BEFORE THE COMMISSIONERS
TARANAKI REGIONAL COUNCIL
NEW PLYMOUTH DISTRICT COUNCIL

IN THE MATTER	notice of requirement and resource consent applications to construct a bypass at Mount Messenger, Application ID: DSN17/44711 and LUC18/47193
BETWEEN	**New Zealand TRANSPORT AGENCY (NZTA)** Applicant
AND	**TE KOROWAI TIAKI O TE HAUĀURU IINCORPORATED (TE KOROWAI)** Submitter

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ORAL STATEMENT OF WILLIAM SIMPSON ON BEHALF OF THE SIMPSON WHANAU

DATED 16 August 2018

INTRODUCTION

1. Kia ora koutou ma kua tae mai e tautoko te kaupapa o te ra

2. Kaua e te wareware that Walter Mantell the then Commissioner for extinguishing Native Māori Lands. He received his orders on the 25th April 1848: the object of his mission was the extinguishment of any title which may upon enquiry be found to be vested in the native inhabitants.

3. The motive …was a desire to confiscate the Māori lands and to trample under the soles of their feet. The Treaty of Waitangi became the voice of the Māori people so that the whole world would eventually know the truth.

4. Queen Elizabeth II at Waitangi 6 February 1990 said

   "Today we are strong enough and honest enough to learn the lessons of the last 150 years and to admit that the Treaty of Waitangi has been imperfectly observed" by the Crown

Background

5. I was the General Manager for Huakina Development Trust one of the key committees set up by Waikato Tainui to manage their whenua, the environment social, health and affairs and I will never forget the fights we had with the Crown to recognise us as Manawhenua.

6. It was here that we got to fully comprehend why the whenua, forests, birds, fish, waterways, awa, streams, land the sky all had a mauri, they were the kaitiaki and why they needed protecting for our future.

7. I am one of the chief negotiators for Ngāti Tama Whanganui A Tara and we are also suffering the same issues.

8. As my submission states I am Ngāti Tama.

9. Firstly we do not want to delay this process any more than it is necessary.

10. We fully support a construction of a bypass through te maunga o purehuroa, Parininihi however I am here to state that we as a whānau were made aware that there are many other Ngati Tama beneficiaries and whānau that have been excluded from te consultation process with NZTA for one reason or another.

11. That TRONT had failed to notify all their beneficiaries of their Hui a iwi.

12. Therefore after deep consideration and many hours of discussion with the whānau we ask the commissioner and the people before us **to set aside the Resource Management Application until such time as Ngati Tama o Taranaki (Ngati Tama) as a whole are fully included in the consultation process.**

13. Ngati Tama is in an extremely dark place and have been put through harrowing times and experiences with the loss of our treaty settlement monies through bad investments.

14. Nationally, internationally, the world wide negative publicity on our iwi has been hurtful and catastrophic to say the least.

15. The past leadership of Ngati Tama (TRONT) was said to have failed their people.

16. The leadership at that time along with management was seen to be wanting, and most of these leaders to some have said to have died in shame.

17. Therefore Mana of Ngati Tama is at stake right now and more now than ever before.

18. The decision to grant NZTA resource consent with Ngati Tama's support with their application must never be taken lightly.

19. Albeit the decision to consult with Ngati Tama must include all Ngati Tama that are directly affected must also be taken extremely seriously.

20. We are of the view that these two crucial and significant steps have been overlooked by NZTA and have treated Ngati Tama with contempt.

21. It is our view NZTA have taken advantage of our current weakness and are willing to accept the deal from the current TRONT as a legal requirement and say that they have consultated with Ngati Tama.

22. This is why at this crucial juncture that this **resource application be set aside** to force NZTA to complete a robust and credible consultation process with all of Ngāti Tama rather than putting their faith in the current (TRONT) that purport to represent all of Ngati Tama. That is far from the truth.

23. NZTA have provided you with an extremely impressive paperwork and affidavits from what NZTA purport to suggest has been their consultation pathway to show that it was comprehensive and robust.

