was in fact an ancestral site, and approved overlay notations of a significant Maori area and an archaeological management area, on the land. This type of notation may restrict the ability of the landowner to develop the land. (Palmer, 2016, p. 24)

In several cases, the courts have declined to approve the siting of telecommunications equipment or windfarms on sensitive hilltops, especially where alternatives acceptable to iwi were available (Palmer, 2016). In one case, at least, Māori no longer owned the land (*Mason-Riseborough RM v Matamata-Piako DC* (1997) 4 ELRNZ 31). Yet in another case that went to the Court of Appeal, the courts approved a requirement of designation of land at Ngawha Springs for a new corrections facility, despite iwi opposition. There was conflicting evidence on "the spiritual qualities and relevance of a taniwha, which could be affected by the construction and occupation of the land" (Palmer, 2016, p. 25).

> In summary, on matters of assessing the relationship of Maori with their ancestral lands, and incorporating this relevant matter of national importance into the context of plan policies and rules, and resource consent applications, the [Environment] Court has been relatively successful in determining reasonable and acceptable outcomes. (Palmer, 2016, p. 25)

Justice Joseph Williams gave a somewhat different assessment of jurisprudence in this area, reviewing three cases, including the Ngawha Springs case (Williams, 2013). In the cases reviewed, Williams considers that the courts in the end, and on appeal, failed to take appropriate account of Māori cultural sensibilities (about the location of sewer pipes; the taking of water from the Whanganui river; and the recognition of spiritual concerns). Williams argued in relation to Ngawha Springs:

> [A]fter two decades of jurisprudence in these matters the courts can still, with respect, demonstrate relatively limited understanding of the techniques that Māori custom would use to assess the veracity of conflicting evidence on spiritual matters, still less of the metrics from within Māori custom by which effects on spiritual interests might be properly and objectively measured. (p. 21)

In *Marr v Bay of Plenty Regional Council* ([2010] NZEnvC 347, [2011] NZRMA 89) an Environment Judge and a Māori Land Court Judge sat together to consider the renewal of consents for discharges from the Tasman Mill into air, and into the Tarawera River.

> The discharges had adverse effects on the relationship of iwi to their lands and the river, but the economics of the capital investment in mill, employment opportunities, and social benefit to the Kawerau Township, were held to constitute special circumstances justifying approval. That type of outcome confirms the pragmatic approach of the Court in these complex situations. (Palmer, 2016, p. 26)

Treaty settlements and co-governance and joint management arrangements

A number of groups and individuals have observed that the most substantive advances in Māori participation in environmental planning decisions have occurred through the Treaty settlement process rather than the RMA (Waitangi Tribunal, 2011; Williams, 2007; Miller, 2011; Fox & Breton, 2014; Matunga, 2016). Williams argued that

> the process that is setting innovative templates for Māori participation in environmental management is not the usual law and policy path. It is the more *ad hoc* Treaty settlement process which relies far more on pragmatic political do-ability than policy symmetry and which is less adaptable over time. (2007, p. 64)

Compared to the RMA, Treaty settlements are more likely to set up co-governance and joint management agreements (JMAs) that specifically provide for management and operations in accordance with tikanga Māori (the Māori system of law and custom) and as determined by Māori. Matunga (2000b) argued that Treaty settlement processes were inherently likely to focus on environmental management authority:

> Acknowledging the correlation between alienation of Maori lands and resources and the extinguishing of Maori administrative and management control over resources is vital. Many claims to the Waitangi Tribunal have been initiated out of concern at the failure of natural resource law and policy to protect resources valued by Maori and the level of environmental degradation that resulted…Predictably, the current Treaty settlement process is seeking redress in the form of environmental restoration and transfer of actual ownership of natural resources. However, the reinstatement of iwi management and planning authority over these resources and financial compensation to facilitate economic recovery is equally as important. (p. 40)

Fox and Bretton (2014, pp. 19–20) followed Coates (2009a) in arguing that JMAs arising out of Treaty settlements are more likely than those provided for under the RMA. Treaty settlement JMAs give potentially reluctant councils little choice but to participate. Questions of efficiency (a statutory test under the RMA) and political consequences are taken out of their hands. JMAs under Treaty legislation usually relate to land vested back into iwi, and so reduce the potential for perceived conflicts of interest; and iwi are not obliged to balance other matters of national importance, as would be required under the RMA. These statutory arrangements often or usually prevail over RMA plans and policy statements, should conflict arise (Box 7.5).

Box 7.5 provides examples of co-governance and JMAs arising from Treaty settlements. Such arrangements usually provide for the management of circumscribed parts of the natural landscape, and usually do not exclude enjoyment and use by the broader public.

Box 7.5 **Treaty settlements and environmental co-governance and joint management**

Waikato River Authority

The Waikato River Authority (WRA) was established in 2010 as a result of legislation giving effect to a Treaty settlement with Waikato-Tainui; and to concurrent and subsequent agreements with Waikato River iwi (Waikato-Tainui, Ngāti Tūwharetoa, Raukawa and Te Arawa, with the addition in 2012 of Ngāti Maniapoto in relation to the Waipa River). Iwi and the Crown appoint an equal number of people to the WRA.

The main purpose of the WRA is to set directions and administer funds "to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations". The governing legislation sets out a vision and strategy for the Waikato River that is deemed to be part of the Waikato Regional Policy Statement and which prevails over any NPS or Coastal Policy Statement under the RMA. Local authorities must amend regional and district plans to give effect to the vision and strategy.

The legislation also provides for JMAs between the various local authorities and iwi authorities relating to the content of planning documents under the RMA. Waikato-Tainui, for instance, has a JMA with each of the local authorities in the Waikato and Waipa river catchments. The Waikato Regional Council and Waikato-Tainui began early discussions in 2016 on the content of the next Regional Plan.

Te Urewera

The Te Urewera Act 2014 established Te Urewera as a legal entity, managed by a Board to act on its behalf. The Board initially comprised equal membership of Tūhoe and the Crown, but after 3 years will have six members appointed by Tūhoe and three by the Crown. The Act provides for the Chief Executive of Tūhoe Te Uru Taumatua and the Director-General of Conservation to be responsible for the operational management of Te Urewera. The Board is directed to reflect Tūhoe customary values and law. Work undertaken in Te Urewera does not, subject to certain conditions, require resource consent.

Tūpuna Maunga o Tāmaki Makaurau Authority

As part of the negotiation of Treaty settlements in Tāmaki Makaurau (Auckland), the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 transferred ownership of 14 Auckland maunga (mountains) to mana whenua. At the same time, the Act established the Tūpuna Maunga o Tāmaki Makaurau Authority (Maunga Authority), with equal membership from mana whenua and Auckland Council, and a non-voting member appointed by the Crown. The Authority provides a means for mana whenua to exercise kaitiakitanga over maunga. The Authority must prepare an integrated management plan for maunga and set out the conditions under which an authorised cultural activity (defined under the Act) can be performed. The Authority and Auckland Council are to prepare a yearly operational plan. Auckland Council is responsible for the operational management of maunga. Maunga are to be held in trust for the common benefit of the iwi/hapū of Ngā Mana Whenua o Tāmaki Makaurau and the other people of Auckland.

Source: Auckland Council, 2016; Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010; Ruru, 2014; Waikato River Authority, 2016; Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

The Waikato District Council submitted on the importance of JMAs arising from Treaty settlements, to the Commission's *Towards better local regulation* inquiry (NZPC, 2013).

> Another regulatory innovation is that of co-governance and co-management with iwi regarding the protection and enhancement of the Waikato River. This has had the positive effect of iwi working alongside the local authorities and developing a healthy joint working relationship … For the Waikato District Council it is not the Treaty of Waitangi that has had the greatest influence but the subsequent raupatu settlement acts. This has positive effects for both parties in being able to cut costs of consultation and appeals to the Environment Court because iwi are now formally at the beginning of the decision-making process. This has led to the inclusion of a new Vision and Strategy to the District plan for the protection and restoration of the health and well-being of the Waikato River and the signing and implementation of a Joint Management and Governance Agreement. (sub. 16, pp. 3–4)

Ryks et al. (2014, p. 8) noted that settlements have "significantly strengthened the resource base of urban iwi and hapū, [allowing them] to employ people with planning and resource management expertise, so that iwi and hapū can participate in urban planning". At the same time, some iwi have become major urban landowners. Provisions for cultural redress in some Treaty settlements provide for recognition of, and restoration of, traditional waterways and ancestral names. More resources have enabled iwi "to collect and record history and traditional knowledge about their ancestral area".

Other arrangements arising from Treaty settlements, although not formally JMAs, are similar to them. The Ōrākei Reserves Trust is an example where Māori own the reserve, but the Trust has a balance of councillors and Ngāti Whātua Ōrākei members.

F7.2 Treaty settlements have often given iwi and hapū a significant role in the governance and management of environmental features and resources. At the same time, the settlement process has strengthened iwi and hapū capabilities and provided resources that enable stronger participation in environmental planning under the Resource Management Act.

7.4 The current law: meshing two traditions

Matunga (2000b) argued that, by recognising "the right of the chiefs, subtribes and people to manage and therefore plan for the[ir] land, villages and treasures", the Treaty had instituted a dual planning tradition (p. 38). What this means in practice today is shaped by the statutes and jurisprudence that frame New Zealand's planning system.

Justice Joseph Williams traversed how, over the last 40 years, tikanga Māori (a term sometimes used interchangeably with "Māori customary law") has progressively entered mainstream New Zealand law through statute and developing jurisprudence. He wrote of a decade-long "grand conversation," beginning in the mid-1980s, between iwi, the courts and the legislature, which accelerated this change (Williams, 2013):

> Outside the Treaty settlement process … the Resource Management Act 1991 was the most important and impressive result of this grand conversation … It was the first genuine attempt to import tikanga in a holistic way into any category of the general law. (p. 18)

The way in which tikanga Māori is incorporated into statute has a strong impact on the extent to which, in practice, Māori are able to make decisions in accordance with tikanga. A reference, for example to kaitiakitanga, might provide for "unqualified exercise of the relevant Māori custom, or much weaker consequences might follow" depending on the wording (Coates, 2009b, p. 43).

