



## Resource Management Amendment Act 2005 – Improving certainty for consultation and iwi resource planning

This is one of a series of information sheets giving an overview of the amendments to improve the Resource Management Act (RMA).

### WHAT WERE THE ISSUES?

While practice is improving across the country, there are practical problems with understanding and applying those provisions in the RMA that relate to iwi and hapū. In particular, there is a lack of clarity about consultation.

The amendments will provide greater legal certainty for councils, applicants, and iwi and hapū about consultation requirements and will provide new mechanisms for improving practice.

### HOW HAS THE RMA BEEN IMPROVED?

#### Duty to keep records about iwi and hapū

New section 35A requires councils to keep and maintain a record of each iwi authority and in some cases, groups that represent hapū. Groups that represent hapū must be included where the hapū notifies the council that a particular group represents the hapū on RMA matters. For each iwi and, where relevant, hapū group within its region or district, the council must keep a record of:

- the contact details of each iwi authority, and group that represents the hapū for the purposes of the RMA
- any planning documents recognised by each iwi authority and lodged with the council under sections 61, 66 and 74 of the RMA
- any area of the region or district over which one or more iwi or hapū exercise kaitiakitanga.

The Crown (through Te Puni Kōkiri) has a duty to provide information to local authorities to help with the council's obligations to keep records.

Te Puni Kōkiri is developing *Te Kāhui Māngai*, a directory of iwi and Māori organisations. The directory will hold administrative and contact information for each organisation as well as information on tribal areas. The web-based directory will be operational in October 2005

and will be accessible at [www.kahuimangai.govt.nz](http://www.kahuimangai.govt.nz). *Te Kāhui Māngai* will form the basis of the information the Crown must provide to councils under new section 35A(2)(a).

*Te Kāhui Māngai* will include information beyond the purposes of the RMA. Any party wishing to consult on resource management issues should contact their local authority for information on who to consult for RMA purposes.

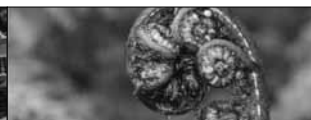
A council must include information provided by Te Puni Kōkiri, but may also include other relevant information on iwi or hapū obtained directly from the iwi authority or group representing the hapū. This recognises that many local authorities have established relationships with local iwi and hapū.

#### Consultation on resource consent applications and notices of requirement

New section 36A clarifies that neither an applicant nor a consent authority has a duty to consult any person in respect of applications for resource consents and notices of requirement. However, both an applicant and a local authority must comply with a duty under any other enactment to consult any person about the application.

The intention is to clarify that consultation is not required in relation to applications for resource consents or notices of requirement, rather the intention is to improve processes for consultation with iwi and hapū in the development of plans and policy statements.

Of course, an applicant or the council can still choose to consult any person about an application or notice of requirement. The amendment does not preclude consultation with iwi authorities or groups representing hapū. In some cases, iwi authorities or groups representing hapū may be affected parties and local authorities may need to contact them to identify any effects of the application on tangata whenua.



Consultation at the early stage of the consent process will often be good practice and can facilitate the progress of an application, but this is at the discretion of the applicant.

### **Joint management agreements**

The lack of express statutory provision for joint management of resources is addressed. The Act now provides a framework for public authorities and iwi authorities and groups that represent hapū for RMA purposes to enter into joint management agreements about natural or physical resources (new sections 36B-E).

A joint management agreement may provide for the joint performance or exercise of any function, power or duty under sections 30 and 31 of the RMA, which includes the management of natural or physical resources. It may apply to the whole or part of a district or region.

The amendment is aimed at encouraging collaborative projects like the partnerships councils have developed with Ngāti Tuwharetoa, Te Arawa and Ngāti Whātua.

The amendment provides that any party to a joint management agreement may terminate an agreement on 20 working days' notice.

### **Consultation with iwi authorities**

When consulting iwi authorities during the preparation of a proposed policy statement or plan, councils will be treated as having consulted if they have followed the procedure outlined in new clause 3A of the First Schedule. Councils must:

- consider the ways they may foster the development of the capacity of iwi authorities to respond to an invitation to consult
- establish and maintain processes to provide opportunities for those iwi authorities to consult it
- consult
- enable the iwi authorities to identify resource management issues of concern to them
- indicate how those issues have been or are to be addressed.

As a minimum, councils must consult with those iwi authorities whose details are entered as a record kept under section 35A. These new requirements are similar to the requirements under section 81 of the Local Government Act 2002 to facilitate Māori participation in decision making.

The principles of consultation have been clearly established by the courts and are of particular relevance in consulting iwi authorities under this clause. Iwi planning documents, and the process of preparing such documents, can provide a good starting point for identification of resource management issues of concern to tangata whenua.

Under new clause 3B of the First Schedule, a council is not required to comply with the above procedure if the same matter has been the subject of consultation with the same person/people under another Act in the 12 month period before public notification of the proposed policy statement or plan. However, the person/people must have been advised that the information obtained under the previous consultation exercise could apply to matters under the RMA.

Note 'tribal runanga' is no longer referred to in the First Schedule or elsewhere in the Act. The definition of iwi authority in section 5 of the Act is wide enough to include tribal runanga. There is no mandatory requirement to consult hapū contained in records kept under section 35A, however, councils are encouraged to do so.

### **Building capacity and promoting best practice**

The Ministry for the Environment will continue to take steps to improve the relationships between iwi, local government and central government. Current measures include the promotion and support of best practice, pilot projects, iwi planning, environmental forums and one-to-one targeted assistance.

Further guidance will be provided after practice has developed. This will be available on the Ministry for the Environment's website, [www.mfe.govt.nz](http://www.mfe.govt.nz), and the Quality Planning website, [www.qualityplanning.org.nz](http://www.qualityplanning.org.nz)

### **OTHER RMA INFORMATION SHEETS**

Other information sheets in this series include:

- Overview
- Summary
- Improving national leadership
- Improving decision making
- Improving local policy and plan making
- Improving natural resource allocation.