



# Briefing to the Incoming Ministers for the Environment & Conservation

## Te Tiriti o Waitangi based co-governance for environmental resilience.

**From:** S07/Adaptive Governance and Policy Group as part of the Bioheritage National Science Challenge. **Contact:** Maria Bargh and Carwyn Jones, research co-leads. **Date:** November 2020

### Summary

- Currently there are significant opportunities to halt the decline in Aotearoa New Zealand's biodiversity and support Māori and other communities to have healthy relationships with the environment.
- We offer our support as you both embark on changes to the Resource Management Act, further review and implement the Biodiversity Strategy and Biosecurity Act.
- For those working to protect and restore Aotearoa New Zealand, what matters at the broadest level is that our unique and beautiful biological heritage thrives. It is a vision many New Zealanders share. For mana whenua what matters is to have our knowledge and values recognised and be able to participate in the decisions that affect our biological heritage.
- A thriving protected and resilient biological heritage is best achieved when decisions are shared between tangata whenua and tangata Tiriti.
- Our research suggests that to support balanced, resilient and healthy ecosystems in Aotearoa Te Tiriti o Waitangi relationships must be honored and activated.
- Iwi, hapū and mana whenua knowledge, values and contributions are being neglected in our current system. They require more respect, funding, capacity and power.
- Further delays in implementing recommendations from the Waitangi Tribunal are unsustainable.

## Adaptive Governance and Policy Group, Strategic Outcome 7 (SO7)

This brief was created by the Adaptive Governance and Policy Group (Strategic Outcome 7), BioHeritage National Science Challenge, Ngā Koiora Tuku Iho. This Challenge aims to protect and manage Aotearoa New Zealand's biodiversity, improve our biosecurity, and enhance our resilience to harmful organisms. SO7's priorities are ensuring that the natural resource system; policy, legislation, funding and participation can effectively support biological resilience and enable mana whenua to participate as Treaty partners.

### Introduction

1. As the Ministers for Environment and Conservation you face some of the most pressing issues impacting safe and secure eco-systems in Aotearoa, including supporting population growth, access to freshwater, mitigating and reducing the risks of climate change and threats to biodiversity. The decisions you make or choose not to make will likely have lasting impacts on the future of Aotearoa. However, protecting the environment will take collaboration nationally across government sectors, organisations, communities, businesses, individuals and internationally.

### Te Tiriti Relationships

2. Te Tiriti o Waitangi relationships are central to environmental protection in Aotearoa. Yet, since the signing of Te Tiriti, successive governments have failed to effectively adhere to the agreed partnership. Instead the Crown - its Ministries and Authorities- repeatedly fail to protect Māori rights and tino rangatiratanga over natural resources, resulting in the degradation of many of our most significant natural resources<sup>1</sup>.

While Crown-Māori and Treaty relationships are often mentioned in environmental legislation, policy, planning and reporting documents- including the Ministry for the Environment's own reports<sup>2</sup>- these acknowledgments have not halted further Treaty breaches.

3. Treaty relationships like all relationships need care and attention. Iwi, hapū and mana whenua require funding, capacity building, respect and decision-making powers in the resource management system. Government authorities need to enact recommended

---

<sup>1</sup>Wai 167, Wai 119, Wai 686, Wai 785, Wai 1200, Wai 215, Wai 1130, Wai 863, Wai 894, Wai 2358, Wai 145, Wai 2200

<sup>2</sup> Ministry for the Environment 2018/2019. Annual Report Pūrongo ā-Tau. Ministry for the Environment 2017-2021 Four Year Plan.

legislative and policy change, but also must invest in the cultural and historical training of staff to be able to work more effectively with Māori in this system. By supporting these relationships and utilising the breadth of research available we can also support resilient and healthy ecosystems.