The scheme of the RMA, combined with the jurisprudence outlined in Williams (2013), recognises an approach to planning arising from tikanga Māori. In particular, the RMA provides for the transfer of powers to an iwi (section 33); and for JMAs involving iwi and hapū to perform duties, powers and functions under the Act (sections 36B to 36E). The Act also requires councils, in preparing plans, to take into account any relevant planning document prepared by an iwi (sections 61, 66 & 74). Yet the RMA places recognition of a Māori planning tradition within a broader framework shaped by planning traditions based in the general law.

Tikanga Māori and the British legal tradition come from what were, at the time of the Treaty, and still remain, very different cultural norms, values and social relations (Williams, 2013). It is natural to ask how approaches to planning based on each might mesh.

Characteristics of tikanga Māori

Tikanga Māori is the Māori system of law and custom. A key characteristic of tikanga Māori is that it is dynamic and not fixed to a set time or time period or based on a strict application of precedent. The dynamism of tikanga Māori stems from its foundation on principles rather than rules. Yet the same principles mean that interpretation of tikanga Māori does not rely just on the personal views of a particular individual (New Zealand Law Commission, 2001, p. 5).

In the context of urban planning, managing something according to tikanga means applying Māori customary law to the management of an environmental feature or resource. Although tikanga Māori is a Māori way of doing things, it is not exclusively Māori. That is, many of the principles involved are consistent with the values that the broader community holds towards environmental management. The Te Aranga principles, for instance, are an expression of tikanga Māori (Box 7.2).

Importantly, tikanga varies across different mana whenua groups, though in ways that are "guided by the fundamental values that underpin tikanga" (New Zealand Law Commission, 2001, p. 4).

The rule of law – tikanga Pākehā

Most conceptions of the rule of law agree on certain "procedural" principles as being essential to the rule of law. These procedural principles are focused on issues such as how law is made, how known and accessible it is, and who applies it and how.

Lord Bingham (a Law Lord and judge in the House of Lords) identified the core principle of the rule of law in this way: "[A]ll persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts" (Bingham, 2011, p. 8). Lord Bingham identified eight principles that together make up the rule of law.

- The law should be accessible and, so far as possible, intelligible, clear and predictable.
- Questions of legal right and liability should ordinarily be resolved by applying the law rather than exercising discretion.
- The laws of the land should apply equally to all, except to the extent that objective differences justify differentiation.
- Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
- The law must provide for adequate protection of fundamental human rights.
- Means must be provided for resolving, without prohibitive costs or inordinate delay, bona fide civil disputes that the parties are unable to resolve on their own.
- Adjudicative procedures by the state should be fair.
- The rule of law requires the state comply with its obligations in international law as in national law.

Reconciling tikanga Māori and the rule of law

In its inquiry on local government regulation, the Commission identified potential challenges in meshing tikanga Māori and the rule of law (NZPC, 2013):

- Decision makers should be independent from those affected and should approach the decision with an open mind. Potential conflicts of interest are a particular issue in JMAs [joint management agreements], where an iwi authority has a role in the decision-making process in respect of a resource in which they have a direct interest.
- The law must be accessible and, as far as possible, clear and predictable. Tikanga Māori is by its nature flexible and dynamic, which means its meaning and application will not always be clear and predictable. Tikanga Māori is also not very accessible to many New Zealanders, as there is a general lack of knowledge and understanding about tikanga Māori. (NZPC, 2013, p. 185)

The Commission also acknowledged a view that "recognising tikanga Māori might depart from the general rule … that the laws of the land should apply equally to all". For instance, "Māori might have an interest in a regulatory matter or environmental feature that is not a property right under the general law of New Zealand, but would be a recognised interest under tikanga Māori" (NZPC, 2013, p. 90). In practice the courts have interpreted the current law in a way that recognises the special interests of Māori, but balances these with other interests (Box 7.4).

Meshing two traditions in practice

A large majority (over 90%) of councils responding to the Commission's survey said they could use the planning system to recognise and protect the special interests that Māori have in the environment, such as kaitiakitanga. Of these, almost 50% of respondents thought they could use the planning system to have a *major* influence in recognising and protecting Māori interests (Colmar Brunton, 2016).

Giving effect to the law requires a council to exercise leadership, to have good internal policies and processes, and to provide guidance for staff and stakeholders (NZPC, 2014b). These things cannot be legislated for. Each urban centre has its own combination of geographic features (land and water), mana whenua, mātāwaka and tauiwi (non-Māori) populations, development history and relationships, and traditions. These unique combinations of circumstances require local actors to work out how to incorporate tikanga Māori into planning practice. Unsurprisingly, different ways of doing this have emerged across the country – some apparently more successful than others. Environment Canterbury supported the idea that recognising and working in the context of local circumstances is important (sub. DR70).

Building relationships

Treaty principles involve a relationship between Māori and the Crown that is in the nature of a partnership (Box 7.3). Incorporation of Treaty principles into legislation brings a strong expectation that local authorities and iwi will establish effective and enduring relationships based on acting reasonably, honourably and in good faith. Māori engagement in environmental management and urban planning will be successful only to the extent that both sides work to secure the mutual benefits arising from that engagement. Developing a culture and capabilities that support such relationships is important on both sides (Chapter 14):

> Developing, building and maintaining relationships between iwi/hapū, property developers and local government are essential, particularly for helping local government and property developers recognise the relevance of Mātauranga Māori for contemporary urban planning. A positive relationship … is more likely to create greater opportunities for Mātauranga Māori to be incorporated into urban planning. Conversely, an adversarial relationship … stymies Mātauranga Māori based design elements from being implemented. (Awatere et al., 2011, p. x)

> The key to successful implementation of kaitiakitanga in urban settlements is positive relationships between iwi/hapū/whānau, property developers, community groups, and local government that have beneficial outcomes for all agents involved. (Ngā Aho & Papa Pounamu, 2016a, p. 25)

Mechanisms to include Māori in decision making and to protect Māori interests

Mechanisms currently used by local authorities to include Māori in decision making and to protect Māori interests include:

- Māori committees and Māori representation on council committees;

- JMAs;
- statutory consultation;
- iwi management plans (IMPs);
- Māori representation on councils;
- registers of Māori interests; and
- requirements for cultural impact assessments (CIAs).

Māori committees and Māori representation on council committees

Māori committees (often mandated by memoranda of understanding between councils and iwi) are a fairly common response to the requirements of section 14 and 18 of the LGA to include Māori in decision making, and to build their capability to do so (NZPC, 2013). The role of committees and particularly the scope of decisions they are involved in varies extensively between local authorities.

The GWRC, for example, has a memorandum of understanding with six iwi in the region (GWRC, 2013). A leadership advisory body, Ara Tahi, with joint membership from the Council and iwi, provides a vehicle to set shared directions for the ongoing relationships. Among other roles, Ara Tahi selects and supports tangata whenua representatives on the Council's standing committees. These representatives have voting rights on the committees.

Separately, the GWRC has, with iwi, established Te Upoko Taiao (Natural Resource Management Committee) to oversee the development of its new regional plan. The Committee comprises seven elected councillors and seven appointed members from the region's mana whenua.

The Proposed Natural Resource Plan for the GWRC area (notified in July 2015) identifies five distinct catchment areas (whaitua) within the region. The GWRC is setting up whaitua committees with iwi, local authority and community representation to establish priorities and programmes within each whaitua.

Selwyn District Council and the Greater Christchurch Development Strategy Partnership submitted on their inclusion of iwi representatives on local government committees:

> Selwyn District Council already has in place a number of agreements with iwi in terms of engagement in planning and other environmental processes…Selwyn District Council is currently underway with its District Plan Review and preparation of its second generation plan. The governance structure of the District Plan Committee includes a representative from Te Taumutu Rūnanga on the committee for the duration of the review. These are some examples of the many arrangements already in place for various governance committees and partnerships with local iwi within Selwyn District and should be viewed as examples or case studies in developing a new urban planning model which embraces Maori participation in urban planning processes. (Selwyn District Council, sub. 33, p. 7)

> Te Rūnanga o Ngāi Tahu has representation at the UDS [Urban Development Strategy] Implementation Committee and council partners have worked collaboratively with Ngāi Tahu to establish many fruitful initiatives in recent years to build relationships and put in place agreements with iwi and papatipu rūnanga in terms of engagement in planning and other environmental processes. (Greater Christchurch Urban Development Strategy Partnership, sub. 44, p. 8)

In some districts, Māori representation on council committees, especially with voting rights, has been controversial (Stuff, 2016).

Joint management agreements and co-governance arrangements

JMAs create, to varying degrees, joint Māori and local authority management of the environment (usually natural features). Treaty settlement processes have established most JMAs to date (section 7.4).

The Commission knows of only two JMAs established under sections 36B to 36E of the RMA. In 2008, Taupō District Council and Ngāti Tūwharetoa, entered into a JMA with limited scope. Under this JMA, owners of multiply owned Māori freehold land may apply to have their resource consent application for that land heard

by a joint committee from the district council and Ngāti Tūwharetoa (Taupō District Council, n.d.; Coates, 2009a).[66]

More recently, Ngāti Porou and the Gisborne District Council entered into a JMA for the management of the Waiapu catchment. The agreement is focused on restoring the health and wellbeing of the Waiapu and its many tributaries through sustainable freshwater and land management (Te Rūnanganui o Ngāti Porou, 2015; Gisborne District Council, 2015).

