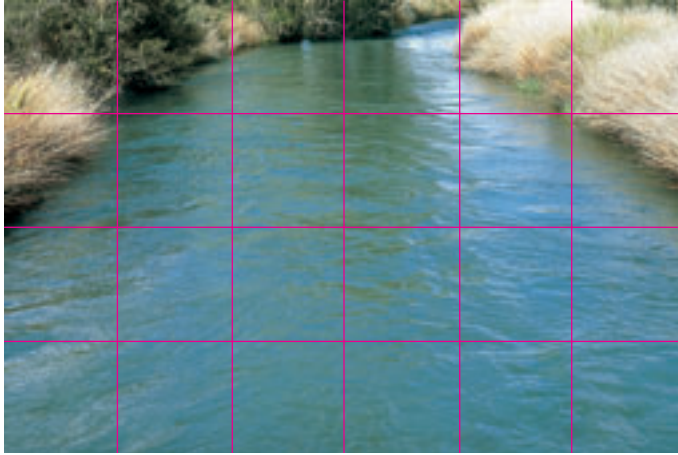


## Contents

-  **2** Acknowledgements
-  **3** Introduction
-  **4** What is an iwi management plan?
-  **5** Legislative context for iwi management plans
-  **6** The status of 'iwi planning documents' in the plan hierarchy
-  **8** Dealing with 'having regard to' and overlapping and conflicting iwi planning documents
-  **10** Having regard to iwi planning documents
-  **12** Benefits and limitations of iwi management plans
-  **16** Key issues for councils
-  **17** Steps to making the best use of iwi management plans
-  **19** Building relationships with iwi
-  **26** Where to find iwi management plans
-  **27** Encouraging iwi planning where there is no plan
-  **29** Developing MoUs and other agreements with iwi
-  **31** Developing council policies and procedures and implementing them
-  **47** A final word
-  **48** Appendix 1 - Key resources
-  **49** Appendix 2 - Known iwi management plans and documents
-  **50** Appendix 3 - Provisions in the Resource Management Act 1991 that recognise Maori interests in natural resources
-  **52** Table 1: Analysis of iwi management plans



This draft report was prepared by Karen Bell of Enviro Solutions and had input from Helen Lomax (as researcher and reviewer), and Vaughan Pane (Beca Planning). The input of all involved in developing this guide, including all the councils who provided useful examples, is gratefully acknowledged.

2



*‘Whakamau ki Nga Kaupapa’ means to fix attention on  
and be intent on plans and ideas.*

This guide, *Whakamau ki Nga Kaupapa*, provides a practical summary of ideas to help local authorities make the most of iwi management plans and other iwi planning documents.

The guide will be most relevant to preparing and amending planning and policy documents and people processing resource consents under the Resource Management Act 1991 (RMA).

*Whakamau ki Nga Kaupapa* provides suggestions about how council staff and their consultants can work more effectively with iwi and represent their views in district and regional planning processes using iwi management plans as a focus and starting point.

To help prepare the guide and ensure its relevance, we asked councils about their experiences of working with iwi management plans. Their comments and ideas throughout the guide illustrate both the benefits and limitations of working with iwi management plans.

The establishment of plans and processes to facilitate communication between iwi and local authorities has the potential to achieve a much better understanding of each other's issues and to set some shared expectations. However it should also be understood that plans and processes, of themselves, will be no more than a means of facilitating the kind of consideration and consultation that the RMA requires. They will never be a substitute for dialogue on specific issues.



# What is an iwi management plan?



An iwi management plan is any planning document recognised by an iwi management authority (the authority which represents an iwi and which is recognised by that iwi as having authority to do so).

Iwi management plans may be a formal planning document similar to council policy documents, or they may be a statement of iwi policies in a less formal and detailed memo or

report. Iwi management plans are usually developed by iwi, whanau or hapu for their iwi, whanau or hapu. They provide a statement on the position of the tangata whenua on a range of issues so that these can be heard and considered by councils and other stakeholders.

In some instances iwi management plans provide a holistic document of the iwi's

concerns and may go more broadly than RMA requirements (and deal with social and economic matters, health issues, etc). Or they may be a statement on the iwi's interests in relation to one resource area, such as the Ngai Tahu document on fresh water (see Appendix 1 for key resources). Some iwi management plans are single-issue plans and focus on one specific single site or a particular "hot" issue and are developed jointly by iwi and councils.