24. However they have neglected to provide any evidence to show that **they have not** compromised the consultation process.

25. It must be noted that NZTA have relied heavily on TRONT to support their resource consent application claiming TRONT to be the only Ngāti Tama Māori group they need to seek mandate to get the resource consent to begin the bypass construction at Te Maunga o Purehorua

26. Let's be clear NZTA are financially supporting TRONT and their manager.

27. There are a lot of people from Ngati Tama and the wider community who believe strongly that these payments have compromised the position of TRONT and the manager.

28. Questions arise as to who they purport to represent, the iwi or NZTA and where do their loyalties lie?

29. It is strongly believed that NZTA are not coming into this process with clean hands.

30. At no time did TRONT get mandate to accept the payments by NZTA in regards to the resource consent by its beneficiaries. It would be fallacious to believe otherwise.

31. Are we seeing history repeating itself once more? Ngati Tama suffering at the hands of TRONT and the manager.

32. This submission is to show that consultation with Ngāti Tama has not been as robust and transparent as is made out to be by NZTA.

33. Our whanau are extremely troubled and say that if NZTA is granted resource consent it will have a disastrous effect on our Iwi, the environment, the ecology, our tikanga, our spiritual significance, our mauri, more importantly will the mana of Ngāti Tama be tarnished once more.

34. It would be extremely callous at this time to grant the resource consent application knowing the facts, the history, the spiritual values, and cultural significance of the current route have not been fully espoused by Ngati Tama.

35. We know that there is a challenge in the courts as we speak as to the validity of the Trustees in TRONT. This matter is an iwi matter yet to be decided. However it is an important matter to contemplate.

36. Even though it is not a council matter the outcome must and will have an effect on the final decision as to whether to grant the resource consent or not. I respectfully ask you to consider this when making your decision.

37. As an Iwi we cannot allow the matter to lie where it is knowing we are not united in spirit, thought, and view on this important matter.

38. We are about to embark and cut into the heart of Mangapepeka, the valley of darkness, a sanctuary of Ngati Tama during the Māori land wars between Ngati Maniapoto, Waikato Tainui, Ngati Haua and many others.

39. Mangapepeka gave life and sustenance to the many of our tupuna, kaitiaki in the form, of nga manu, lizards, and rats, kiwi, more pork, wai, Ika, fauna and flora.

40. We do not want head back into the dark spaces our tupuna had gone because of one error of judgement. The final decision to give support to NZTA around the resource consent must be a united one.

41. The view that it is okay to cut the heart and soul from the two hundred year old trees and to divert the awa that sustained our tupuna from certain death is despicable and shameful to those that pursue this pathway especially if you are Ngati Tama.

42. Ngati Tama need time to heal and at this time the hake is still raw. NZTA is using this vulnerable time and their monies to buy Ngati Tama's support rather than to work alongside us and to hear all our stories, especially those that are directly affected.

Why am I standing?

43. To give full recognition to our spiritual and cultural values that are not mentioned nor expressed in the documents that have been provided by TRONT.

44. To call upon the smorgasbord of case law that NZTA and of course yourselves will be familiar with, that gives recognition to Te Tiriti o Waitangi, te iwi, te hapu, te whanau and te Māori.

45. To highlight what legal arguments to consider around the words:

"CONSULTATION" and **"GOOD FAITH"**

And what it means to us as Ngāti Tama

46. Chief Judge Edward Taikurei Durie said *"The development of the concept of partnership among Māori and Non- Maori is a lifelong job, it doesn't have an end to it and it must be worked at constantly to widen both partners view of the treaty and the past"*

Consultation

47. We know consultation is not a new word and the leading case generally is the *Wellington International Airport Ltd v Air New Zealand [1991]* [1]which highlighted what is consultation and what is not consultation.