Voluntary co-governance agreements outside the RMA framework can have a similar character. Selwyn District Council submitted:

> Selwyn District Council along with Canterbury Regional Council and Te Runanga o Ngai Tahu have signed the Te Waihora Co-Governance Agreement to record the commitments of the parties to share the responsibility for Te Kete Ika a Rakaihautu and the wider Te Waihora [Lake Ellesmere] catchment. (sub. 33, p. 7)

In its draft stocktake of council-iwi participation agreements in November 2015, Local Government New Zealand (LGNZ) identified a total of 18 councils with JMA-like arrangements across New Zealand (LGNZ, 2015c). This includes arrangements arising out of Treaty settlements, those made under the RMA, and other voluntary agreements such as joint committees.

Statutory consultation processes

The RMA requires consultation with iwi during the formation of plans (section 7.3). Māori participants in the inquiry frequently told the Commission that they wanted early engagement with councils, to give them ample opportunity to identify their interests that might be affected by plans. District plans may also identify sites of significance to Māori and require consultation with Māori as part of the consent process for developments that may affect these sites.

Effective protection of Māori interests requires their participation in plan formation, not just consultation about already formed plans. Ngā Aho and Papa Pounamu report:

> Plans that have more successfully integrated tikanga Māori and mātauranga Māori have often involved Mana Whenua and Māori planners as part of the plan development team (e.g. Proposed Auckland Unitary Plan; Kaipara District Plan: Christchurch City Plan). (2016b, p. 22)

Some councils submitted that they welcomed Māori involvement in planning.

> Our view is that our council already regard Maaori as a partner and would involve them specifically and integrally in any strategic vision forming exercise as well as in the subsequent drafting of any new regulating plan. (Waikato District Council, sub. 2, p. 10)
>
> We … note that engagement [with Māori] is a crucial part of the planning process. (Horizons Regional Council, sub. 25, p. 3)
>
> The Council remains committed to adopting best practice in engaging with iwi Maori as demonstrated by the He Waka Eke Noa (Effectiveness for Māori Framework, EFM) which was launched in 2015. The framework aims to create a pathway to enable the Council to strengthen Māori communities, create innovative ways to facilitate Māori participation in our decision making and empower our organisation's capacity to respond effectively to our Māori stakeholders and communities. (Wellington City Council, sub. DR61, p. 22)

Yet the Waitangi Tribunal has earlier commented:

> It is fair to say that the system is designed to facilitate Māori reaction to priorities being set by local councils and applicants. While this in itself is an advance on the pre-RMA position, there are obvious structural shortcomings in this approach. Other than the almost entirely unused control and partnership mechanisms … there are few opportunities for Māori to take the initiative in resource management. Māori are usually sidelined in the role of objectors. (2011, p. 115)

Māori participants in the Commission's *Towards better local government* inquiry confirmed that their involvement in planning was largely as objectors (NZPC, 2013). Both Māori and council participants in the

[66] Ngā Aho and Papa Pounamu (2016b) also note that section 188 of the RMA enables iwi to be approved as a heritage protection authority, but has never been used for Māori authorities.

current inquiry said that effective consultation depends on the quality of the ongoing relationship between the parties. For instance, the Waikato Regional Council and Waikato-Tainui told the Commission that the relationship that they had established as a result of their participation in JMAs for the Waikato River had provided a positive base for early consultations on the next Regional Plan (pers. comm., 20 April 2016; section 7.3).

Identifying and making a record of sites of significance to Māori is not always straightforward. Māori, for instance, may be unwilling to make public the existence and location of culturally sensitive sites (wāhi tapu) and urupā (burial places). Some councils use "silent files" to protect this information:

> From a planning perspective, the use of 'silent files' to better recognise and protect wahi tapu and other taonga is a tool that requires greater consideration, consistency of use, and implementation guidance. In Council's experience mistrust from tangata whenua has limited the use of this mechanism although there has been successful implementation for particular groups. Greater awareness, understanding and certainty is required so that this mechanism can be used confidently by Council and tangata whenua. (Far North District Council, sub. 45, p. 2)

Ngā Aho and Papa Pounamu advise that "[c]lear protocols are required to manage sensitive information" (2016b, p. 7):

> [P]oor past relationships mean that Mana Whenua do not always trust planners or resource consent applicants to protect and respect information about their sites of significance. It is appropriate that this knowledge is held by Mana Whenua, not councils, and in many places, this lack of trust has resulted in little if any protection for sites and places of significance to Mana Whenua in planning documents. (2016b, p. 24)

Identification of sites of significance can be controversial. Auckland Council initially identified 61 sites of significance to mana whenua in its PAUP. A second protective overlay identified a further 3 600 sites "of value" to mana whenua. After public debate and criticism, the Council later decided to remove more than 600 of the sites "of value" located on private land, because it was unable to confirm that they were in fact of value to mana whenua (Stuff, 2015a; Stuff, 2015b).

The IMSB told the Commission that there was a misconception that Māori are decision makers through requirements for CIAs related to sites of significance and of value to Māori. Cultural provision in the PAUP attracted a large number of submissions in opposition (IMSB, pers. comm., 20 April 2016). The Independent Hearings Panel (IHP) considering the PAUP later recommended deleting all the identified sites of value from the Plan because "…those sites have not been appropriately identified and evaluated to determine if they are indeed a site of value"(Auckland Unitary Plan IHP, 2016a, p. 14). The decision of Auckland Council to accept this recommendation was appealed by the IMSB on points of law (IMSB, 2016). The IHP envisaged that future identification of sites of value to Māori would follow "appropriate consultation and research" (Auckland Unitary Plan IHP, 2016b, p. 14) and be given effect through a Plan change (Auckland Unitary Plan IHP, 2016a).

Ngā Aho and Papa Pounamu (2016b) note a particular risk for Māori interests with fast-tracked planning processes, compounded, in many locations, by the lack of "a robust evidence base of culture values associated with places"(p. 28). They recommend that councils should place a priority on developing such an evidence base, and otherwise take a precautionary approach to planning that affects places where evidence is currently lacking. Further, they argue that councils should give mana whenua meaningful opportunities to be involved in fast-tracked processes, and that councils should provide a streamlined approach to identify and protect the interests of mana whenua.

Cultural impact assessments

Planners and developers use CIAs to determine the effect of proposed developments on sites of significance or value to Māori:

> A CIA is a report documenting Māori cultural values, interests and associations with an area or a resource, and the potential impacts of a proposed activity on these. CIAs are a tool to facilitate meaningful and effective participation of Māori in impact assessment. A CIA should be regarded as technical advice, much like any other technical report such as ecological or hydrological assessments. (Quality Planning, 2016)

While CIAs are not formally required by the RMA, they may facilitate consenting processes, and district plans may require applicants to obtain them. Participants have differing views on how well they operate in practice. Participants in the Better Urban Planning Wānanga in Auckland in June 2016 reported positive experiences:

> Positive examples of proactive engagement mechanisms include the development of Cultural Impact Assessments (CIA) which recognise development impacts on mana whenua values. [Examples also include] engagement with mana whenua to develop the Proposed Auckland Unitary Plan…which emphasised 'early, effective and meaningful engagement'; and the Regional Policy Statements, all recognising that mana whenua are experts in their own values. In each of these examples mana whenua are paid for their time, knowledge and expertise and respected for the intrinsic benefits that they collectively bring to the process. (Ngā Aho & Papa Pounamu, 2016a, p. 25)

Auckland Council (sub. DR86), Canterbury District Health Board (sub. DR59) and the New Zealand Association of Impact Assessment (sub. DR105) also supported the use of CIAs. The Bay of Plenty Regional Council cited its Regional Policy Statement to emphasise that mana whenua have a central role in determining whether CIAs are required and their content: "…only tangata whenua can identify and evidentially substantiate their relationships and that of their culture and traditions with their ancestral Lands, waters…" (sub. DR111, p. 4). Ninety-one percent of iwi and hapū participants in Te Puni Kōkiri's 2012 Kaitiaki Survey reported that CIAs were either "useful" or "very useful" (Te Puni Kōkiri, 2013).

Other submitters variously reported that, across councils, the thresholds for CIAs were unclear, the way in which they were carried out was variable, and the basis for fees charged was not always transparent (Federated Farmers of New Zealand, sub. 21; Trustpower, sub. DR61; Horticulture New Zealand, sub. DR73). Federated Farmers and Trustpower each found that some iwi authorities lacked the capacity to carry out CIAs well and appropriately and in scope. They also found frequent delays in deciding whether a CIA was required and in completing one in a timely manner. Trustpower identified a need for each CIA to be "fit for purpose relative to the scale of the development proposed" (sub. DR61, p. 6). Yet the Wellington City Council (sub. DR68) reported that CIAs (in its area) are only requested in clearly defined circumstances; while the Bay of Plenty District Council said that CIA fees were "set by the author in line with standard consultancy rates" (sub. DR111, p. 4). The Bay of Plenty District Council added:

> Tangata whenua face many challenges preparing CIAs including addressing multiple Māori interests in an area, concurrently dealing with multiple CIA requests and translating concepts and ideas across cultural divides. (p. 4)

The GWRC has found that lack of early consultation with iwi increases the risk for applicants of delays in CIAs being completed (sub. DR80).

A number of submitters noted that many iwi lack the resources to carry out CIAs appropriately and that councils and central government can play a role in helping to build capacity (Federated Farmers of New Zealand, sub. 21; Trustpower, sub. DR61; Whanganui District Council, sub. DR95; GWRC, sub. DR80; New Zealand Association of Impact Assessment, sub. DR105). The GWRC runs workshops with mana whenua to increase mutual understanding about information requirements for CIAs and how, at the discretion of iwi, information might be shared. The Christchurch City Council and Ngāi Tahu "have sought to address the barriers to undertaking [CIAs] through agreements with and financing of the environment agency Mahaanui Kurataiao Ltd, along with early engagement in the planning process" (Christchurch City Council, sub. DR90, p. 11). Whanganui District Council identified a risk that if councils were too closely involved they could hinder the growth of iwi technical expertise.

CIAs can provide a valuable means to identify Māori interests in, and the potential impact of, developments on sites and resources of significance to Māori. Yet it appears that CIA practice, including the charging of fees, the thresholds for requiring a CIA, and the timeliness of assessments, has developed unevenly across the country. This reflects variable capabilities both in councils and among iwi authorities, and a lack of clear guidance on CIA practices.