**"[An iwi management plan is] ...a planning document recognised by an iwi authority. This may include planning for social, economic, and resource management issues based on tribal management and self-development..."**

4

**...[it is] a vision of how the management and protection of natural and physical resources can be achieved based on the cultural and spiritual values of tangata whenua."**

*(Ministry for the Environment, Te Raranga A Mahi, 2000)*

**Iwi management plans have been prepared by a number of iwi around the country to:**

- avoid reactive responses to resource consent applications or issues and policies (including resource management plans) that affect iwi in a particular rohe
- clearly state iwi kaupapa on environmental issues
- enable whanau, hapu, iwi or runanga to exercise their tino rangatiratanga over resources in their rohe
- state how whanau, hapu, iwi or runanga intend to participate in resource management processes
- directly influence how regional and district councils develop policy on matters of significance to tangata whenua
- clearly state expectations about how organisations should exercise their functions and responsibilities under the RMA
- set out the ground rules for consultation with whanau, hapu, iwi or runanga.

*(Ministry for the Environment, Te Raranga A Mahi, 2000)*

In Appendix 2 of this guide is a list of iwi management plans available and known about at this time.

## Legislative context for iwi management plans

**Note:** This guide does not discuss legal requirements or case law regarding consultation. For further information on this topic please refer to *Case Law on Tangata Whenua Consultation, Working Paper (Ministry for the Environment, June 1999)* or seek your own legal advice.

There are a range of sections under the RMA to provide for Maori interests (see Appendix 3 for a detailed list of RMA provisions). In relation to iwi management plans, regional councils and territorial authorities are required to “take into account any relevant planning document recognised by an iwi authority” under the provisions of sections 61(2)(a)(ii), 66(2)(c)(ii), and 74(2)(b)(ii) of the RMA. This is relevant to preparing and changing a Regional Policy Statement, Regional Plan and a District Plan.

Part II of the RMA makes varying provision for Maori perspectives to be considered in planning and decision-making processes of local authorities. Iwi management plans often state how iwi want councils to deal with Part II of the RMA. Section 104 of the RMA (matters to

be considered in relation to considering an application for a resource consent) is subject to Part II (of the RMA), so iwi management plans can be of assistance to councils with meeting RMA requirements in relation to considering resource consent processing. In addition councils can transfer some of their functions, powers and duties under section 33 of the RMA, and this could be to iwi authorities.

Making the best of iwi management plans is a good start for councils to meet legislative requirements relating to Maori in the resource management planning process. Integrating iwi management plans into your planning can complement other approaches to meeting your legislative requirements and acting in good faith with your local iwi.



## The status of 'iwi planning documents' in the plan hierarchy

6



When a regional council or district council prepares or changes a plan or regional policy statement, the relevant matters that must be considered are listed in sections 61(1), 66(1) and 74(1) of the Act (for regional policy statements, regional plans and district plans respectively). The weight to be given to the various matters differs depending on the legal phraseology used eg the phrases 'in accordance with', 'give effect to', 'take into account', and 'have regard to'.

The Resource Management Amendment Act took effect on 1 August 2003 and changes the status of iwi management plans by requiring that they be 'taken into account' rather than 'had regard to'.

The phrase 'shall have regard to' is not synonymous with 'shall take into account'. The latter phrase requires a further step in the consideration process so such a change will elevate the status of iwi management plans.

It has been held that 'to take into account' matters means that the appropriate matters must necessarily affect the discretion of the decision-maker (*R v CD* [1976] 1 NZLR 436 (HC)). In *Haddon v Auckland Regional Council* [1994] NZRMA 49 the Environment Court stated: "It would appear that the duty 'to take into account' indicates that a decision maker must weigh the matter with the other matters being considered and in making a decision, effect a balance between the matter at issue and be able to show he or she has done so."

By comparison the Court of Appeal has stated that matters which are to be 'had regard to'