## Waitangi Tribunal

4. Decades of Waitangi Tribunal reports have inquired into and made recommendations on aspects of resource management that could be improved in Aotearoa, but with no binding powers many of these recommendations have gone un-implemented or ignored<sup>3</sup>. Now in 2020, against a background of renewed uncertainty about the climate and the COVID19 pandemic, it seems more important than ever to acknowledge the many resources that have been invested in these reports including by hapū, iwi, and Māori<sup>4</sup> and now is the time to build on those investments to halt the decline in biodiversity and for the sake of effective environmental management.
5. Out of 18 Waitangi Tribunal reports over the last decade, 12 or 67% focused on the degradation of a resource due to governance and policy failures. All of them found the RMA was inadequate and recommended amendment. 50% found the RMA inconsistent with Te Tiriti and 78% recommended co-governance or co-management arrangements. Some of these reports took over 10 years to be written (Wai 262) and while they have prompted reviews, they still await any real implementation.<sup>56</sup>

## Balance

6. Equity and balance are key to a prosperous healthy environment, scholars and scientists frequently describe the realities of human induced climate change as being an imbalance in our ecosystem<sup>78</sup>. The imbalance reflects not only our relationships with the environment - the burning of fossil fuels, deforestation or water pollution- but also the inequities apparent between different worldviews, communities and peoples who must

---

<sup>3</sup> See Appendix 1.

<sup>4</sup> Maria Bargh & Estair Van Wagner, 2019. *Participation as exclusion: Māori engagement with the Crown Minerals Act 1991 Block Offer process*, Journal of Human Rights and the Environment, 10(1), 118-139.

doi: <https://doi.org/10.4337/jhre.2019.01.06>

<sup>5</sup> Te Puni Kokiri, 2020. *Te Pae Tawhiti: Wai 262* <https://tpk.govt.nz/en/a-matou-kaupapa/wai-262-te-pae-tawhiti>

<sup>6</sup> Department of Conservation, Partial reviews of Conservation General Policy and General Policy for National Parks.

<https://www.doc.govt.nz/our-work/partial-reviews-of-conservation-general-policy-and-general-policy-for-national-parks/>

<sup>7</sup> The Chronicle, 2008. *The Warning From 50,000 Scientists: Earth's Climate Is Unbalanced*.

<https://www.chronicle.com/article/the-warning-from-50-000-scientists-earths-climate-is-unbalanced/>

<sup>8</sup> Vandana Shiva, 2009. *Soil Not Oil*. Alternatives Journal; Waterloo 35, 19,22-23.

work more constructively together to improve the state of the environment for generations.<sup>910</sup>

7. Māori rights are not adequately protected, and Māori views are not being implemented sustainably. Hapū, iwi, and Māori often spend significant amounts of time and money to advise, consult and fight for their voices to be heard but with little substantive impact. This imbalance of power produces an inefficient use of resources (time, money and research) that could be better put towards protecting the environment.

## Recommendations

8. In Appendix 1 we outline what we believe to be standing in the way of a flourishing environment. Using key findings and recommendations on the management of natural resources from 18 Waitangi Tribunal reports- the brief will outline some suggested first steps to be taken by the Ministry for the Environment and Department of Conservation. The recommendations are mainly focused on the Resource Management Act 1991 but **will also include several for the:**

- Hazardous Substances and New Organisms Act 1996,
- the Local Government Act
- Historic Places Act
- Department of Conservation and the Conservation Act
- Along with general findings for MfE and DoC.

---

<sup>9</sup> Simon Lambert et. al., 2018. *Indigenous Biosecurity: Māori Responses to Kauri Dieback and Myrtle Rust in Aotearoa New Zealand*. In: Urquhart J., Marzano M., Potter C. (eds) *The Human Dimensions of Forest and Tree Health*. Palgrave Macmillan, Cham. [https://doi.org/10.1007/978-3-319-76956-1\\_5](https://doi.org/10.1007/978-3-319-76956-1_5)

<sup>10</sup> Jacinta Ruru et. al., 2017. *Reversing the decline in New Zealand's biodiversity: empowering Māori within reformed conservation law*. *Policy Quarterly*, v. 13, n. 2. ISSN 2324-1101. doi: <https://doi.org/10.26686/pq.v13i2.4657>.

**Eight general findings arose from these reports outlining the needs, opportunities and issues in our current resource management system:**

**1. The Essence of Te Tiriti is missing–**

The Resource management system is inconsistent with Te Tiriti o Waitangi and fails to effectively uphold or protect Māori rights and tino rangatiratanga. A major cultural shift must occur across government to allow for a true honoring of Te Tiriti. This will mean stronger and more equitable relationships between Māori and the Crown in resource management but also across all government sectors.