Horticulture New Zealand submitted:

> Horticulture New Zealand considers that clear guidelines and a more consistent approach as to when cultural impact assessments are required would be useful…In terms of timing, if clear guidance is available as to when such assessments are required this will enable applicants to start the process rolling early. It will also assist iwi/hapu with knowing when their services may be required – as would early notification of the application to iwi/hapu…Greater clarity around the scope of such assessments, what they need to cover and the detail for this, would assist iwi/hapu to determine resourcing as well as likely costs associated with producing such assessments. (sub. 73, p. 12)

Trustpower also argued the need for more guidance on "[t]he appropriate protective measures to be applied to historic sites on private land" and the thresholds for, and contents of, CIAs (sub. DR68, p. 14).

More guidance on CIAs practices would help develop capability and greater clarity and consistency across the country. The Commission is proposing that, in a future planning system, the Government should issue a National Policy Statement on Planning and the Treaty of Waitangi (section 7.6). The NPS should include guidance to local authorities on how to work with mana whenua to identify and protect sites and environmental features of significance to mana whenua, and on reaching agreement with mana whenua on the conduct and resourcing of CIAs. Local authorities should be encouraged to respect local tikanga and mātauranga, while working constructively to find processes and practices that work well for all parties in resource use decisions.

Reaching an agreement on a transparent and fair way to set fees will help secure confidence in the conduct of CIAs. While not directly applicable to fees charged by mana whenua for CIAs, the Auditor-General's guidelines for charging fees for public sector goods and services sets out relevant principles (OAG, 2008).

R7.2

In a future planning system, the government should provide clear guidance (through the proposed National Policy Statement on Planning and the Treaty of Waitangi) to local authorities on how to work with mana whenua to identify and protect sites and environmental features of significance to mana whenua.

Guidance should cover processes to reach agreement with mana whenua on the threshold for, the conduct of, and fee setting for cultural impact assessments for proposed developments that may impact on such sites and features.

Iwi management plans

Sections 61, 66 and 74 of the RMA require that District and Regional Plans and Regional Policy Statements take into account "any relevant planning document recognised by an iwi authority" and lodged with the council, where that document is relevant to the resource management issues of the region. The legislation does not prescribe the form or content of such planning documents.

Ngā Aho and Papa Pounamu reported:

> Iwi Management Plans and Iwi Planning Documents are a valuable way for Mana Whenua to identify, record and disseminate specific values, rights and interests they have in any given environment. Iwi planning documents assist Mana Whenua to determine a consistent approach to the multiple planning processes they are asked to participate in. (2016b, p. 24)

Matunga argued that IMPs

> represent perhaps the most significant Maori development in environmental planning in the last 20 years as articulations of tribal thought …Most iwi and hapu recognise their importance and have either prepared or are preparing one. The first-generation plans have tended to cover broad policy across the iwi social, economic, cultural, environmental and justice spectrum. Some iwi are preparing second-generation plans and further refining preparation methodology, scope and policy detail, while others are preparing hapu or iwi environmental plans as a subset of broader tribal planning …Already, second-generation plans are showing a greater implementation focus, or action orientation, and are targeting specific iwi resource issues and problems. (2000b, p. 45)

The Te Puni Kōkiri 2012 Kaitiaki Survey of iwi and hapū organisations participating in RMA processes reported that 92% considered that iwi/hapū management plans were either "useful" or "very useful" (Te Puni Kōkiri, 2013). Yet at the time of the survey only 23 groups out of 79 respondents had lodged IMPs with councils, most commonly because they were incomplete or under review.

IMPs complement other consultative processes for iwi to participate in resource management plan making. Under current law, councils decide how they will take IMPs into account in formulating plans and policy statements. Ngā Aho and Papa Pounamu note that "the effectiveness of iwi planning documents is hindered by limited resources and limited recognition in the existing planning system" (2016b, p. 24).

The Ministry for the Environment identified 190 IMPs lodged with local authorities throughout New Zealand in 2015 (MfE, 2016i).[67]

Māori representation on councils

The Local Electoral Act 2001 provides that local authorities may establish Māori wards or constituencies. A local referendum may be held to confirm or rescind such a decision. To date, two regional councils (Bay of Plenty Regional Council and Waikato Regional Council) have established Māori constituencies to elect councillors. Attempts to establish Māori wards for other councils have failed to gain support from incumbent councillors, or decisions to establish such wards have been rescinded as a result of referenda.

A number of commentators have proposed that electing Māori representatives to local authorities become mandatory (eg, Matunga, 2016). This raises issues about the form and purpose of local democracy that go beyond the inquiry's terms of reference (Chapter 1).

The Independent Māori Statutory Board model

As an alternative to Māori representation on Auckland Council, the Local Government (Auckland Council) Act 2009 established the IMSB.[68] The board has nine members – seven representing mana whenua and two representing mātāwaka. The Minister of Māori Development invites mana whenua to form a selection body, which then selects the board members. The Māori plan for Tāmaki Makaurau (Auckland) recognises 19 mana whenua groups.

Section 81 of the Act charges the IMSB with assisting Auckland Council to make decisions, perform functions and exercise power by promoting issues of significance to Māori in Tāmaki Makaurau and ensuring the council complies with statutory provisions referring to the Treaty of Waitangi. In particular, the IMSB has:

- issued a schedule of issues of significance to Māori in Tāmaki Makaurau (IMSB, 2012a);
- consulted on and published a 30-year Māori plan for Tāmaki Makaurau (IMSB, 2012b); and
- undertaken two audits (the most recent in 2015) of how well the Council and council organisations comply with statutory provisions referring to the Treaty of Waitangi (IMSB, 2015).

The IMSB must appoint up to two persons to sit on each Auckland Council committee that deals with natural and physical resources. Auckland Council may ask the IMSB to appoint members to other Auckland Council committees and boards.

The New Zealand Council for Infrastructure Development (NZCID) proposed that the Auckland IMSB model is applied more widely (NZCID, 2015a, p. 50). In their model, the number of unitary councils across the country would be relatively small. Elected local boards under those councils would represent communities of interest in overseeing the provision of local amenities and community services. IMSBs would have a similar status and equivalent powers to the Auckland IMSB.

The IMSB model is suited to some regions – particularly those with a large number of mana whenua groups. The model provides a mechanism to identify and voice common interests. In other regions, particularly those

[67] This may include double-counting some IMPs lodged with more than one local authority.

[68] The Royal Commission on Auckland Governance had recommended that Auckland Council include two councillors elected by voters on the Māori electoral roll and one councillor appointed by a Mana Whenua Forum (Royal Commission on Auckland Governance, 2009b).

with a small number of well-established mana whenua groups, direct participation in planning processes is logistically easier.

The Commission is proposing the establishment of a National Advisory Board on Planning and the Treaty of Waitangi. One of the Board's functions will be to carry out a Treaty of Waitangi audit of the planning system every five years (Chapter 13). The experience of the IMSB in Auckland with its Treaty audit will usefully inform this function at a national level. The Wellington City Council's Effectiveness for Māori framework similarly provides "key performance indicators and steps to assist the Council and its officers to meet its statutory obligations to Māori/Treaty of Waitangi across a range of Council functions" (sub. DR61, p. 21).

7.5 How well does the planning system recognise and protect Māori interests?

Commentators consider that the planning system has had mixed success in recognising and protecting Māori interests in planning decisions. However, practice and capability have been developing over time, supporting a more positive assessment. This has been stimulated by arrangements arising from Treaty settlements; and by many councils and Māori establishing positive ongoing working relationships (section 7.3 and section 7.4).

Commentators provide a mixed picture of progress under the RMA

In 2003 Neill highlighted poor understanding by councils of Māori interests and differing views about the purpose of council–Māori engagement.

> Councils seldom have such a well-developed analysis of the strategic position of Māori… As a consequence, the rationale for allocating resources, or developing and maintaining structures, processes and people to facilitate the relationship and make effective use of the information that is gathered is unclear, and this becomes a real impediment to productive relationship building….
>
> In general, for local government, the momentum for involving tangata whenua is seen as a legislative requirement, or an imperative in relation to a particular environmental issue. Continuity of the relationship is not emphasised. Through my conversations with iwi and hapū representatives and Māori practitioners involved in relationship building with councils, I have come to understand that they value these relationships as an ongoing process, part of nurturing Māori self-determination, and asserting cultural preferences and processes, themes widely noted by others (see for example, Coates, 1998; and commentaries from Durie 1998; Maaka 1998), as well as a way to address environmental matters. (Neill, 2003, pp. 3-4)

Professor Hirini Matunga had argued in 2000 that "[t]he imagery of the Act eight years on is of the Māori Treaty partner on the outside, looking in on a passing parade of environmental decision and policy processes controlled by the other" (Matunga, 2000b, p. 45). Matunga pointed out that, "despite various applications by iwi", even the section 33 provisions allowing a local authority to transfer one or more of its powers had not been implemented in practice. Yet Matunga also argued that the RMA gives tacit recognition to a Māori iwi-based planning system, the most prominent manifestation of which is the IMP (section 7.4).

In 2016, in an address to the New Zealand Planning Institute conference, Matunga made a relatively more positive assessment of the success of the RMA from a Māori perspective (Matunga, 2016). In terms of providing for Māori participation in planning decisions, he rated the RMA as 7 out of 10, compared to 9 out of 10 for Treaty settlements, and only 4 or 5 out of 10 for local government legislation.