48. We also must recognise that the duty to consult arose from two main sources in the RMA.[2]

[1] 1 NZLR 671(Court of Appeal)
[2] ss8, 6e, and 7a and clause 3(1)(d) of the first schedule

49. Further consultation is also recognised as a principle of Te Tiriti o Waitangi which by virtue of section 8 *"all persons exercising functions and powers … shall take into account "*

50. This view was recognised in the case *Ngati Kahu and Pacific International Investments Limited v Tauranga District Council*[3]

51. There are many cases that refer to the *"duty to consult with tangata whenua"* which is also identified in the first and fourth schedule of the Resource Management Act[4] (RMA)

Good Faith Argument

52. We recognise that consultation itself should be conducted *"in good faith",* that it does not necessarily require a consensus, it should be ongoing and that consultation should never fetter the council's decision making responsibility.

53. We also recognise that s8 of the RMA is clear that councils must take into account the principles of Te Tiriti o Waitangi.

54. These sentiments are echoed in another old case Gill v Rotorua District Council when the Tribunal said:

> *One of the nationally important requirements of the RMA under Part II considerations is that account must be taken of principles of the Treaty of Waitangi 1840: section 8 of the Act. One of these principles is that of consultation with tangata whenua:* [5] *It was noted that the tribunal stated "we think it right to say that the good faith owed to each other by the parties to the Treaty must extend to consultation on truly major issues" (p152)*

55. These principles are seen in the Haddon v Auckland Regional Council case[6] Tribunal said

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[3] The tribunal was concerned with the question of what consultative duty lay upon a council in the course of procedures and events leading up to public notification of the change relating to a subdivision and disposition of the land

[4] Clause 3(1)(d),and (1)(h)

[5] See also NZMC v Attorney General [1989]2 NZLR 1142 (CA) (p616)

[6] In the Haddon case the tribunal commented on the meaning of "*Take into Account*"

"It would appear that the duty to "take into account" indicates that a decision maker must weigh the matter with other matters being considered and in making a decision effect a balance between the matters at issue and be able to show he or she has done so"

56. We also agree that when consultation must take place and who is to be consulted is a moot point and argumentative to say the least. As earlier stated by Tama Howells submission.

57. There are however many older RMA cases such as the "Gill ", the *"Haddon" "Quarantine Waste", "Ngatiwai" "Hanton", "Rural Management", "Whakarewarewa Village Charitable Trust"*, cases that gave rise to the importance of consulting.

58. **The Court of Appeal viewed consultation as analogous to a fiduciary relationship, and Mäori view consultation <u>as a taonga</u> and when an understanding is reached <u>it is said to be tapu</u> and more so if the decision is made on a sacred Marae.**[7]

59. The tribunal in the Haddon case[8] stated that the onus is upon the TLA not only to notify the iwi but also the hapu as appropriate landowners. Therefore the obligation was seen as a s93(1) duty to notify and it was also seen as a separate issue to that of section 8

60. These views are highlighted in the case:

"Ngai Tahu Māori Trust Board v Director – General of Conservation"[9]

Where it held that "*the requirements to take into account the principles of the Treaty of Waitangi and it should be interpreted and applied widely. The Treaty of Waitangi principles were not limited to consultation but also included actual protection of tangata whenua interest".*

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[7] In the Hadden case it was held although the application by ACC was publically niotified and a number of people were personally notified. Mr Haddon was not. Mr Hadden waqs notified through the Ngatiwai Trust Board Mr Haddon felt as tangata whenua he ansd his family members were not perobnally notified in particular he had been a well kown Maaori and committed a lot of time to the area. It was a well-known fact that he had a special interets in the area.

[8] Supra at 105

[9] [1995] 3NZLR 553

61. We need to remember at this point that the Crown must take positive steps to protect tangata whenua interest under the Treaty of Waitangi and to consult effectively with tangata whenua.[10]

62. It cautioned that the requirements to actively protect Māori interests must not be restricted to consultation only ... the spirit of te Tiriti o Waitangi is paramount ... honesty of purpose calls for an honesty effort to ascertain facts and to reach an honest conclusion ... consultation is but one way to achieve this.

