



He rangahau ki te aria  
*Exploring the concept*  
ko te Tiriti te putake e  
*of a Treaty based*  
whakatuturutia ai nga  
*environmental*  
tikanga mo te taiao  
*subsid framework.*

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*audit framework*

PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT  
*Te Kaitiaki Taiao a Te Whare Paremata*

PO Box 10-241 - Wellington - [www.pce.govt.nz](http://www.pce.govt.nz)

*May 2002*

# Mihi

Tihe mauri ora  
Nga tini mate, moe marie mai koutou  
Ki te waahi ngaro  
Ki a tatou, nga morehurehu o ratou ma  
Tena koutou, tena koutou, tena koutou

He herenga waka  
He whitiwhiti whakaaro  
He whitiwhiti korero  
E u ko te maramatanga



*A sneeze, comes life  
To all the dead, sleep peacefully  
In that lost place  
To us, their survivors  
Greetings*

*Wherever canoes are tied up  
Thoughts are exchanged  
Dialogue is exchanged  
Enlightenment comes forth*

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# GLOSSARY – NGA KUPU

<i>hapu</i>	family or district groups, communities
<i>hui</i>	gatherings, discussions, meetings, usually on marae
<i>iwi</i>	tribal groups
<i>kai</i>	food, produce
<i>kaitiaki</i>	iwi, hapu or whanau group with the responsibilities of kaitiakitanga
<i>kaitiakitanga</i>	the responsibilities and kaupapa, passed down from the ancestors, for tangata whenua to take care of the places, natural resources and other taonga in their rohe, and the mauri of those places, resources and taonga
<i>kaupapa</i>	plan, strategy, tactics, methods, fundamental principles
<i>kawanatanga</i>	government, the right of the Crown under the Treaty of Waitangi to govern and make laws
<i>koha</i>	donation, gift, contribution
<i>korero</i>	discussion, debate
<i>mahinga kai</i>	places where food and other resources are traditionally gathered, and those foods and resources
<i>mana</i>	respect, dignity, status, influence, power
<i>manaakitanga</i>	show respect, kindness, hospitality
<i>manawhenua</i>	traditional status, rights and responsibilities of hapu as residents in the rohe
<i>marae</i>	local community and its meeting places and buildings
<i>matauranga</i>	traditional knowledge
<i>mauri</i>	essential life force, the spiritual power and distinctiveness that enables each thing to exist as itself
<i>mihi</i>	greeting, introduction
<i>mokopuna</i>	grandchildren, descendants
<i>ora</i>	life, wellbeing, health
<i>pa</i>	occupation site, often in a strategic location such as a hilltop
<i>Pakehatanga</i>	European cultural and philosophical frameworks
<i>rahui</i>	protection of a place or resources by forbidding access or harvest
<i>rangatiratanga</i>	rights of autonomous self-regulation, the authority of the iwi or hapu to make decisions and control resources
<i>rohe</i>	geographical territory of an iwi or hapu
<i>runanga</i>	committee of senior decision makers of an iwi or hapu
<i>takiwa</i>	place or territory used by or associated with an iwi, hapu or whanau
<i>tangata whenua</i>	people of the land, Maori people
<i>taonga</i>	valued resources, assets, prized possessions both material and non-material
<i>tapu</i>	sacredness, spiritual power or protective force
<i>tikanga</i>	customary correct ways of doing things, traditions
<i>tuku iho</i>	passed down (from the ancestors and the gods)
<i>tupuna</i>	ancestors
<i>wahi tapu</i>	special and sacred places
<i>wairua</i>	spirit, soul
<i>waka</i>	canoe, vehicle
<i>wananga</i>	place of education and research, university
<i>whakapapa</i>	genealogy, ancestry, identity with place, hapu and iwi
<i>whanau</i>	family groups
<i>whanaungatanga</i>	relationship, kinship, bonds
<i>whanui</i>	broad, extensive, all inclusive

# 1 INTRODUCTION

This document reports the findings of a scoping study undertaken through 2001 and 2002 by the Parliamentary Commissioner for the Environment (the Commissioner) into the concept of a Treaty based environmental audit framework. The basic concept is for a framework which could be applied to evaluate the work of central and local government agencies with environmental and resource management responsibilities, and the work of tangata whenua, in relation to:

- Te Tiriti o Waitangi / the Treaty of Waitangi 1840 (the Treaty) and the principles derived from it
- the various provisions in New Zealand's environmental legislation for Maori values and interests
- processes for iwi and hapu participation in New Zealand's environmental management
- improved environmental outcomes that recognise and provide for the values, interests, knowledge and tikanga of tangata whenua in the natural taonga, resources, sites and landscapes of significance to them.