Unfinished business

Joseph Williams (at the time Chief Māori Land Court Judge) had concluded in 2007 that the RMA had succeeded in bringing the "traditional and spiritual landscape of iwi and hapū" into focus (Williams, 2007, pp. 61–62). Yet, from a Māori point of view, regulatory agencies had only imperfectly translated these perspectives into policies and effective practice:

> [T]he RMA story remains a 'could be'; a 'not yet achieved' in National Certificate of Educational Achievement (NCEA) terms, 'some room for hope with more effort', some progress but not enough to say thorough ongoing systemic change has been achieved. (Williams, 2007, p. 62)

The Waitangi Tribunal (2011), in the indigenous flora and fauna inquiry (for a time presided over by Williams), also argued:

> The RMA … has not fulfilled its promise. It has not delivered appropriate levels of control, partnership, and influence for kaitiaki in relation to taonga in the environment. (p. 273)

Williams' assessment remained much the same in 2013:[69]

> What has changed in environmental regulation over the last 20 years is that Māori issues that were never on the table are now on the table for discussion at council level and in court, even if they must compete for air with a dozen or more other considerations, are highly defeasible and only rarely decisive ….[yet the Act] has not over the last two decades produced examples of any significant step change in the *structural* relations between the necessary players under the Act. (Williams, 2013, p. 22)

Williams referred in particular to the lack of use of provisions under the Act to transfer decision-making powers to iwi and hapū. He also argued that, in practice, IMPs "have not enabled iwi and hapu to take the resource management initiative on matters of significance". Williams concluded, "[t]he RMA is frankly not pulling its weight. Instead, such modest advances as iwi and hapū are achieving in these structural areas are almost exclusively the result of Treaty settlement negotiations with the central Crown" (2013, p. 22).

Miller (2011) found that

> although the RMA ha[s] improved the planning system in terms of the recognition of Maori cultural and spiritual concerns and the inclusion of structures for Maori participation in planning processes, there is still much more that can be done to ensure that the participation is effective. (p. 162)

Yet Miller later submitted to the current inquiry that "[w]hile not perfect [the RMA] has made Māori issues and a Māori world view much more prominent parts of planning processes and the act's enforcement provisions work well" (Associate Professor Caroline Miller, sub. 50, p. 9).[70]

Henderson (2011) took a similar position to Matunga (2000b) in noting that the RMA represents a limited commitment to including the rights and values of Māori in resource management planning. Yet he also noted that "[k]nowledge of Maori values is advancing, and iwi are becoming more involved and better resourced, in some instances, to play an increasingly significant part in resource management" (p. 17). Henderson identified positive developments including:

- more JMAs;
- case law and Waitangi Tribunal deliberations that have allowed a greater investigation into many cultural ideas and practices;
- more awareness among policymakers and decision makers of the need to include consideration of, and recognition of, the legitimacy of Māori values;
- greater capability among iwi to engage in planning processes and decisions; and
- considerable development of the case law on consultation (2011).

The Auckland IMSB, in its second Treaty of Waitangi 3-yearly audit of Auckland Council, provided further evidence of improving capability and practice – though tempered by slow progress in implementing recommendations from the 2012 audit (IMSB, 2015). The audit, conducted by PwC, found:

> In contrast to the first audit, there is:
>
> - good awareness of legislative obligations to Māori, Te Tiriti principles and the audit, its purpose and importance
> - executive and senior level interest and support in securing a clear and readily implementable work programme, that dovetails into existing projects and initiatives, without delays

[69] Joseph Williams was appointed as a judge of the High Court in 2008.

[70] Caroline Miller is Associate Professor of Planning at Massey University, Palmerston North.

- a number of instances where good practice is occurring, and this is by design, rather than due to the institutional knowledge held by certain individuals. (p. 10)

The audit found that "engagement with Mana Whenua and Mataawaka continues to be a work in progress" (p. 10).

Wellington City Council submitted:

> The challenge for local authorities is to establish robust mechanisms that fulfil, in a meaningful manner, the statutory obligations designed to protect Māori interests. On a national basis the capability of local authorities to fulfil statutory obligations to Māori/Treaty of Waitangi is inconsistent and ad-hoc, and this means that the active protection of Māori interests continues to be at risk. (sub. DR68, p. 21)

Professor Hirini Matunga summed up:

> …the basic architecture or framework for recognising, providing for and protecting Māori interests in the environment *at this point in NZ's history,* is sound, but in need of significant strengthening to reflect evolution in the Treaty partnership, growth in iwi management planning, progress on Treaty settlements over the last 25 or so years and complexity in the urban Māori context…the 'potential' of the Resource Management Act 1991 to recognise and provide for Māori interests in the urban context has only been partially realised. Various national, regional and district planning and policy 'opportunities' and instruments built into the Act to provide for Māori and indeed Treaty interests, have had limited uptake [and been inconsistent in application]. (pers. Comm., 30 January, 2017)

What the Commission heard

The Commission has met with iwi groups; Māori design and planning professionals; and councils to discuss Māori engagement in planning and active protection of Māori interests in planning. Participants confirmed the picture of uneven performance around the country, with patches of good and excellent practice. They spoke of areas where progress had been made in recognising and protecting Māori interests in the environment, often as a result of Treaty settlement processes and the development in capability that this has brought.

Almost universally, Māori participants spoke of their desire to establish good working relationships with councils that would provide opportunities for early engagement in planning processes. This way they could identify their interests early enough for them to receive adequate protection. At the same time, they welcomed approaches that sought to provide the mutual benefits for councils, local communities and iwi that arise from Māori engagement.

Some iwi participants told the Commission that they were careful to prioritise the issues that they engaged on, to make the best use of their resources. They saw a need to filter a potentially large volume of routine requests for consultation.

Māori participants were also keen to see approaches to urban design that would "[c]reate great spaces and places for Māori to be Māori – in the urban environment" (Ngā Aho & Papa Pounamu, 2016a, p. 31). Many see the Te Aranga cultural landscape principles, based as they are on mātauranga Māori, as a good starting point (Box 7.2). The IMSB told the Commission that a key objective is for Māori to see themselves in Auckland – including the return of customary Māori place names, a bicultural waterfront and bilingual signage (pers. comm., 16 March 2016). The IMSB promoted inclusion of the Te Aranga principles in the Auckland Design Manual (Box 7.2).

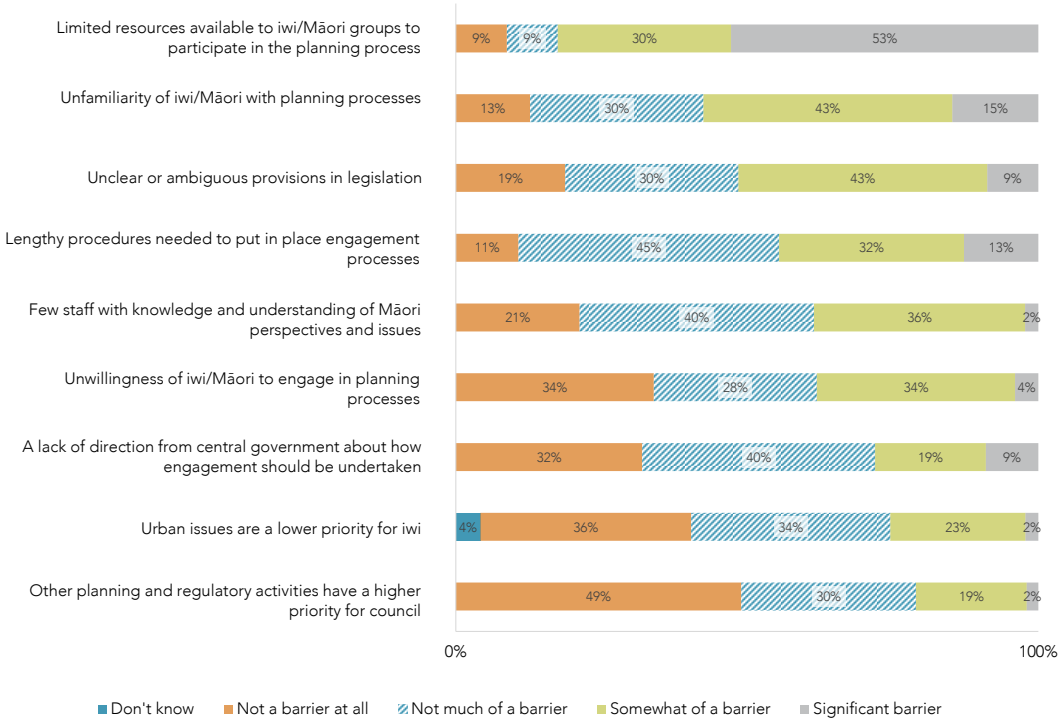
This positive picture was complemented by the perspectives of developers. Some Auckland developers told the Commission that they welcomed the contribution that mana whenua made to design choices based on the Te Aranga principles.

Explanations for mixed success recognising and protecting Māori interests

Commentators have identified a number of reasons for mixed success in recognising and giving effect to Māori interests in the planning system. Reasons offered include capacity gaps, differing expectations about the purpose of engagement, a lack of central government guidance, and lack of support from some elected representatives.

In its survey of councils, the Commission asked about what they saw as the barriers to engagement with iwi on planning. Councils saw limited resources available to iwi/Māori groups to participate and their unfamiliarity with planning processes as the most significant barriers. Forty percent of councils also identified lack of staff with the required knowledge and understanding of Māori perspectives as an issue. More than 50% thought that legislative provisions were unclear or ambiguous, though only 28% thought lack of direction from central government was a significant problem (Figure 7.2).

Figure 7.2 Councils' perceptions of barriers to engagement with iwi/Māori on planning



Source: Colmar Brunton, 2016.

Notes:

1. Responses to the questions "To what extent is each of the following 9 things a barrier for your council?"
2. Due to rounding, numbers may not total to 100%.

Council and Māori capabilities to engage

Many inquiry participants confirmed shortfalls in capability to engage. This applied to some councils and some Māori groups (eg, IMSB pers. comm., 20 April 2016; Ngā Aho & Papa Pounamu, 2016a). This confirms the view that the Commission reached in its *Towards better local regulation* inquiry (NZPC, 2013).