63. NZTA to date and the consultation with iwi (TRONT) has been nothing but piece meal, fragmented and lacks the understanding and prioritisation of Māori culture, social, spiritual, ecological, environmental, values which underpin us as tangata whenua.

Relevance

64. NZTA in our view has taken advantage of a dysfunctional iwi and used its powers of persuasion and authority to gain an advantage over the iwi at a time of vulnerability.

65. It is the view of our whanau that NZTA failed to adequately consult with tangata whenua as clause 1(h) RMA requires. There needs to be more than just sending out notices of the application and meeting with only twenty people at what was deemed a Hui a iwi.

66. NZTA must have noted that the numbers were low at the Hui a iwi, this should have raised a red flag.

67. NZTA must have seen that there was not a quorum at the hui a iwi therefore the meetings should have been abandoned or at least noted that there were issues that were beyond their control and have said something to the organiser's rather than continuing the hui and calling it a consultation hui with Iwi.

[10] Consultation and engagement witrh maaori , Ministry of Education p4.

Who to consult

68. Who to consult is a question that needs to be asked and answered in this case. We are the view it has to be with Ngati Tama not just TRIONT.

69. We as a whanau and along with Te Korowai are adamant that we were not consulted by NZTA as Ngati Tama that are likely to be affected by the application.

70. s93(1) RMA is a requirement for consent authorities which is to send a notice to a number of specified persons and bodies among those to be notified are those that *"are likely to be affected by the application", "iwi authorities"* and other persons or authorities.

71. In the case of Haddon the Auckland City Council (ACC) notified everyone but him. ACC notified Ngati Wai Trust Board but did not notify him or his family given their commitment to the area concerned.

72. We have the same or similar situation here with Te Korowai, and many other beneficiaries that have direct relationship with Te Maunga o Purehorua me Parininihi.

73. It was held in the Haddon's case that *"The onus is upon councils not only to notify the iwi , but also the hapu as the appropriate land-owners ..."* Ngati Tama case in our view is analogous to the Haddon case.

74. It is with these sentiments that we say that Te Tiriti o Waitangi is synonymous with consultation processes with Māori and all Māori have a right to be consulted.

75. NZTA have a duty, consistent with Te Tiriti o Waitangi to consult with Māori and not have an option to pick and choose as they see fit, who they should consult with and who not to consult with.

76. We must remind ourselves that effective consultation must ultimately lie at the feet of those who are the decision makers.

77. The interpretation of effective consultation must also be based on for whom the decision is to be effective.

78. Consultation is dependent on the scale of the project. This project is huge to say the least and will affect the whenua o Ngati Tama. To be effective it must be a joint treaty partnership decision.

Good Faith

This give rise to the term "in Good Faith"

79. It must be noted at this time that despite the obligations that are provided for in the RMA, *"in good faith"* is the most underrated words that are usually overlooked.

80. When consultation is being conducted *"in good faith"* and when the proposal can be genuinely influenced by the views of those asked to contribute, then one would be seen to be consulting "*in good faith*".

81. "*In good faith*", in our view should be the guiding principle, and needs to be binding and meaningful.

82. As stated earlier with most consultation processes, *"in good faith"* is at the heart of consultation exercises undertaken.

83. Te Puni Kokiri referred to "*"in good faith"* in terms of openness, and accountability stating that transparency in decision making is an important feature of Local Government.[11] Therefore we cannot assume or expect consultative processes from one Māori organisation to be demographically the same. This gives importance to that notion that good consultation processes are nowhere more necessary than with Māori.

Tangatawhenua & Manawhenua

84. We must remember that Tangatawhenua and Manawhenua are the people most likely to be affected by many decision that affect the land throughout New Zealand, especially te maunga o Purehorua, Mangapepeka me Parininihi.