Through a process of targeted interviews and research, a wide range of ideas, views and concerns about the audit framework concept have been gathered together. As well as consideration of the concept itself, the scoping study has also canvassed thinking on the potential applications of such a concept in New Zealand's environmental management, and on the principles and processes by which a Treaty based audit framework would need to be developed.

This exercise has been a scoping or exploration of the concept and associated issues. The process was not intended to actually develop an audit framework, but to evaluate the concept and its potential.

This report is accompanied in the folder by the following items:

- a summary of the relevant environmental legislation – Legislation: Nga Ture
- a survey of initiatives being undertaken by central government agencies – Current Initiatives: Nga Whakatutakitanga Hou
- case studies of audit and evaluation projects in New Zealand – Case Studies: Nga Whakamaramatanga.

## 1.1 THE COMMISSIONER'S ROLE AND WORK

The Commissioner reports directly to Parliament through the Speaker of the House of Representatives. The Commissioner and his work are not part of the Executive Government, nor subject to the directives or policies of Ministers or government agencies. This independence gives the neutrality necessary for the work of the Commissioner, Dr J Morgan Williams, and his team. The Commissioner's powers are restricted to investigating and making recommendations only. It is for other bodies to decide whether they will implement the Commissioner's recommendations.

The independence of the Office is crucial to the impact of the Commissioner's recommendations. Thus the Commissioner's independence is carefully guarded, to protect his position in relation to agencies' policies and programmes, since at some future date, the Commissioner may need to investigate and assess the achievements of that agency in environmental management.

The Environment Act 1986 sets out the Commissioner's role and functions, establishing discretionary powers to investigate and report on:

- New Zealand's systems of agencies and processes set up by Government for environmental management (s16(1)(a))
- the processes and effectiveness of environmental planning and management by public agencies (s16(1)(b))
- any matter where the environment may be adversely affected as a result of the acts or omissions of any person or body (s16(1)(c))
- appropriate preventative measures or remedial action.

The Commissioner also provides advice to Parliament and select committees, undertakes and encourages the collection and dissemination of information relating to the environment, and encourages preventive measures and remedial actions for the protection of the environment (ss16(1)(d),(f),(g)).

## 1.2 THE COMMISSIONER AND THE TREATY OF WAITANGI

The Long Title of the Environment Act states that the Act is to ensure, amongst other matters: 'that, in the management of natural and physical resources, full and balanced account is taken of... [t]he principles of the Treaty of Waitangi'. The 1840 Treaty records the fundamental bargain between the Crown and Maori, seen in the relationship between the provisions of Article I and those of Article II of the Treaty – the exchange of the right of the Crown to govern, in return for confirmation by the Crown of the rangatiratanga of tangata whenua, leading to such principles of the Treaty as the Crown's obligation to actively protect Maori interests (see Legislation: Nga Ture).

There is also recognition in the Environment Act of other matters of importance for tangata whenua. The definition of ‘environment’ (s2) includes, among other things: ‘people and communities’; ‘cultural... attributes’; and ‘cultural conditions’ that affect the environment. Furthermore, the Commissioner’s investigations may have regard to ‘any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of the heritage of the tangata whenua and which contribute to their wellbeing’ (s17(c)).

Over the years the Commissioner has investigated and reported on a number of issues of direct concern to tangata whenua. Major studies include:

- a report on the Crown response to the recommendations of the Waitangi Tribunal (1988)
- guidelines for local authorities’ consultation with tangata whenua, to assist councils with their responsibilities under the newly introduced Resource Management Act 1991 (RMA) (1992)
- an assessment of the environmental implications of the Crown’s processes for settling Treaty claims (1994)
- *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management* (1998).