The Commission's survey of councils for the current inquiry found that councils perceived the capability of iwi and Māori communities to engage as a major barrier; while the knowledge and skills of their own staff was a lesser barrier (Figure 7.2). Caution is needed in interpreting this data. Allowance needs to be made for differing perceptions of capability. For instance, Backhurst et al. (2003, p. 12) found that "although planners and other council staff … felt that their knowledge of the treaty and kaitiakitanga was good, iwi ranked it much lower" (reported in Miller, 2011, p. 161).

Consistent with this, Ngā Aho and Papa Pounamu reported:

> [I]n our experience, many planners and decision-makers do not know how to meaningfully integrate tikanga Māori and mātauranga Māori into planning processes. This lack of capability may mean that information provided through submissions from Mana Whenua and Cultural Impact Assessments is not integrated into the decision-making process. (2016b, p. 22)

Likewise, 38% of iwi and hapū participants in Te Puni Kōkiri's 2012 Kaitiaki Survey reported that council's capability to engage was either "poor" or "very poor." Problems related to poor attitudes, lack of iwi and

hapū influence at the policitcal level, a history of poor relationships, and low levels of understanding about iwi and hapū. Unsurprisingly, around 30% of Iwi and hapū participants in Te Puni Kōkiri's 2012 Kaitiaki Survey thought that their input into regional and district plans and policy statements was "poorly" or "very poorly" reflected in the final document; though 31% thought their input was "very well" or "well" reflected (Te Puni Kōkiri, 2013).

Yet a picture is now emerging of capability for engagement growing over time. This is partly the result of Treaty settlement processes building Māori capability and of settlements providing iwi and hapū with more resources. Consistent with this, the Rangitikei District Council submitted that it "is aware that those Iwi who are still in the Treaty claim process lack the capacity to engage with planning processes" (sub. 10, p. 1). Growing capability is also partly the result of learning and relationship building from increasing engagement on planning issues.

Williams (2007) implied that without any change in the current legal framework

> [a] stronger iwi presence in environmental matters will be an inevitable result of the treaty settlement process. That presence will be more sophisticated and better resourced. It will have access to networks and templates among other iwi. It will have access to Wellington. We can expect the tribal role to shift from a reactive objection-based mode of participation to a proactive mode. Iwi will rely on iwi management planning techniques. They will have their own proposals to advance and their own resource management solutions…All local government will need strong strategic relationships with iwi. The current patchy situation will not be sustainable in 2021. (p. 64)

The Commission's survey found that 45% of councils thought the necessary lengthy procedures were a barrier to successful engagement. The Rangitikei District Council submitted on the pressures involved:

> [T]here is considerable tension between allowing public participation (including engagement with Maori) and ensuring reasonable timeframes for those seeking to use land in different ways. (Rangitikei District Council, sub. 10, p. 1)

Yet many inquiry participants told the Commission that early investment in developing successful relationships smoothed the path for subsequent planning and consenting processes.

> A further issue relating to capability is the responsibility that councils have under the LGA to consider and take steps to "foster the development of Māori capacity to contribute to decision making-processes" (section 81(1)(b)). Almost 60% of councils provide support in kind or financial support for iwi/hapū involvement in plan-making processes; 43% of councils do so for resource consent processes. (MfE, 2016h)

Some participants identified a need for proactively building and resourcing mana whenua capability to engage (Box 7.6). Just over half of iwi and hapū participants in Te Puni Kōkiri's 2012 Kaitiaki Survey reported that their capacity (defined as time money and resouces) to engage was "poor" or "very poor", while around 19% of groups rated their capacity as "good" or "very good" (Te Puni Kōkiri, 2013).

Box 7.6 **Inquiry participant views on capability building**

> Often the need to provide the capacity for mana whenua to be involved and participate meaningfully in Resource Management Act processes has not been considered. It is up to the discretion of the council involved to provide the funding and often this is considered too late in the process for mana whenua to engage meaningfully. (Ngā Aho & Papa Pounamu, 2016a, p. 11)
>
> Preparing an iwi-planning document requires resources, skills, and time. Iwi or hapū that have not prepared an iwi planning document, or have yet to update their iwi planning document are disadvantaged in the planning processes which must often meet short timeframes. Without the robust evidence base provided by an iwi management plan, decisions are made that impact on Māori values, rights and interest without appropriate consideration of tikanga Māori and mātauranga Māori… sufficient support is required for Mana Whenua to prepare, review and update these documents. (Ngā Aho & Papa Pounamu,2016b, p. 25)

> Disparity of resources between councils and Māori is another significant issue that limits their ability to participate in planning process…Government should invest in programmes that educate council planners and decision makers on the importance of long-term planning partnerships with Māori. This commitment will enable barriers to implementation of legislation to be addressed. A prerequisite of effective partnership is that the partners have an awareness and understanding of each other's values. To this end it is important that councils invest in educating themselves on mātauranga Māori. (GWRC, sub. DR80, p. 16)
>
> Practical support and resourcing are needed to grow Iwi capacity. This is more important than more guidance. In practice CIAs are being requested and many applications are being considered by Iwi; but their ability to respond is limited by stretched administrative resources and limited human resource. Government should provide training, help with standards and audit applications to ensure responsibilities are being met. (Bay of Plenty Regional Council, sub. DR111, p. 4)
>
> We support the comments in the draft report (pp. 272, 302) that capabilities are a key factor in developing and supporting effective relationships with iwi and hapū and local authorities. Building capacities within Environment Canterbury and supporting the Papatipu Rūnanga in Canterbury to develop practical skills and experience are core components of the Tuia programme. For example, Environment Canterbury assistsentities set up to deliver cultural impacts advice to councils on resource consent applications. (Environment Canterbury, sub. DR72, p. 10)

Chapter 14 discusses the need to strengthen councils' capability to engage with Māori.

Unclear legislative provisions and lack of guidance

Just over a half of councils responding to the Commission's survey reported that unclear or ambiguous provisions in legislation were a barrier to mana whenua engaging in planning. Although the current legislative framework provides ample room for stronger engagement between councils and mana whenua, practice is uneven across the country. This is partly because of differences in capability and willingness to take opportunities; but lack of clarity about statutory expectations may play a role.

Lack of guidance from central government is a related issue. While, in the Commission's survey, this was not raised by many councils as a barrier, participants in the Better Urban Planning Wānanga in Auckland in June 2016 considered:

> There has been little guidance provided by central government on how these provisions [in the RMA] should be implemented in practice. It has been left up to individual councils to determine their own approach, but often they do not have people with the right skills or understanding of Te Ao Māori and tikanga to be able to translate these concepts into planning documents, processes, and outcomes. (Ngā Aho & Papa Pounamu, 2016a, p. 11)

The GWRC submitted:

> Council attitudes to implementation of legislative requirements to recognise and protect Māori interests in planning lack consistency. Māori planning perspectives are informed by mātauranga Māori (indigenous knowledge). The precepts that underpin mātauranga Māori are not widely understood by council planners and decision makers meaning that the inclusion of Māori perspectives in planning process is uncertain and often reactive. Of greatest concern are the lost opportunities resulting from lack of Māori involvement in processes, especially the opportunity to support the development of Māori planning and its contributions to urban design.
>
> It is important that councils have an understanding of mātauranga Māori in order to provide for the inclusion of Māori perspectives throughout the planning cycle. (sub. DR80, pp. 15–16)

Section 7.6 recommends that, in a future planning system, the government provides guidance on enabling the expression and active protection of Māori values, rights and interests though a National Policy Statement on Planning and the Treaty of Waitangi.

Useful guidance on Māori participation in planning needs to be sufficiently flexible to address and respect the wide variety of local circumstances, capabilities, environmental features, social and cultural mixes; and differences in tikanga and mātauranga (Christchurch City Council, sub. DR90). General direction in legislation is unlikely to fulfil this requirement. Auckland Council submitted:

> The Tāmaki Makaurau mana whenua governance landscape is very unique; it is rich and complex in the nature and number of groups and relationships present. Further, Auckland's Treaty settlement landscape is evolving as iwi and the Crown enter into settlements. Such settlements influence the ability and nature of iwi to be involved in various aspects of the urban planning frameworks and in the nature and focus of specific relationships with local government and the Crown. Any future urban planning framework needs to provide for this level of rohe-specific complexity. (sub. DR86, p. 5)

Mixed political support

In some local authority districts, political support for deeper engagement of Māori in planning may have been lacking. For instance, Fox and Bretton (2014, pp. 12–13) follow Coates (2009a) in suggesting that one reason why JMAs under section 33 of the RMA may be few in number is because of fear of political consequences and perceived conflicts of interest on the part of iwi.

Ngā Aho and Papa Pounamu, similarly argue:

> We suggest that the limited use of co-governance mechanisms indicates a lack of political will. Based on our experience, we suggest that it is often politically difficult for councils to include Mana Whenua representatives on council decision-making committees without strong direction from Central government requiring Māori representation. (2016b, p. 23)

This is an issue that will take time and a growing understanding from experience of the mutual benefits of engagement to overcome. For instance, evidence on successful JMAs is growing and points to the importance of establishing good relationship-building processes (OAG, 2016). Stronger guidance on engagement through the proposed National Policy Statement on Planning and the Treaty of Waitangi should accelerate progress (section 7.6).

F7.3

Māori engagement in urban land-use planning is growing as a result of improving capability in local authorities and Māori groups, experience from successful practice (often stimulated by Treaty settlements) and strengthening relationships. Yet the system's performance has proven uneven, due to factors such as:

- constraints on the capability of some councils and some iwi to engage with each other;
- lack of clarity about how to implement legislative requirements for Māori participation in planning; and
- varying expectations about the nature of council–Māori relationships.

7.6 Better recognition and active protection of Māori interests

Māori have diverse interests in the urban environment, some of which more closely involve land-use planning than others (section 7.1). In particular, mana whenua have cultural connections with ancestral lands expressed through the obligation of kaitiakitanga. Māori are landowners and many wish to be able to develop their land in line with tikanga Māori, for instance in the form of papakāinga. More broadly, Māori want to see themselves reflected in the urban cultural landscape. They would like to see urban design recognise, value and draw on mātauranga Māori (Ngā Aho & Papa Pounamu, 2016a).