85. Tangatawhenua and Manawhenua is clarified in legislation by the Māori Land Court applying section 30(1) (b) Te Ture Whenua Māori Act 1993. These are also corroborated by and in the principles of Te Tiriti o Waitangi.[12]

Kaitiakitanga

86. This moves us to the term *"kaitiakitanga"*, and its importance.

87. In our view this special concept has a meaning deeper than just guardianship, and custodianship.

88. *Kaitiakitanga* comes with a human and spiritual responsibility; to the rivers, mountains, sea, trees, streams, fish, animals, and to the whenua.

89. This term was aptly simplified by Te Puni Kokiri. [13] Māori identity stems from a relationship with natural and physical resources of their rohe. Every whanau, marae, hapu and iwi has an <u>environmental taonga</u> <u>*within their rohe that contributes to their identity.*</u> This taonga can be seen as the kaitiaki in lakes, rivers, mountains, coastlines, streams, trees, fish, eels, birds, and forests.

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[11] Te Puni Kokiri p10 unreported November 1999

[12] Environmental & Resource Management Law (1977) *"it should be noted that the obligation to take into account the principles of the Treaty o Waitangi extends to Regional Councils and Teritoorial Authorities as well as Ministers of the Crown when exercing functions and powers under the Act".*

[13] This was to ensure that those taonga were protected to a set of practices or tikanga which were developed and observed to maintain the mauri to the natural world. Observing these tikanga evolved into the ethic and exercise of kaitiakitanga

90. The loss of mauri and the use of one of the elements of the natural world without maintaining kaitiakitanga me tohungatanga has serious consequences for tangata whenua me manawhenua of that rohe as individuals and as a whanau.

91. Kaitiakitanga is enormously significant because of its holistic, spiritual, and cultural view of the environment and of its relationship to the whenua. The holistic approach to environmental management both in New Zealand and globally is seen as an approach to safeguard our natural environment. The spiritual approach protects those before us and cultural view protects the mauri, ihi, and mana of the rohe.

Points that we wish to make are:

75. Where the Crown is the consent authority it is a requirement to consult with all tangatawhenua manawhenua prior to a resource consent application hearing

76. The forth schedule requires an applicant to identify those persons interested in or affected by a proposal, the consultation undertaken and any response to the views of those consulted.

77. Failure to provide adequate information could result in delays and requests for further information.

78. Iwi as submitters should clearly express their concerns about a resource consent application so that the relevant issues can be clearly identified during the application process and additional information sought as need be.

Summary

We have chosen to enclose for your convenience copies of the pertinent Local Government Act 2002 sections that apply to consultation and the importance of Māori, Manawhenua and Tangatawhenua in relations to consultation.

To highlight that consultation is written in other statutes and legislation that govern Local and Regional Councils that support the view that the TLA's and others are required to consult with Māori.

It was stated that "it is also prudent that steps that TLA's would need to make are to ensure that its decision making processes would stand any form of scrutiny by **"MAAORI"**

Finally

We lend our support to the submission to stop the current NZTA option for the road works via Te Maunga Purehorua Mangapepeka due to Ngati Tama not being consulted with comprehensively. Secondly we are required by tikanga to give our protection to the current endangered Kaitiaki o te maunga o purehorua and mangapepeka.

Last but not least the number of Ngati Tama whānau not consulted with is clear. We have been led to believe that the numbers that require consultation exceeds those that have attended Hui A Iwi set up by TRONT, by ten fold

This is the tragedy that Ngati Tama will need to live with if the resource consent is granted at this crucial juncture

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Annexed and Marked "A"

The Local Government Act 2002 gave notice to TLA's that all decision making processes must comply with sections 10, 11, 14, 77, 78, 80, 81 and 82. It is also prudent that the steps the Councils would need to make are to ensure that its decision making processes would stand any form of scrutiny, by Maori and these are summarised as follows sections;

Section 77

1. Identification of reasonably practical options
2. Consideration of the relationship between Maori and Their Land
3. Consider the benefits and costs of each option in relation to future Social, economic and cultural well-being of the district.
4. The extent to which community outcome will be prompted by each option
5. The impact of option on the councils capacity to meet its statutory responsibility
6. and any other relevant matters

Section 78

1. Council to consider the view and preferences of those likely to be affected by the decision
2. Views of those affected are given due consideration

Section 79

1. Council must make judgement about how the level of consultation required and ;
2. The extent to which the different options are identified and assessed.
3. The degree to which benefit and costs are to be quantified
4. The extent and detail of information to be considered
5. The extent and nature of any written record to be kept
6. Have regard to the principle of Local Government, the council, resources, the range of options and the view of other persons

Section 81

Council must provide opportunity for Maori to participate in the decision making process.