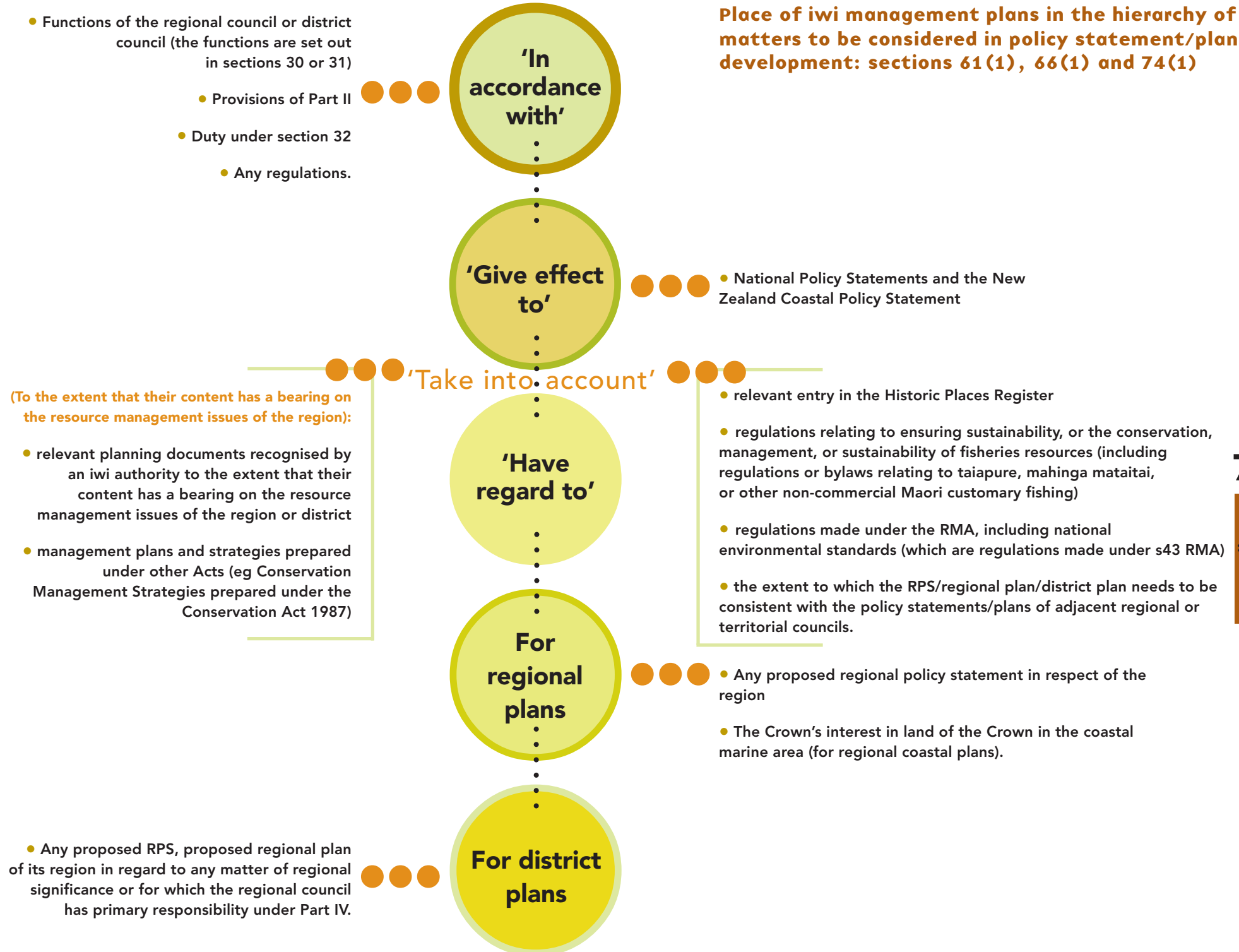
*"may in the end be rejected, or accepted only in part. They are not, however to be rebuffed at the outset by a closed mind so as to make the statutory process some idle exercise."* (*New Zealand Fishing Association v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 Cooke P quoting McGechan J in the High Court). The Court has also said that there is no magic in the words 'have regard to' - they mean no more than what they say: the statement or document cannot be ignored (*NZ Cooperative Dairy Co Ltd v Commerce Commission* [1992] 1 NZLR 601).

In summary, both phrases make iwi management plans a relevant consideration for the council. However unlike 'have regard to', the phrase 'take into account' means that the iwi management plan must be shown to have influenced the council's discretion.

Table 1 shows the place of iwi management plans in the hierarchy of matters to be considered in policy statement/plan development: sections 61(1), 66(1) and 74(1). The matters at the top of the Table must be given the most weight.

Note however that other provisions are relevant. In the context of plan preparation consultation with tangata whenua is mandatory (see clause 3(1)(d) First Schedule). And all local authority decision making, whether on plans or resource consents, is subject to the overarching principles in Part II. These provisions raise a number of issues, including some of particular interest to Maori, well above the 'have regard to' standard.

**Place of iwi management plans in the hierarchy of matters to be considered in policy statement/plan development: sections 61(1), 66(1) and 74(1)**



## Dealing with 'having regard to' and overlapping and conflicting iwi planning documents

Iwi planning documents can be of considerable value to a local authority in undertaking consultation with iwi. They can provide a starting point for identifying interested iwi and a reference point for identifying issues of interest to iwi. They also provide a platform for further interaction between local authorities and iwi.