The Commissioner’s broader thematic investigations – for example, studies of historic heritage management (1996), marine environmental management (1999), or the public acceptability of genetically modified biocontrols for possums (2000) – also traverse the interests of tangata whenua. In addition, iwi, hapu, whanau and others regularly bring their concerns directly to the Commissioner about particular environmental management issues. These may be specific local concerns, but often have wider significance. One recent example is the request by Te Runanga o Raukawa for the Commissioner to look into Kapiti Coast District Council’s proposal to source supplementary water supplies via a pipeline from a well-field at the Otaki River. The concerns raised by the Runanga were at the heart of a number of critical strategic issues for the district’s environmental management, as discussed in the Commissioner’s report, *Whose Water Is It? – The Sustainability of Urban Water Systems on the Kapiti Coast* (2001).

The Commissioner’s 1997-2001 Strategic Plan identified, among other matters, the following issues influencing environmental management, and significant areas for attention:<sup>1</sup>

- inadequate monitoring of the implementation of Treaty principles at local government level
- Resource Management Act requirements (ss6(e),7(a),8)
- degradation and loss of taonga
- Treaty of Waitangi claims settlements
- co-management potentials
- cultural and intellectual property issues
- consultation and participation issues.

## 1.3 ORIGINS OF THE CONCEPT

At the Commissioner’s Strategic Plan review in July 1999, a proposal was advanced by Hirini Matunga (now of Lincoln University) that the Commissioner should develop a Treaty based environmental audit framework. Hirini had promoted the concept at the 1997 *Guardians for the Environment* symposium, concluding that New Zealand is:

*...in urgent need of a comprehensive Treaty based environmental audit system which can audit not only environmental processes but also environmental outcomes from the point of view of their positive or negative impacts on tangata whenua and through evaluation against a set of Treaty-derived criteria... While the RMA, Regional Policy Statements, District Plans etc may look good on paper, how do we know whether they are in fact moving Maori towards the goals stipulated by sections 6(e), 7(a), 8 etc, if we do not have a system or methodology for gauging effectiveness?*<sup>2</sup>

The Commissioner has also been advised that a Treaty based environmental audit concept has been considered and promoted by Tainui and their resource management unit, the Huakina Trust.

The idea was discussed amongst the Maori participants in the Commissioner’s 1999 Strategic Plan review. There was support for exploration of the concept, although there was a range of views and expectations about what such an audit framework might comprise. Support was tempered by concern that, if a framework was to be developed, appropriate processes would need to be followed. There was discussion of the respective roles of the Commissioner and tangata whenua, and the need for a partnership approach in any undertaking to develop a Treaty based audit framework.

## 1.4 WHY SHOULD THE COMMISSIONER LOOK INTO THE CONCEPT?

How is the proposal for audit and accountability systems – for tangata whenua participation and recognition of the Treaty in New Zealand’s environmental management – a matter that warrants the Commissioner’s attention? A number of interrelated factors are relevant in terms of the Commissioner’s functions under the Environment Act, including the potential usefulness of audit frameworks for assessing:

- the abilities of government agencies, both central and local,<sup>3</sup> to fulfil their statutory responsibilities for environmental management under a range of legislation (RMA, Conservation Act 1987, Hazardous Substances and New Organisms Act 1996, etc)
- the avoidance, remedying, mitigation or monitoring of environmental management practices and activities which result in damage, degradation, compromise or destruction of natural taonga, resources, sites and landscapes of significance to tangata whenua



- the abilities of tangata whenua to fulfil their kaitiaki responsibilities to past, current and future generations and to the natural taonga that are part of their heritage and contribute to their well-being
- the information, expertise and practical support that tangata whenua might contribute for improved environmental management for the benefit of New Zealand as a whole
- improved recognition of, and respect for, matauranga Maori and tikanga in relation to environmental management
- improved understanding by agencies, individuals and tangata whenua of the implications of the Treaty for environmental management, and of practical ways in which these can be addressed.

## 1.5 TERMS OF REFERENCE

The Commissioner's approach has been to carefully consider the proposal and its implications, rather than immediately moving towards developing an audit framework. This scoping study is a preliminary exploration of the concept.