Section 82

Council is required to ensure that it has processes in place for consulting with Maori.

In addition to consultation requirements the council must ensure that any decision on the change of ownership on the land is legal.

10 Purpose of local government

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

11 Role of local authority

- The role of a local authority is to—
  - (a) give effect, in relation to its district or region, to the purpose of local government stated in section 10; and
  - (b) perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment.

14 Principles relating to local authorities

- (1) In performing its role, a local authority must act in accordance with the following principles:
  - (a) a local authority should—
    - (i) conduct its business in an open, transparent, and democratically accountable manner; and
    - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:
  - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
  - (c) when making a decision, a local authority should take account of—
    - (i) the diversity of the community, and the community's interests, within its district or region; and
    - (ii) the interests of future as well as current communities; and
    - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10:
  - (d) a local authority should provide opportunities for Māori to contribute to its decision-making processes:
  - (e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and
  - (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
  - (fa) a local authority should periodically—
    - (i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and
    - (ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and
  - (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and
  - (h) in taking a sustainable development approach, a local authority should take into account—
    - (i) the social, economic, and cultural well-being of people and communities; and
    - (ii) the need to maintain and enhance the quality of the environment; and
    - (iii) the reasonably foreseeable needs of future generations.

(2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

Section 14(1)(fa): inserted, on 27 November 2010, by section 6 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

76 Decision-making

- (1) Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81, and 82 as are applicable.

  (2) Subsection (1) is subject, in relation to compliance with sections 77 and 78, to the judgments made by the local authority under section 79.

  (3) A local authority—
  - (a) must ensure that, subject to subsection (2), its decision-making processes promote compliance with subsection (1); and
  - (b) in the case of a significant decision, must ensure, before the decision is made, that subsection (1) has been appropriately observed.

  (4) For the avoidance of doubt, it is declared that, subject to subsection (2), subsection (1) applies to every decision made by or on behalf of a local authority, including a decision not to take any action.

  (5) Where a local authority is authorised or required to make a decision in the exercise of any power, authority, or jurisdiction given to it by this Act or any other enactment or by any bylaws, the provisions of subsections (1) to (4) and the provisions applied by those subsections, unless inconsistent with specific requirements of the Act, enactment, or bylaws under which the decision is to be made, apply in relation to the making of the decision.

  (6) This section and the sections applied by this section do not limit any duty or obligation imposed on a local authority by any other enactment.

77 Requirements in relation to decisions

- (1) A local authority must, in the course of the decision-making process,—
  - (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
  - (b) assess those options by considering—
    - (i) the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and
    - (ii) the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and
    - (iii) the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and
    - (iv) any other matters that, in the opinion of the local authority, are relevant; and
  - (c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

(2) This section is subject to section 79.

78 Community views in relation to decisions

- (1) A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

(2) *[Repealed]*

(3) A local authority is not required by this section alone to undertake any consultation process or procedure.

(4) This section is subject to section 79.

Section 78(2): repealed, on 27 November 2010, by section 9 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

79 Compliance with procedures in relation to decisions

- (1) It is the responsibility of a local authority to make, in its discretion, judgments—
  - (a) about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the matters affected by the decision; and
  - (b) about, in particular,—
    - (i) the extent to which different options are to be identified and assessed; and
    - (ii) the degree to which benefits and costs are to be quantified; and
    - (iii) the extent and detail of the information to be considered; and
    - (iv) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.
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(2) In making judgments under subsection (1), a local authority must have regard to the significance of all relevant matters and, in addition, to—

- (a) the principles set out in section 14; and
- (b) the extent of the local authority's resources; and
- (c) the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons.