**2. Power Sharing Partnerships–**

‘Partnership’ needs to be the consistent governance model between government agencies and hapū and iwi so that hapū and iwi have equal decision-making rights over the significant natural resources within their rohe. Where appropriate, governing responsibilities for those natural resources may be delegated entirely to mana whenua. This needs to be supported with appropriate legislation acknowledging these rights.



**3. Funding & Capacity building–**

The government must provide funding and capacity building for hapū, iwi and mana whenua to participate fully in the RMA system. This may manifest in many ways e.g. for staffing, training, monitoring and funding for the running of a management entity.

Government bodies need to build their own cultural capacity to work effectively with mana whenua and te ao Māori.



#### 4. **Monitoring & Reviewing –**

The RMA system and its fulfillment in honoring Te Tiriti o Waitangi needs to be closely monitored, so adaptive changes can be implemented. Local government must report on their actions to support Māori rights. The Ministry for Environment must also review and be reviewed, taking a leadership role in making sure Te Tiriti o Waitangi and the rights and health of resources are being actively supported and raised.



#### 5. **Balance–**

Cultural, spiritual and ancestral values and knowledge and rights must be fairly and equally balanced against other values and imperatives. This includes resource management legislation and policy but also the wider social ecosystem.

Furthermore, where in the past there has been imbalance, remedial action needs to be taken to create balance.



#### 6. **Protection–**

Iwi, hapū and mana whenua must be at the decision-making table when it comes to protecting significant and sacred parts of the environment. Specifically, further protections are needed for wāhi tapu, taonga and customary practices.



#### 7. **Representation–**

National Policy Statements, legislation and government bodies must adequately provide for representation of Māori values, rights and tikanga. However, this does not just mean inserting Māori terms and ideas but instead having systems in place for cultural learning to occur in these spaces where Māori, iwi and hapū are leaders in the creation of planning policy and legislation.



## 8. Diversity–

The resource management space must accommodate for the diversity of Māori values, rights and tikanga during decision making and planning.



### These findings are not new

9. The findings discussed above are not new. Sadly, these issues date back many generations, and have been reiterated throughout each of the 18 reports spanning almost a decade. With the Crown now faced with heightened environmental, political and social pressure these findings face the risk of continuing to be ‘balanced out’. However, to ensure a “Just Transition” or a “Tika Transition” to a low carbon, biodiversity rich economy in Aotearoa, where climate and communities are protected, a rebalancing of power needs to be at the core of decision making<sup>11</sup>. The new Government is well placed to act on the wealth of research and knowledge already produced in Aotearoa.
10. Released in July 2020 - The RMA review by Randerson et. al<sup>12</sup> called for the repeal of the Resource Management Act 1991, many of the report’s findings and recommendations align with those represented in this brief. Such as; the need for stronger tikanga and Te Tiriti compliance, better monitoring and feedback loops, more capacity, support and guidance from central government.

#### Some relevant recommendations from the Randerson report:

- Address and effectively resolve the issue of Māori and freshwater.
- Te Tiriti clause (sec 8) should be strengthened to “give effect”.
- Outcomes of the Act to relate to tikanga Māori.
- Positive obligations put on Local Authorities to investigate opportunities to use the transfer of power and joint management agreements.

<sup>11</sup> David Hall (ed), 2019. *A Careful Revolution: Towards a Low-Emissions Future*. Bridget Williams Books. Wellington.

<sup>12</sup> Tony Randerson et.al, 2020. *New directions for resource management in New Zealand*. Wellington: Ministry for the Environment.

- Mana whenua to replace 'Iwi authority' and 'tangata whenua'.
- Repeal sec 33(4)(c) and 35b (1) to better support transfer of powers.
- Funding should be provided to Māori undertaking resource management duties in the public interest.
- Creation of the National Māori Advisory Board with a range of functions including providing advice and oversight to the government and monitoring Te Tiriti o Waitangi compliance.
- New 'Regional Hubs' established for compliance monitoring.
- Add the concept of 'Te mana o te Taiao' into the purpose of the new Act.
- Creation of 'Open Portal' for consent applications to coordinate agency.