The terms of reference for the scoping study are:

- through a process of targeted strategic consultation and research, to scope:
  - the concept of a Treaty-based environmental audit framework
  - its potential applications in environmental management
  - the principles and processes by which such a framework could most effectively and most appropriately be developed
- to communicate directly to key stakeholders and participants in the scoping study on the study's findings.

## 1.6 METHODOLOGY

Through the middle part of 2001, the Commissioner conducted interviews with key individuals, iwi and hapu representatives, people from councils and government departments, resource management professionals, people who had taken part in the Commissioner's 1999 Strategic Plan review, and others with experience, involvement and knowledge of the issues. A list of interviewees is provided at the end of this report. It was made clear to interviewees that the interviews and the scoping study process were not intended to be a consultation exercise.

These discussions each began with a list of questions intended to tease out people's ideas around the concept of an audit framework. Inevitably the korero ranged widely across the issues, experiences and concerns of interviewees in relation to diverse aspects of New Zealand's systems for environmental management. These digressions, stories and more general concerns helped develop a valuable context within which the particular questions around the audit framework concept could be considered.

In addition to the interview process, research was undertaken covering a range of papers, reports and sourced information from interviewees and the Commissioner's ongoing monitoring.

## 1.7 FRAMING ASSUMPTIONS

This scoping study has been undertaken within a number of fundamental assumptions about environmental management, the Treaty, and the role and functions of the Commissioner and other agencies. Some of these matters are covered under the formal statutory mechanisms; others are more inherent. They are summarised here in the interests of clarity and transparency about the kaupapa of this scoping study:

- The purpose of any undertaking of the Commissioner and his team is to contribute towards:
  - improving environmental management systems and processes
  - achieving better quality environmental outcomes.
- Under Article II of the Treaty, tangata whenua have rights and interests in the environment and natural resources, distinct from and of a different nature to those of the general public or stakeholder groups.
- The Crown – including the Department of Conservation (DoC), Ministry for the Environment (MfE), and other agencies – has various roles and responsibilities in relation to tangata whenua and their rights and interests. Various processes have been established to implement those responsibilities and fulfil the Crown's duties under the Treaty.
- The obligations of kaitiaki to the ancestors and future generations, and the identity and well-being of iwi, hapu and whanau, are inextricably intertwined with the environment, places and landforms, natural and physical resources and taonga species within their rohe or takiwa.
- There are some things that only tangata whenua can determine or define, including:
  - mandate and representation
  - kaitiaki responsibilities and priorities
  - the significance and values of taonga, resources, wahi tapu, and other places and landscapes to tangata whenua
  - appropriate management or protection of those taonga, resources and places, according to tikanga
  - the measures necessary to avoid, remedy or mitigate any adverse effects on the mauri, tapu, wairua and whakapapa of those taonga, resources and places.
- Improved processes, structures and systems for management and tangata whenua involvement should lead to improved environmental outcomes – or should increase the likelihood of achieving better outcomes, and reduce the likelihood of adverse outcomes or environmental damage.
- Accountability is an essential principle in environmental management, particularly when the processes and work are resourced from public funding. However, accountability applies more widely than the necessity for scrupulous financial reporting, and includes such dimensions as:

- inter-generational accountability – our responsibilities to past, present and future generations
- the responsibilities of humans to other species, to biodiversity and ecosystems
- the fulfilment of statutory, ethical and Treaty obligations.
- Tangata whenua have not only rights and interests, but also enormously valuable contributions to make to environmental and resource management in New Zealand – participation, input, knowledge and expertise that are often not being maximised.

## 1.8 WHAT THIS SCOPING STUDY IS NOT

It is important also that there is clarity about the limitations and boundaries of the scoping study. The interviews and research undertaken, and this report, are not the development of an audit framework. The scoping study has not been an investigation of the effectiveness or achievements of the policies, programmes and actions of particular agencies, iwi or hapu.

The scoping study has been a qualitative exercise, not a quantitative one. As a scoping process, it has been selective, targeting relevant groups and individuals; it has not been a general, comprehensive consultation. This report does not attempt to rank the views and ideas emerging from the interviews in any quantitative way according to the number of times a view or idea was expressed.