(3) The nature and circumstances of a decision referred to in subsection (2)(c) include the extent to which the requirements for such decision-making are prescribed in or under any other enactment (for example, the Resource Management Act 1991).

(4) Subsection (3) is for the avoidance of doubt.

Section 79(3): added, on 7 July 2004, by section 9 of the Local Government Act 2002 Amendment Act 2004 (2004 No 63).

Section 79(4): added, on 7 July 2004, by section 9 of the Local Government Act 2002 Amendment Act 2004 (2004 No 63).

80 Identification of inconsistent decisions

- (1) If a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify—
  - (a) the inconsistency; and
  - (b) the reasons for the inconsistency; and
  - (c) any intention of the local authority to amend the policy or plan to accommodate the decision.

(2) Subsection (1) does not derogate from any other provision of this Act or of any other enactment.

81 Contributions to decision-making processes by Māori

- (1) A local authority must—
  - (a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and
  - (b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and
  - (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).

(2) A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—

- (a) the role of the local authority, as set out in section 11; and
- (b) such other matters as the local authority considers on reasonable grounds to be relevant to those judgme

"B"

Consultation with tangata whenua

Korero

The western environmental system values the natural world (trees, plants, mountains, streams, rivers and so on), only in so much as it is meaningful to humans. Tupuna Maori would say that these things have values in themselves, that whether humans are here or not, the trees still retain their mana, the birds still retain their mauri ora, the mountains retain their tapu: they remain taonga!

Te Puni Kokiri–"Mauriora ki te Ao"

The core purpose of the Resource Management Act 1991 is the promotion of 'sustainable management'. It has taken years of environmental degradation for Pakeha to finally accommodate the notion that unless our resources are managed in a way that sustains them for future generations, there will be nothing left to nourish and nurture us.

We as Maori and uri of Papatuanuku have responsibilities far beyond that of any Pakeha law. The sustenance of our earth mother and ultimate kaitiaki is an inherent obligation in all of us. For as her mauri suffers from pollution and neglect, our well-being and mana as a people is also threatened.

We are obliged to protect, sustain and nurture her, whether this be through Pakeha law or Maori lore. This means that our participation in environmental management is not as much the issue as is our ultimate responsibility to our tupuna and uri.

Therefore, regardless of the barriers, we must participate to a large extent in Resource Management processes and at the same time hold fast to our matauranga Maori and promote it in a way that restores the balance of natural order that once existed in Aotearoa.

Ministry for the Environment.

Under the RMA, sometimes local authorities have to, or should, consult with tangata whenua. However, there are no set procedures in the RMA to guide this *consultation process*.

But, there are some guidelines about consultation from the Courts.

Who should consult?

Councils–when preparing or changing plans

Resource consent applicants

Under the RMA, resource consent applicants do not have a duty to consult with tangata whenua. However the Courts have said that applicants should consult with tangata whenua when their applications for resource consents may affect the matters referred to in sections 6(e) and 7(a)

[*Paihia& District Citizens' Assn v Northern Regional Council &Anor* (A 77/95)]. The details of the applicant's consultation should be included in the *assessment of effects* [Clause 1(h) of Part I of the Fourth Schedule of the RMA].

If an applicant is aware that the tangata whenua may be **interested in or affected by** their proposal, they would be wise to consult.

This is because a consent authority may require further information from the applicant about what consultation, if any, they carried out with Maori [See section 92(2)(a)(ii) of the RMA] or any other party.

Consent authorities

The consent authority itself (as a quasi-judicial body) does **not** have a duty to consult with tangata whenua because they are making the decision. [See *Whakarewarewa Village Charitable Trust v Rotorua District Council* (1994) W61/94].

However consent authorities need to make sure they know all the necessary facts before preparing a report on resource consent.