Dealing with overlapping and conflicting iwi management plans is little different from dealing with different groups in the community who have opposing views on the way resources should be managed under the RMA. (An analogy would be differing Government departments putting in dissimilar or even contrary submissions on a proposed plan.)

When making decisions on plans, councils consider all the information, determine the relative weight of the conflicting issues, weigh up the evidence and make an overall judgement as to the appropriate course of action. They would go through the same decision making process when taking into account overlapping and conflicting iwi management plans.

Under the Resource Management Amendment Act 2003 there is a stronger direction to councils to consider iwi management plans ('take into account'). This means that the matter must be weighed with all the other matters being considered (eg another iwi management plan) and the decision maker must effect a balance between these matters and be able to show that he or she has done so.

Also, as is noted below, iwi boundaries do not accord with the boundaries of regional and district councils. While acknowledging that there is likely to be some degree of overlap in an area this is unlikely to be over the whole local authority area. Iwi generally have defined areas within which they claim manawhenua and although this may overlap with another neighbouring iwi the majority of the area claimed as manawhenua is likely to be distinct.

Further to this, the development of iwi management plans might help alleviate this issue, rather than intensify it. Iwi management plans are likely to identify the area a particular iwi authority is claiming manawhenua over and the issues they have within that area. This is likely to help the local authority identify the issues for iwi (both allowing them to provide for these in early drafts of their plans and thus smooth the process for implementation of such plans, and allowing them to give greater recognition to the requirements of sections 6(e), 7(a), and 8).

FIG. 104

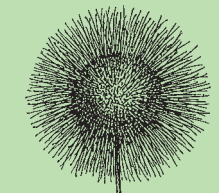
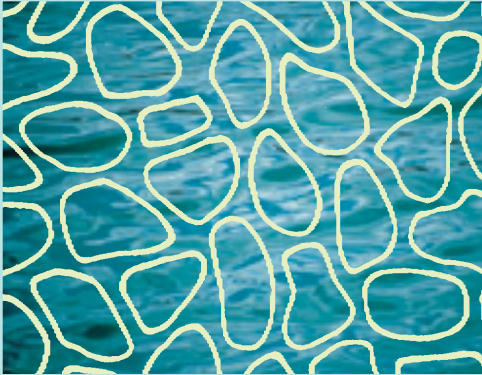
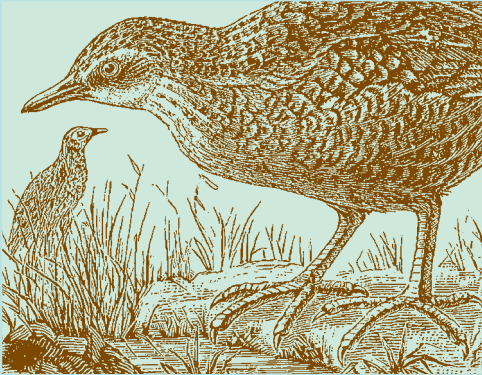


FIG. 113A  
Fruiting head of piri-piri  
(*Acaena sanguisorbæ*)

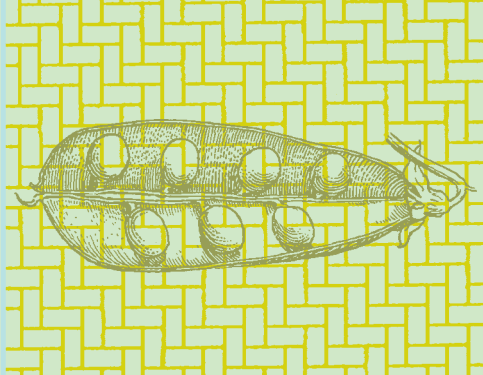
# Situation where there might be more than one iwi in a particular district or region