Not all recommendations from the reports could be outlined in this brief – as there are many which discuss the return of specific land areas, or the creation of specific joint management arrangements and other such contextual recommendations. However, the core reasoning behind such recommendations has been included.

11. Implementing Waitangi Tribunal recommendations, as outlined in Appendix 1, will only be the start, as to ensure sustainable Treaty relationships continue in the future, adaptive and responsive action needs to be taken. Without honoring the Waitangi Tribunal's recommendations as a minimum requirement, it is hard for the current system to be adaptive as it is continuously recommending and finding the same things to little or no change. This is an unsustainable and imbalanced process.



## Appendix 1- Waitangi Tribunal Reports: Overview of Findings & Key Recommendations

The research compiled for this briefing stem from reports between 1992-2019 (See Appendix 2 for full list of reports).

### Relevant Tribunal Recommendations to Support the Findings

12. The tables below outline specific recommendations grouped by each of the above findings - to show what amendments to legislation and policy should occur to help support these findings. These findings are all interlinked and therefore implementing **only some will not create lasting change.**

**Eight general findings arose from these reports outlining the needs, opportunities and issues in our current resource management system:**

- The essence of Te Tiriti is missing
- Power sharing partnerships are required
- Funding & capacity building is required
- Monitoring and reviewing needs to be strengthened
- Balancing of values needed
- Protection of rights and taonga required
- Representation required
- Diversity must be provided for & protected



#### 12.1. Essence of Te Tiriti Recommendations:



Recommendation	Report/s	Action to be taken
<p><b>Amend Section 8 of the RMA;</b></p> <ul style="list-style-type: none"> <li>● So that decision makers <b>under the RMA must give effect to the principles</b> of the Treaty of Waitangi/ and shall act in a manner that is consistent with the principals of the treaty.</li> </ul>	<p>1200, 167,796,785, 863, 304, 145</p> <p><i>*note that Wai 262 acknowledged this rec but stated that this alone would</i></p>	<p>Included in any review or repeal of the RMA.</p> <p>To ensure these aspects of the law are effectively utilised cultural competency and</p>

<ul style="list-style-type: none"> <li>to state that the duties imposed on the Crown in terms of the principles of the Treaty of Waitangi are imposed on all those persons exercising powers and functions under the Act.</li> </ul>	<p>not fix the issues, and more must be done.</p> <p>2358, 167, 262, 1130,</p>	<p>capacity of government workers will also need to occur</p>
<p><b>Sec 33 + 36b of RMA;</b></p> <ul style="list-style-type: none"> <li>Local government should not be able to unilaterally revoke transfer of powers</li> <li>Sections should be reviewed to encourage transfer, control or partnership.</li> <li>Sections should be amended to require Māori involvement in decision making</li> <li>Specifically, for decision making about Māori heritage.</li> </ul>	<p>262, 2358</p> <p>863,2358, 262, 145</p> <p>215</p>	<p>Included in any review or repeal of the RMA.</p>
<p>The Ministry of the Environment <b>must be required to explore options for kaitiaki Under sec 188 of the RMA and report annually to parliament.</b></p>	<p>262</p>	<p>Ensure the Ministries work plans, outcomes and goals include specific reference to guiding options for kaitiaki.</p>
<p>New Zealand law surrounding <b>waterway ownership be reformed as a matter of urgency so that it</b> is consistent with Te Tiriti o Waitangi</p>	<p>894, 2358, 262</p>	<p>Implement research and findings already provided to the Ministry on this.</p>
<p>Re-establishment of district and regional representative bodies for tangata whenua/mana whenua;</p>	<p>796</p>	<p><b>Question to consider:</b></p> <p>Could a new governance structure run by iwi, hapū Māori be used to help the co-governance in local government?</p>