The current legislative framework provides for recognition and active protection of Māori interests in urban land-use planning (section 7.3). Many examples exist of successful and productive engagement of Māori in planning processes (section 7.3; section 7.4). Yet implementation of this framework has been uneven because of varying capability across councils, iwi and hapū; lack of clarity about what councils should do; and differing expectations about the nature of council–Māori relationships (section 7.5).

There is support for effective Māori participation in a future planning system

A range of submitters supported, in general terms, current progress towards effective Māori participation in a future planning system. The support was sometimes tempered by reference to the interests of other parts

of the community (Box 7.7). The Rangitikei District Council stressed the importance of an increased understanding of Māori interests in the wider community, as well as the diversity of ethnic communities (sub. DR70). LGNZ supported proposals for enhanced participation arrangements in the Resource Legislation Amendment Bill 2015, "as it reflects the current practice of the majority of councils" (sub. DR113, p. 9) (discussed in section 7.3).

Box 7.7 **Support for effective Māori participation in a future planning system**

A new urban planning system needs to explicitly integrate Māori interests through the whole planning process, from the vision building right through to the way we regulate development. What we as planners must do is ensure a robust, fair and flexible process that honours Māori interests and achieves a regulating plan that has both their support as well as that of the rest of our increasingly diverse community. (Waikato District Council, sub. 2, p. 10)

A unique feature of planning in New Zealand is the special significance set aside for addressing Maori interests. This consideration should be retained as a key principle in any revised planning system. (Hamilton City Council, sub. 4, p. 2)

The policy gains and approaches that are in play in New Zealand now increasingly recognise and provide for the protection of Maori interests. These processes need to be continued in any new planning system. (New Zealand Planning Institute, sub. 27, p. 10)

Selwyn District Council supports greater Maori involvement in developing a new integrated urban planning model. Maori need to carry sufficient weight in decision making and be appropriately resourced to allow their involvement in the planning process. Improving consistency in iwi engagement in plan development and consenting processes is a very important step forward in a new urban planning model. (Selwyn District Council, sub. 33, p. 7)

Trustpower supports iwi authorities having a role in the development of statutory planning documents and for this role to be focussed at the 'front end' of statutory planning processes. (sub. DR68, p. 7)

The UDS Partnership supports moves to enable greater Māori participation in urban planning matters. (Greater Christchurch Urban Development Strategy Partnership, sub. DR83, p. 13)

Environment Canterbury supports the conclusions reached in Chapter 11 of the draft report regarding continued provision for and emphasis on the participation of iwi and hapū in planning and other local authority work…[O]ur Tuia Relationship Agreement with the ten Papatipu Rūnanga of Ngāi Tahu in Canterbury and the tribal authority, Te Rūnanga o Ngāi Tahu, is a fundamental commitment for the whole organisation, led by Dame Margaret Bazley and our Commissioners over the last six years. (sub. DR72, pp. 9–10)

Federated Farmers agrees that any new planning system must recognise and protect Maori interests, as it must recognise and protect any private interests. Equally, democratic decision making requires councils to clearly identify how and when iwi and other groups will be consulted when plans are developed and resource consent decisions are made. (Federated Farmers of New Zealand, sub. 21, p. 10)

We agree that carrying forward the current general framework is sensible based on the ongoing growth in both local authority and Māori understanding and capacity that we are observing in our Region. (Horizons Regional Council, sub. DR97, p. 1)

F7.4 Strengthening the current broad framework for recognition and active protection of Māori interests in land-use planning has broad support and aligns with the Crown's Treaty of Waitangi obligations.

R7.3 A future planning system should carry forward and build on current regulatory provisions to give effect to the Crown's Treaty of Waitangi obligations by enabling the expression and active protection of Māori interests in the built and natural environments.

Active protection of Māori interests across the planning system

In its draft report, the Commission questioned whether further strengthening or tightening of legislative provisions was required to maintain progress in actively protecting Māori interests in the planning system. It pointed to:

- the steady introduction of new models for Māori engagement in the last decade, and the likelihood that their success would stimulate further innovations and strengthening of capability (section 7.3, section 7.4 and Ryks et al., 2014);
- uneven capability across local authorities and across some iwi and other Māori groups being a major barrier to good practice, and evidence that capabilities had been improving (section 7.5);
- the challenge of designing guidance from the centre to adequately reflect differences in local circumstances; and
- the impossibility of legislating for the trust and recognition of mutual benefits that was the necessary base for productive relationships between mana whenua and other Māori communities and local authorities.

Participants comments on the Draft Report

A number of submitters and commentators argued that the Commission's draft report did not go far enough in considering the implications of its recommendations for actively protecting Māori interests in the environment. The Auckland District Law Society submitted that "some of the Commission's recommendations have significant unexamined impacts for Maori as a Treaty partner, and may limit the interests of Māori" (sub. DR70, p. 3). Ngāti Whātua Ōrākei submitted:

> Consideration of Māori issues in the Report remains compartmentalised (even to the extent of containment in a specific chapter). Treaty principles, notably partnership, need to be "mainstreamed" into [the] planning system. This is not just a matter of Treaty of Waitangi obligation, but should be seen as a positive enhancement in terms of broader sustainable development principles with major benefits to all. In this regard spatial planning is an ideal primary vehicle, while urban design offers huge and largely untapped potential. (sub. DR76, p. 8)

In a similar vein, other submitters stressed the importance of tangata whenua participating in the development of national environmental regulations (Environment Canterbury, sub. DR72) and of "monitoring the level of influence of Māori participation in decision-making on final outcomes" (Auckland Council, sub. DR86, p. 12). Auckland Council noted that

> [t]he commission's draft report … does not discuss or identify opportunities for Māori influence on central government direction or decision making. Introducing central government direction or oversight powers which fail to recognise the Crown-iwi on-going partnership may limit opportunities for Māori participation in the urban planning framework. Where such changes significantly reduce or alter the nature of the partnership between Crown and Māori such changes may raise Treaty issues. (sub. DR86, p. 4)

Auckland Council was concerned in particular that "the draft report indicates there seem to be reduced opportunities for meaningful participation in the proposed national Independent Hearings Panel processes at the policy setting and consenting stages" (sub. DR86, p. 5).

Environment Canterbury submitted that any national effort to encourage best practice in plan development should be established "as a partnership process involving central government, the local government sector, iwi and hapu, relevant professional organisations and academic expertise" (sub. DR72, p. 20).

Ngā Aho and Papa Pounamu (2016b), in their review of the draft report, criticised the lack of recommendations to strengthen the recognition and provision for Māori rights, values and interest in urban planning. They also argued that the Commission had not adequately considered the implications of its broad framework and of some of its specific proposals, for the active protection of Māori interests. In particular, Ngā Aho and Papa Pounamu held

> strong concern that Māori values, rights and interests must be recognised and provided for in fast-tracked planning processes within a future planning system …It is not clear how Māori values, rights and interests will be managed in any future planning system, given a number of recommendations in … the DRAFT report that focus on reducing the level of engagement, limiting appeal rights and fast-tracking planning processes. (2016b, p. 28)

Ngā Aho and Papa Pounamu recommended

> a new national planning authority with specific expertise in Māori values, rights and interests in urban planning and the management of natural, physical and spiritual resources, [and] a new category of planning document that connects iwi planning documents and local government plans. (2016b, p. 25)

Auckland Council went further and said that the draft report gave "no consideration of learnings from Te Ao Māori that could help shape a future New Zealand urban planning framework" (sub. DR86, p. 10). Ngā Aho and Papa Pounamu further recommended that local and central government

> develop assessment and monitoring methodologies and frameworks that integrate tikanga Māori and mātauranga Māori, in order that a culturally responsive and robust evidence base can be developed to inform urban planning processes and decision-making. (2016b, p. 34)

A number of submissions and other commentators have also argued the need for more guidance through statutory instruments on Treaty issues in urban planning (Horticulture New Zealand, sub. DR73; Trustpower, sub. DR68; Waitangi Tribunal, 2011; Fox & Bretton, 2014). Horticulture New Zealand identified a need for national guidance on "how to balance conflicting or competing values and interests in certain circumstances or for certain types of development" (p. 15). Other submitters favoured better informal guidance, for instance through strengthening the material on the Quality Planning website (LGNZ, sub. DR113; Whanganui District Council, sub. DR95); or thought that building capability was more important (Bay of Plenty Regional Council, sub. DR111). Wellington City Council argued for more guidance through a central government Centre of Excellence (sub. DR61).

The Commission's response

In response to these comments, the Commission has thought further about the Treaty issues set out in its draft report. It acknowledges evidence of uneven and inconsistent practice across local authorities, and deficiencies of capability in some councils and in some Māori organisations (section 7.5). While practice has improved over time, the Commission accepts that current provisions to recognise and actively protect Māori interests in the environment should be strengthened to accelerate progress. The Commission also agrees that Māori should have a role based in statute in the national stewardship of the planning system; and that decision making at all levels within the system should be adequately informed by relevant Māori tikanga and mātauranga.

The Commission recommends a comprehensive approach to strengthening the recognition and active protection of Māori Treaty interests in land-use and resource management planning. These recommendations are described in more detail later in this section, in earlier parts of this chapter, and in Chapters 13 and 14. Together they cover the following proposals. In a future planning system:

- a *National Māori Advisory Board* [NMAB] *on Planning and the Treaty of Waitangi*, established under statute, will:
  - 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; and
  - carry out a triennial Treaty of Waitangi audit of the planning system (Chapter 13);
- the government, with the advice of the NMAB, and after consulting widely with Māori interests, should issue a National Policy Statement on Planning and the Treaty of Waitangi, to provide guidance to and set expectations for local authorities and other decision makers about how they should give effect to the Crown's Treaty obligations to recognise and actively protect Māori interests in the built and natural environments;
- the proposed National Policy Statement on Planning and the Treaty of Waitangi should, with the advice of the NMAB, include guidance to local authorities on:
  - policies and methods to help mana whenua develop the capability to participate effectively in planning processes;
  - how to work with mana whenua to identify and protect sites and environmental features of significance to mana whenua; and the conduct of CIAs for proposed developments that may impact on such sites and features (section 7.4);
  - how to identify opportunities for and put in place agreements with mana whenua for the co-governance and joint management of sites and environmental features of significance to mana whenua; and
  - planning provisions for papakāinga and other residential and non-residential developments to give effect to tikanga Māori (section 7.1).