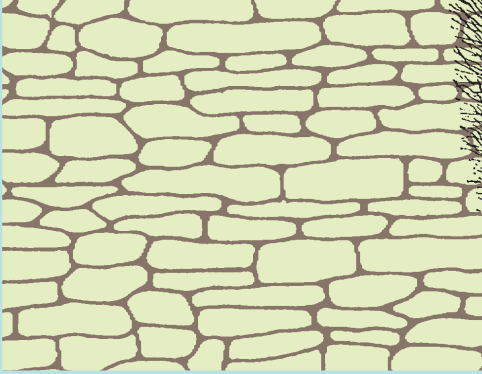
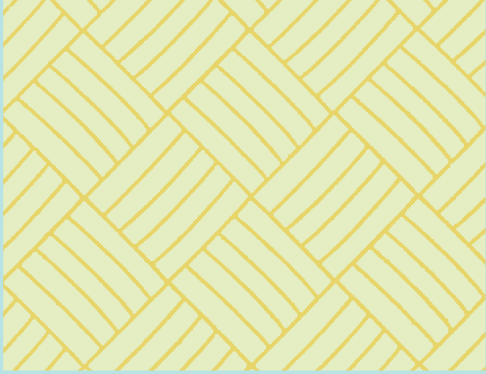
**Iwi boundaries** do not accord with the boundaries of regional and district councils set up under the Local Government Act. Where there is more than one iwi in a particular region or district there can be disputes over who has manawhenua over an area. The Environment Court has held that it is not for the council or Environment Court to decide who is entitled to manawhenua over an area, stating that the appropriate forum for this is the Maori Land Court. The procedure for deciding contested claims to representation is prescribed by Te Ture Whenua Act 1993 (Maori Land Act). It is acknowledged that this may place councils in a difficult position.



9



101 Green leaves



# Taking into account iwi planning documents

## Recommended good practice

You must approach and consider an iwi management plan with an open mind, and work within a clearly defined process which recognises that in some circumstances the plan may be of considerable importance.

Meeting the statutory requirement for iwi planning documents requires:



10



### Good Identification

Identify all relevant iwi management plans in your region or district.

Identify any RMA issues, policies, objectives, strategies, proposed rules of relevance to your Council and its responsibilities or to the matters being considered.

### Good Documentation

You should have a clear paper trail, which demonstrates how you have met your statutory obligations regarding iwi planning documents.

Be transparent in how decisions are made. This includes being explicit about the process you have used, the conclusions you have reached, the weighting you have given to differing matters in the iwi management plan.

## Good Analysis

Evaluate and analyse the relevant information in the iwi management plan.

Ask yourself:

- is the issue a resource management issue?
- is the issue a significant one in the district/region?
- does the issue need to be addressed in the proposed Regional Policy Statement, regional or district plan development or change?

Decide on the appropriate level of analysis. The depth of any analysis will relate to the scope and size of the exercise. More time, in-depth analysis, communication, consultation and documentation is required when developing a whole new plan than when proposing a minor plan change. The depth of analysis required can be influenced by considering:

- the importance of the resource management issue in relation to the purpose of the Act and the matters being addressed
- the complexity of the issue being addressed
- the significance of the issue being addressed.

Consulting with iwi should help identify the level of analysis they expect, and this may be helpful in deciding on the level of analysis you will take.

## Good Decisions

Under the current statutory obligations to 'take into account' iwi planning documents there is a wide range of decisions you can make.

You can choose to take no action, to reject the iwi management plan, adopt it in whole or part, or undertake further investigation of certain issues. Identify your action in a simple analysis table, eg:

Other plans and strategies that must be taken into account (s74(2)(b))

Plan	Policies/Issues	Comment	Action
Department of Conservation management plan			
Ngati Ao iwi management plan			
Regional Land Transport strategy			

- Ensure that you have followed other requirements of the Act such as considering Part II matters and section 32.

Clearly articulate your decisions and show the reasons for them. At a bare minimum having regard to iwi planning documents means that you have tried to identify their existence, read the document, considered its contents and reached a decision based on the relative weighting afforded to it.

- It is in the consideration that must be given to iwi management plans in terms of further actions where the essential difference between 'have regard' and 'take into account' will rest, not in the process you used to reach that point.

It is important to remember that the provisions of Part II, establish the principles for all decision-making under the RMA. Where sections 6 to 8 provide for the consideration of matters of particular importance to Maori, they tend to do so in stronger terms than the 'have regard to' directions in sections 61, 66 and 74:

- section 6 stipulates that decision makers 'shall recognise and provide for' all the matters listed in it
- section 7 states that decision makers 'shall have particular regard to' all the matters listed in it
- section 8 stipulates that decision makers 'shall take into account' the principles of the Treaty.

The relevance of these 'higher' standards should not be overlooked. None of these requirements in itself gives any particular force to iwi management plans, but where such a plan deals with any of these issues in an authoritative way, the weight to be given to that expression of the iwi's views must increase accordingly. In other words, leaving aside for the moment the statutory language, the more specific and authoritative an iwi management plan is in the RMA context, then the more weight the Council will have to give it in its decision-making. The weight to be given to any particular plan may vary significantly.