<p><b>Historic Places Act;</b></p> <ul style="list-style-type: none"> <li>Provisions for heritage orders must be overhauled, aiming to remove the present complex process.</li> </ul>	<p>863</p>	<p><b>Question to consider:</b></p> <p>How can you ensure this finding is a priority to those in charge?</p>
<p><b>Review and Amendment of RMA &amp; LGA Acts</b></p>	<p>863, 1200 (rights) 903, 38</p>	<p>RMA review Completed 2020- However, before repealing the RMA- <b>consider these questions:</b></p> <p>Have mana whenua considerations been met thoroughly enough?</p> <p>Is this properly implementing past values or recommendations from mana whenua or the Tribunal?</p> <p>The Local Government Act is pivotal in the resource management system – how does it need to change and better work with the RMA to provide for Māori tino rangatiratanga?</p> <p>Push for or agree to LGA review.</p>
<p><b>Section 342, and Schedule 10 of the LGA;</b> Should be amended or repealed to prevent local bodies from avoiding the requirements of the Public Works Act to offer back lands to their former owners once no longer required.</p>	<p>785</p>	<p>While not in the jurisdiction of Ministry of Environment- this is directly related to Māori resource management. Ensure this is a priority in any review of LGA.</p>
<p><b>Amend the Conservation General Policy and Policy for National Parks to reflect the full range of Treaty Principals that apply in law.</b></p> <ul style="list-style-type: none"> <li>However, treaty principles must not be set in stone and evolve to new circumstances.</li> </ul>	<p>262</p>	<p>Ensure amendments made following the review of these policies.</p> <p>Ongoing Treaty work and learning to be done.</p>



12.2. **Power Sharing Partnership Recommendations:**

Recommendation	Report/s	Action to be taken
Local authorities <b>are required to regularly review</b> their activities under transfer of powers and joint management to see if they are making appropriate <b>use of sections 33 and 36B of the RMA.</b>	262, 2358, 1130 (must enact 36b)	Included in any review or repeal of the RMA or LGA.
Co-governance and co-management arrangements and engagements <b>to be compulsory</b> or actively explored under the RMA. e.g. <b>Mana Whakahono a Rohe provisions of the RMA.</b>	2358, 262, 215, 863,64,	Included in any review or repeal of the RMA.
There should be <b>an independent national body established on a co-governance with 50/50 Crown– Māori representation, to ensure that Treaty principles and Māori values, rights, and interests are fully incorporated in freshwater policy and management.</b> The details should be arranged between the Treaty partners.	2358	Freshwater is a key area needing urgent reform. The New Zealand Māori Council and the Land and Water Forum have also proposed this same recommendation. <sup>13</sup>
The Crown should offer co-governance / co-management agreements <b>for freshwater bodies in all future Treaty settlements, unless sole iwi governance of a freshwater taonga is more appropriate</b> in the circumstances.	2358	Look into and explore joint agreements for waterways in Aotearoa.  <b>Questions to consider:</b>  For those iwi/hapū without treaty agreements on freshwater bodies- how can the Ministry ensure Tiriti rights

<sup>13</sup>Land and Water Forum, 2017. *Better Freshwater Management*.  
<http://www.landandwater.org.nz/includes/download.ashx?ID=150420>

		are protected?
Joint management <b>to include the whole resource area</b> (e.g. whole river and not just part of it)	2358, 167	Include in review or repeal of RMA.  Ensure this is case when providing for or helping to create/explore co-management of resources.
<b>Joint or Dual Consenting processes:</b> <ul style="list-style-type: none"> <li>All meetings and hearings done together with councils and Mana whenua.</li> <li>Iwi or hapū to become joint consent authority.</li> <li>Iwi or hapū consent needed to use traditional resources in the future.</li> </ul>	167,796  167 (Atihaunui)  119 (Ngāti Pahauwera-hangi stones or gravel)	Included in any review or repeal of the RMA.  <b>Question to consider:</b>  How can iwi/hapū/Māori be included better in the strategic end of the consenting process?
<b>DOC; Establishment of a joint working group comprising of representatives from Iwi and DOC to:</b> <ul style="list-style-type: none"> <li>Review departments activities</li> <li>Identify opportunities for joint decision making and funding for Māori programmes.</li> <li>Situations where it is appropriate for iwi to have full control should be identified. i.e. wāhi tapu.</li> <li>Opportunities for Māori Cultural-commercial enterprises on conservation land.</li> </ul>	863	Included in any review or repeal of the Conservation Legislation.  <b>Questions to consider:</b>  How does DOC currently monitoring its treaty compliance and joint decision making with Māori?  Have areas which could be managed solely by iwi been identified or delegated?
<b>DOC to also;</b> <ul style="list-style-type: none"> <li><b>Amend Conservation General Policy;</b> To include partnership as a “will’ obligation.</li> <li><b>DOC; Establish a National Kura</b></li> </ul>	262	To be included in any review or repeal of the Conservation Act and General Policy.