The Commission also recommends that, in a future planning system:

- mana whenua should have a statutory right to participate in spatial planning (referred to as Regional Spatial Strategies or RSSs); local authorities would be required to engage in good faith with mana whenua, have regard to the relevant provisions of IMPs in their region, endeavour to reach agreement with mana whenua on how the RSS can give effect to relevant provisions of IMPs; and include a Chapter on actively protecting Māori Treaty interests in land use planning in the RSS and district plans (an integrated approach to the development of the RSS and plans should ease the burden for mana whenua of engaging with multiple local authorities) (Chapter 13);
- central government agencies with stewardship responsibilities for the planning system should monitor and promote the capability of local authorities to engage effectively with mana whenua and Māori communities in planning (Chapter 14); and
- central government agencies with stewardship responsibilities for the planning system, in collaboration with the NMAB, should develop ways to introduce tikanga Māori and mātauranga Māori into methods to monitor and assess the performance of the planning system at the national, regional and local levels (Chapter 13).

The Commission's proposals for independent review of RSSs, Regional Policy Statements for the Natural Environment and District Plans (Chapter 8, Chapter 9, Chapter 10 and Chapter 13) provide further protection of Māori interests in the environment. IHPs will be guided by statutory principles and the proposed National Policy Statement on Planning and the Treaty of Waitangi, and will be required to include panel members with knowledge of tikanga Māori. Any provisions for "event-based" rezoning will be subject to the provisions of the RSS. The RSS, in turn, developed with the participation of mana whenua and other stakeholders, will identify sites and environmental features of significance to mana whenua. Councils will need to use a wider range of engagement and consultation tools than at present, to ensure they hear the views of some groups, such as mātāwaka, more effectively than at present (Chapter 8).

Independent review of policy statements and plans should also ease the concerns of other submitters that iwi participation in land-use planning should "not favour one landowner over others due to their direct involvement in the preparation and decision-making on statutory planning documents (or via decision-making on the grant or review of resource consents" (Trustpower, sub. DR61, p. 7).

The Commission has also revisited its account of the rationale for planning (Chapter 3) and the place of urban design in planning (Chapter 8) to reflect the views of submitters, including those expressing a Māori perspective.

A National Policy Statement on Planning and the Treaty of Waitangi

In their review of the Commission's draft report, Ngā Aho and Papa Pounamu strongly recommended that more guidance be provided through a National Policy Statement on Planning and the Treaty of Waitangi. Ngā Aho and Papa Pounamu sketch out, by way of illustration, what such guidance could comprise, though they stress that an NPS should be developed in collaboration with mana whenua and mātāwaka representatives (Ngā Aho & Papa Pounamu, 2016b).

The Commission considers that more guidance through a National Policy Statement on Planning and the Treaty of Waitangi would strengthen accountability for Treaty issues in a future planning system. Such an NPS would complement other measures the Commission is recommending as ways to strengthen national stewardship of the planning system (Chapter 13). In particular, the Commission is recommending a National Māori Advisory Board on Planning and the Treaty of Waitangi is established under statute, to work with central government agencies responsible for the planning system. It is proposing that one role of the NMAB will be to oversee a periodic Treaty of Waitangi audit of the planning system. A National Policy Statement on Planning and the Treaty of Waitangi will help establish a metric against which such an audit would be conducted. Given the central importance of Māori Treaty interests in land use planning and resource management, the proposed NPS should be mandatory.

The Commission agrees with Ngā Aho and Papa Pounamu about collaborating with mana whenua and matāwaka interests to develop a National Policy Statement on Planning and the Treaty of Waitangi. Ngā Aho and Papa Pounamu provide an illustrative example of what such an NPS could cover (2016b). Without attempting to pre-judge the results of future collaboration, the Commission has also identified some matters that such an NPS could usefully cover. The Commission has based its recommendations in this chapter on submissions and other evidence from inquiry participants, and on commentary about how well the current planning system actively protects Māori interests in the environment.

It will be important for national guidance to respect and leave room for the large variety of different local circumstances, tikanga, environmental issues and preferences. In many cases, guidance will be around how councils can engage with mana whenua to reach agreements on local approaches to actively protecting Māori Treaty interests in the environment.

R7.4

In a future planning system, the government should, with the advice of the proposed National Māori Advisory Board on Planning and the Treaty of Waitangi, and after consulting collaboratively with Māori communities more generally, provide clear guidance to local authorities through a mandatory National Policy Statement (NPS) on Planning and the Treaty of Waitangi. The NPS should set out the Crown's expectations on recognising and actively protecting Māori Treaty interests in the natural and built environments.

That NPS should respect and provide scope for local differences in tikanga, environmental and planning issues and community preferences.

Strengthening capability

Uneven capability across both councils and some iwi and hapū is a significant barrier to Māori engagement in planning and the active protection of Māori interests in the environment (section 7.5). Building the capability of local authorities to engage effectively with Māori is discussed further in Chapter 14.

Mana whenua organisations vary greatly in size. Some have completed Treaty settlements and acquired both expertise in engaging with government agencies and substantial resources to build organisational capability. Others are at different stages of the settlement process and often lack such experience and resources. Whatever their size and resources, all mana whenua groups have Treaty interests in the natural environment, and are necessarily involved in planning processes to actively protect those interests. It is in the interests of all participants in urban planning (private developers, local authorities and mana whenua) that mana whenua are well-placed to participate effectively and efficiently in planning processes (Box 7.6).

Councils currently have responsibilities under the LGA to identify and set out in their Long-Term Plans ways to develop Māori capacity to contribute to decision making. The RMA has a similar provision in relation to tangata whenua participation in consultations on Plans and Regional Policy Statements (section 7.3).

Assistance to develop capacity can and does take a variety of forms. Councils or central government can provide resources in kind through training and workshops, secondments of staff (in both directions) and technical expertise; and funding perhaps tagged to particular capability development initiatives. The Christchurch City Council helped to finance the operation of the Ngāi Tahu environment agency Mahaanui Kurataiao Ltd (sub. DR90). The Whanganui District Council (sub. DR95) recommended some combination of central and local government funding to support Māori engagement in planning processes, particularly to help with preparing IMPs.

Once adequate capability has developed, and with appropriate pricing, some aspects of mana whenua participation in planning processes, such as CIAs, should be self-funding.

R7.5

In a future planning system, central agencies with stewardship responsibilities for the system should, with the advice of the proposed National Māori Advisory Board on Planning and the Treaty of Waitangi, establish policies and methods to help mana whenua develop the capability to participate effectively in planning processes.

Policies and methods should include training; secondments of staff between mana whenua, central government and local government agencies; assistance with technical issues; and grants.

The Government should provide clear guidance (through the proposed National Policy Statement on Planning and the Treaty of Waitangi) to local authorities on their responsibilities to help mana whenua develop the capability to participate effectively in planning processes. The National Māori Advisory Board should review local authority initiatives to develop mana whenua capability as part of its triennial Treaty of Waitangi audit.

Stronger prospects for co-governance and joint-management

Current provisions in the RMA for mana whenua participation with local authorities in co-governance and JMAs of environmental features have been rarely used (section 7.4). Yet a number of successful arrangements have been set up as a result of Treaty settlement legislation and more informally (section 7.3; OAG, 2016). One barrier to establishing more such arrangements may be lack of local political willingness to do so (section 7.5).

The Auditor-General has identified "the factors that need to be considered when setting up and maintaining effective co-governance arrangements" (OAG, 2016, p. 6). Better guidance on setting up and conducting co-

governance arrangements, as well as information on successful arrangements, may increase the willingness to establish them.

Ngā Aho and Papa Pounamu (2016b) recommend that, in a future planning system, the government should direct councils to establish co-governance arrangements. This is, in effect, what has sometimes already happened as a result of some Treaty settlements (section 7.3). Even so, the Commission considers that local willingness to enter into such arrangements is an important ingredient in their success. Guidance through an NPS could convey a strong expectation that councils will collaborate with mana whenua to consider possible co-governance arrangement in good faith – particularly where mana whenua have raised a proposal.

R7.6

In a future planning system, the government should provide clear guidance (through the proposed National Policy Statement on Planning and the Treaty of Waitangi) to local authorities on identifying opportunities for, and putting into place agreements with, mana whenua for the co-governance and joint management of sites and environmental features of significance to mana whenua.

The guidance should set out the circumstances that favour such agreements; and the practices that make them successful.

7.7 Conclusion

Māori participation in land-use planning processes has been growing in extent and sophistication over the last twenty years. Treaty settlement processes have been a catalyst; and have stimulated growth in iwi and local authority capability. Accompanying more effective participation of Māori in planning processes is a greater recognition of the value of mātauranga Māori in shaping design choices. Yet progress is uneven and many commentators remain disappointed by poor practice and weak commitment to effective engagement in some areas.

Inquiry participants supported the broad framework for Māori engagement and participation in planning. Yet many argued the need for additional measures to address the uneven practice and uneven capabilities that jeopardise active protection of Māori interests in the environment. These include clearer guidance under statute to councils (in the form of an NPS), and measures to build the capability of councils and the capability of mana whenua groups. The Commission agrees. Among other things, guidance should provide greater clarity about the role of IMPs in planning, the possibilities for co-governance and joint management arrangements, and the recognition and active protection of Māori interests in the environment.