Iwi authorities should be consulted

The RMA says that 'iwi authorities' should be consulted when local authorities are **preparing or changing plans or regional policy statements** [Clause 3(1)(d) of Part I of the First Schedule of the RMA]. It's up to whanau, hapu and iwi to decide who are the most appropriate representatives to carry out consultation on RMA matters.

Having a **representative group** is important for making sure that you have a voice in any RMA matters that may affect you.

Good iwi or hapu environmental plans could also be used to identify who your representatives for consultation with local authorities are (see Iwi/hapu environmental management plan).

Consultation does not always result in agreement

Consultation does not mean that the parties involved must come to an agreement.

However, if consultation with tangata whenua is to be **meaningful**, what is proposed should be **openly discussed**. The Courts have described consultation as including:

- listening to what others have to say and considering responses
- allowing enough time for proper consultation
- making a genuine effort to consult
- giving enough information to the party being consulted
- keeping an open mind and be ready to change or even start again [*Wellington International Airport Ltd v Air NZ* (1991) 1 NZLR 671].

You can participate in consultation

If your hapu or iwi has not developed a formal consultation process for consulting with local authorities or resource consent applicants, you can either:

- develop your own formal consultation process or
- respond on a case by case basis (no formal consultation process).

Case by case consultation

If responding on a case by case basis, think about the following points when deciding whether or not to participate in any consultation with a local authority or a resource consent applicant.

These include asking the local authority or applicant:

- What is the nature of the consultation? (for example, are you going to be receiving or giving them information, or both?)
- What is the purpose of the consultation? (for example, what do they wish to discuss with you and why they feel they need to discuss these matters?)
- How will your input in the consultation process be used? (for example, how is the information you receive or give during the consultation process going to influence any decision that may be made?)
- What are the timelines for making the decision?
- Where is the consultation going to take place?
- Who is going to provide the resources for the consultation process?
- Who is expected to attend the consultation?
- When are they going to inform you of the outcome of the process?

If your local authority does seek consultation, it would be wise to take part in that consultation. It is more difficult to challenge a decision on the basis of no consultation if you have withdrawn or refused to take part in the process.

Local authorities must consult with tangata whenua through their iwi authorities in the **preparation or change of a regional or district plan** [Clause 3 of Part I of the First Schedule of the RMA].

Decision makers

Before any decisions are made under the RMA, decision makers must consider sections 6(e), 7(a) and section 8 of the RMA. (For more information on these sections, see Principles of the RMA.) To find out what these sections may mean for Maori in their area, local authorities should consult with the tangata whenua.

Clause 7 and 8 of Schedule 1 of the RMA details the requirements of the further submission process that local authorities must follow. This is a requirement for all plan changes. I have attached a copy of the wording of Clause 7 and 8 from the RMA for your information.

7 Public Notices of submissions

- (1) A local authority must give public notice of—
- (a) the availability of a summary of decisions requested by persons making submissions on a proposed policy statement or plan; and
- (b) where the summary of decisions and the submissions can be inspected; and
- (c) the fact that no later than 10 working days after the day on which this public notice is given, the persons described in clause

8(1)<http://www.legislation.govt.nz/act/public/1991/0069/latest/link.aspx?id=DLM241225> may make a further submission on the proposed policy statement or plan; and

- (d) the date of the last day for making further submissions (as calculated under paragraph (c)); and
- (e) the limitations on the content and form of a further submission.

(2) The local authority must serve a copy of the public notice on all persons who made submissions.

8 Certain persons may make further submissions

- (1) The following persons may make a further submission, in the prescribed form, on a proposed policy statement or plan to the relevant local authority:
- (a) any person representing a relevant aspect of the public interest; and
- (b) any person that has an interest in the proposed policy statement or plan greater than the interest that the general public has; and
- (c) the local authority itself.

(2) A further submission must be limited to a matter in support of or in opposition to the relevant submission made under clause 6<http://www.legislation.govt.nz/act/public/1991/0069/latest/link.aspx?id=DLM241221