<p><b>Taiao Council and Conservancy-based Kura Taiao boards</b> to formalise partnerships through statute.</p> <ul style="list-style-type: none"> <li>• Provide an expanded role for the Pātaka Committee.</li> <li>• Formalise its policies for consultation with tangata whenua about concessions within their rohe.</li> </ul>		
<p><b>DOC;</b> Tongariro National Park be taken out of DOC control, vested in a new form of title and managed by a statutory authority, which was envisaged by Horonuku Te HeuHeu 1887.</p>	1130	To be Implemented.

### 12.3. Funding & Capacity Recommendation:



Recommendations	Report/s	Action to be taken
<p>Building Māori capacity to participate in RMA processes and in the management of taonga. (Monetary and training)</p>	262, 1130, 785,863, 2358, 686, 903	Included in any review or repeal of the RMA- funds to be allocated for capacity purposes.
<p>Resourcing measures be developed, and their effectiveness monitored, by the national co-governance body or by the Crown in partnership with the Iwi Chairs Forum and NZMC.</p>	2358	<p>Implement funding and monitoring body.</p> <p><b>Question to consider:</b> What type of funding body could be established to help support iwi, hapū, Māori in the RMA space.</p>
<p><b>Government Funding for</b></p> <ul style="list-style-type: none"> <li>• Iwi or hapū trusts or Rūnanga's to manage or co-manage resources.</li> </ul>	167,1130,	Adequate funding to be allocated for all these recommendations.

<ul style="list-style-type: none"> <li>● Iwi or hapū to participate in decision making</li> <li>● RMA knowledgeable staff for iwi, to help prepare effective Iwi resource management plans</li> <li>● Monitoring of resources</li> <li>● For Māori to teach and train government staff</li> <li>● an advocacy service to represent all Māori with interests in multiply owned Māori land and provide advice to Maori in relation to resource management and conservation issues</li> <li>● the Crown provide urgent assistance, including funding and expertise, for water infrastructure and the provision of clean, safe drinking water to marae and papakāinga. This will likely need to include a subsidy scheme.</li> <li>● The Historic Places Trust &amp; Māori Heritage Council to carry out their work.</li> </ul>	<p>785, 2358,863</p> <p>262, 1130, 2358</p> <p>1130,2358, 903</p> <p>38</p> <p>2358</p> <p>215</p>	
<p>Ministry for the Environment to give Māori issues priority and build its own capacity.</p>	<p>262</p>	<p><b>Question to consider:</b></p> <p>What research and reports does the Ministry already have to help guide its governance relationships with Māori - have these been utilised?</p> <p>How does the Ministry monitor its Māori engagement?</p>

<p>Local government and councilors also need to build their capacity to work in and understand te ao Māori meaningfully.</p> <p>New staff must be provided education and training on mana whenua and Te Tiriti rights.</p>	<p>863, 262</p>	<p>Implement National Policy Statement for Māori participation in the resource management system that upholds Te Tiriti o Waitangi.</p>
--	-----------------	---



#### 12.4 Monitoring and Reviewing Recommendations:

Recommendations	Report/s	Action to be taken
<p>RMA and its existing provisions (<b>such as s33 &amp; s36b</b>) be carefully monitored. So, the Crown can better their effect or make changes if necessary.</p>	<p>686</p>	<p>Implement this as binding into any review or repeal of the RMA.</p> <p><b>Questions to consider:</b></p> <p>Have these sections been monitored at all?</p> <p>Has research on these sections been acknowledged or implemented? Why or why not?</p>
<p>Joint consent structures reviewed by independent bodies as to whether they could be solely managed by iwi, hapū etc.</p>	<p>167</p>	<p><b>Questions to consider:</b></p> <p>Is there an entity that can monitor the successfulness of joint consent or joint management arrangements?</p> <p>How many joint consent arrangements are there currently?</p>
<p><b>Treaty commissioner role;</b> to monitor the treaty compliance role of any person or body that has been delegated responsibilities by the Crown.</p>	<p>796</p>	<p>Creation of role.</p> <p><b>Questions to consider:</b></p> <p>How are you working with the minister of Māori-Crown relations?</p>



		Does the Ministry of Environment have any way to monitor the treaty compliance of itself, its projects and teams?
Councils make regular reports on their activities <b>regarding s33 &amp; s36b</b> under the RMA Act but also other areas of joint management and planning to the parliamentary commissioner- <b>or in the case of freshwater bodies- to the co-governance body if it is established.</b>	262, 2358,1130	Direct councils through a policy statement around Māori participation in decision making. Ensure Māori are leaders in the writing of this policy.  Make sure this is a priority and is closely monitored.

### 12.5 Balance, Protection & Representation Recommendations:



Recommendations	Report/s	Action to be taken
Should ensure that the benefits derived by the Crown and regional councils from development and usage of a resource, accordingly, accrue to or are shared with mana whenua.	1200, 2358,1130, 167	Included in any review or repeal of the RMA.
There is no requirement in the RMA to remedy past environmental impacts (at the hands of the Crown) and this is a big issue for many iwi, hapū and mana whenua that needs to be resolved.	1200, 215, 119	Included in any review or repeal of the RMA.
<b>section 6 of the RMA;</b> to include Te Mana o te Wai as a matter of national importance that must be recognised and provided for by RMA decision makers.	2358	Included in any review or repeal of the RMA.  Te Mana o te Wai has been included in new Freshwater Policy 2020. This new policy looks promising. Monitoring will be key to see if it is effective.

<p><b>Allocation regime reformed;</b></p> <ul style="list-style-type: none"> <li>• First in first serve system replaced and overallocation phased out.</li> <li>• A new allocation regime in partnership with Māori, that allocates water to iwi and hapū.</li> </ul>	<p>2358</p>	<p>Included in any review or repeal of the RMA.</p> <p><b>Question to consider:</b></p> <p>How can we ensure a new allocation process does not affect any group unfairly? How can we ensure Māori rights and values are protected?</p> <p>What support mechanism can be put in place by the Crown or Ministry for businesses that might be affected by a new allocation regime?</p>
<p><b>Enhanced iwi management plans:</b></p> <ul style="list-style-type: none"> <li>• Greater legal weight when co-management or co-governance has not been set up</li> <li>• funding provided</li> <li>• Plans to be binding like any other plan or policy</li> <li>• Mana whenua voices are clear and pivotal in planning documents for natural resources either via separate iwi plans or joint plans.</li> </ul>	<p>262, 1130, 2358, 167</p>	<p>Included in any review or repeal of the RMA and policy regarding Māori engagement and participation in the RMA system.</p>
<p><b>Greater use of national policy statements;</b></p> <ul style="list-style-type: none"> <li>• The Ministry for the Environment develops national policy statements on Māori participation in resource management processes or about specific contextual resources.</li> </ul>	<p>262,1130,796, 2358, 1200(Geothermal)</p>	<p>Included in any review or repeal of the RMA.</p> <p>Create new policy statements- ensure Māori are in strategic decision-making roles during the writing and enforcing of policy.</p>

**RMA amended to be more effective for the protection of wāhi tapu and taonga**

- government, local councils and Māori work together to promote the protections available.
- Working groups created with **Māori and Crown officials and local authorities to locate wāhi tapu** in most need for protection.
- Where valued sites are now located on Crown land joint management or partnership might be preferable the registration of mahinga kai rights.
- Oversight of the protection mechanism of heritage sites under the **RTMA be given to territorial authorities.**
- **RMA amended to require Māori decisions about consent** applications involving Māori heritage sites.
- Strengthening RMA's heritage **protection-as provisions were only added in 2003** and more needs to be done to make this a priority.
- Compel councils to list registered sites in plans.

686

686

785

215

863

863

863

Included in any review or repeal of the RMA.

Ensure any new policy regarding Māori engagement or participation includes strong objectives to heritage protection.

**DOC to;**

- **Create a cadet scheme for rangatahi Māori. To enable:** tangata whenua and the department to work together to develop expertise in both Māori and Pākehā conservation perspectives and techniques among local.

863

**Questions to consider:**

How can DOC better support community knowledge integration? Will Rangatahi schemes be useful everywhere? Are there other community based joint ventures to

<p>people.</p> <ul style="list-style-type: none"> <li>• Give Tangata Whenua <b>interests in taonga a reasonable degree of preference when making decisions</b> about commercial activities.</li> <li>• <b>Amend the Conservation General Policy and National Policy for National Parks</b> to make customary harvest and access a “will” responsibility.</li> </ul>	<p>262</p> <p>262</p>	<p>enter between mana whenua and DOC? What do mana whenua think?</p> <p>Ensure any decisions made are considering mana whenua rights and actively consulting mana whenua.</p> <p>Enforce through legislation.</p> <p>Included in review and amendment of these policies.</p>
<p><b>Conservation legislation to undergo a general review;</b></p> <ul style="list-style-type: none"> <li>• With the aim of bringing together Mātauranga Māori and te ao Pākehā</li> </ul>	<p>262</p>	<p>Implement a review of whole Conservation legislation.</p>
<p><b>Historic Places Act;</b> Crown give oversight of the gathering of information on heritage sites to Historic Places Trust and the Māori Heritage Council.</p>	<p>215</p>	<p>Implemented in any review amendment of Act.</p> <p>Support a review of this Act. Alongside stronger provisions for Historic places in RMA.</p>
<p><b>Hazardous Substance and New Organisms Act 1996 should be amended-</b></p> <ul style="list-style-type: none"> <li>• Include a new paragraph in s5 (principles/purpose) that requires <b>all those exercising functions, powers and duties to provide for the relationship between kaitiaki and their taonga species.</b></li> <li>• Methodology order s25 and s26 should be amended so that when evaluating risks automatic privilege is not given to <b>only physical risks.</b></li> </ul>	<p>262</p>	<p>Act and methodology order amended.</p> <p><b>Questions to consider:</b></p> <p>How will kaitiaki be supported to work in this area?</p> <p>Why are non-physical risks currently not included in the order?</p>

<p>Action should be taken <b>on the 2002 Privy Council finding</b> that there should be a substantial Māori membership in Environment Court cases involving Māori issues.</p>	<p>785</p>	<p><b>Questions to consider:</b></p> <p>How are Māori voices heard in the Environment Court now?</p> <p>How could this be improved? Is there support for those who are representing Māori now?</p>
---	------------	--



12.6 Diversity Recommendations:

Recommendations	Report/s	Action to be taken
<p>Re-thinking and re-working the understanding of the term mana whenua and tangata whenua in RMA, Reserves Act and Conservation Act.</p> <p>To be more inclusive of the diversity of mana whenua - tangata whenua relationships.</p>	<p>64</p>	<p>More research and consultation into this.</p> <p><b>Questions to consider:</b></p> <p>How could changes to terminology benefit/hurt iwi, hapū and Māori?</p>
<p>Most (78%) of these reports recommended some sort of co-governance/joint management arrangement within the specific context of the report.</p>	<p>119, 404,167,686,1200,215,863, 796,1130,903,894,2358,64, 262</p>	<p>Ensure that mandatory joint management/co-governance are included in any amendments or repeals to the RMA.</p>

## Appendix 2: Tribunal Reports

Wai No.	Date	Name
119	1992	The Mohaka River Report
38	1992	Te Roroa Report
304	1993	Ngawha Geothermal Resource Report
167	1999	Whanganui River Claim
64	2001	A Report on the Moriori and Ngāti Mutunga Claims in the Chatham Islands.
145	2003	Te Whanganui a Tara me on Takiwa-Report on the Wellington District
686	2003	The Hauraki Report
785	2008	Te Tau Ihu o te Ika a Māui: Report on the Northern South Island Claims
1200	2008	He Maunga Rongo: Report on the Central North Island Claims
215	2010	Tauranga Moana: Report on Post Raupatu
863	2010	The Wairarapa ki Tararua Report
796	2011	The Report on the Management of the Petroleum Resource
262	2011	Ko Aotearoa Tenei
1130	2013	Te Kāhui Maunga: The National Park District Inquiry Report
903	2015	He Whiritaunoka: The Whanganui Land Report
894	2017	Te Urewera
2200	2017	Horowhenua- The Muaūpoko Priority Report
2358	2019	Report on the National Freshwater and Geothermal resources