The following observations and comments are offered as a contribution to the ongoing debate. They do not have the status of, nor should they be taken in place of, the statements of iwi, hapu and whanau on their own behalf, about environmental management issues and agencies' processes.

## 2 THE CONCEPT OF AN AUDIT FRAMEWORK

The people interviewed for the scoping study put forward a broad range of suggestions about what an audit framework might do and be, and, if an audit framework was to be developed, the processes that would be necessary to do this. Some considered that this would be the kind of concept where 'how' things were done would be as important as 'what' was done.

There was agreement around fundamental concepts, such as the principle that an audit framework could establish standards or benchmarks for the monitoring and assessment of New Zealand's processes for environmental management. Such standards could be applied to agencies' fulfilment of their statutory responsibilities in relation to the Treaty and to tangata whenua and their rights, values and interests in the environment – or to the initiatives and policies of iwi and hapu in environmental and resource management.

Interviewees advanced a broad spectrum of ideas on what an audit framework could help agencies, iwi, hapu and whanau to achieve. It was suggested that an auditing framework could assist in the following areas:

### *Awareness and relationships*

- Clarify the roles and responsibilities of agencies and tangata whenua in relation to the Treaty and their environmental work.
- Be an educational tool for agencies' staff, decision-makers, the judiciary and the wider community.
- Identify issues or areas of significance and concern to tangata whenua.
- Clarify agencies' actions and processes to determine tangata whenua interests, consultation and dialogue undertaken, and outcomes achieved.
- Help build better relationships, trust and confidence, based on improved understanding, awareness and respect.

### *Support*

- Strengthen and support the exercise of kaitiakitanga.
- Support the development of iwi and hapu environmental management plans (IHEMPs) and their integration with the work and policies of agencies.
- Support Maori staff and committees working in or alongside agencies, to bring through the Maori dimensions in the policies and activities of that agency.
- Help the longer-term development of agencies' systems, by ensuring advances are 'built in' to the organisation rather than being dependent on individual staff or particular projects.

### Processes

- Provide a basis for developing co-management initiatives or devolving or delegating environmental management tasks or activities to tangata whenua.
- Help synchronise the diverse areas of responsibility, statutory requirements and processes of regional and local government and Crown agencies with environmental management responsibilities.
- Be used to audit iwi and hapu environmental initiatives, the local implementation of iwi or hapu environmental management plans, and the work of iwi and hapu resource management units.
- Help achieve more effective environmental monitoring, compliance and enforcement.
- Help to avoid, or to achieve more effective mitigation and remediation of, adverse impacts of activities or management practices on the environment.
- Contribute towards long-term planning and strategic processes.
- Help to address funding and resourcing issues, and ensure that agencies are effectively allocating reasonable resources in their budgets for Maori involvement and initiatives.

Through these diverse concepts of what an audit framework might help achieve, a number of overarching themes or concerns emerged. These key issues, and their implications for an audit framework, are briefly outlined below.

## 2.1 THE TREATY

There was agreement amongst interviewees that any audit framework would need to be established within a clear understanding of the Treaty, its articles, and the Treaty principles that have been determined over the years in statements by government, the courts and the Waitangi Tribunal (see Legislation: Nga Ture). The Treaty and its principles have certain critical implications for the development and application of an audit framework. These include:

- recognition and respect for the rangatiratanga of tangata whenua confirmed and guaranteed under Article II of the Treaty
- recognition and respect for the authority of the Crown to govern for the well-being and interests of all New Zealanders, established under Article I of the Treaty
- equal rights of citizenship and participation for Maori (Article III)
- recognition of existing agreements between tangata whenua and agencies (such as memoranda of understanding (MOUs), or joint ventures) and of existing strategies, plans and policies. Any audit framework should not cut across, confuse or negate existing arrangements, but should support and strengthen them
- active participation in a partnership between iwi, hapu and whanau, as kaitiaki of the natural taonga in their rohe, and the agencies with statutory responsibilities in relation to those taonga.

The principle of Treaty based partnership should determine the process from the outset, including the initial decision whether an audit framework is to be developed at all, and in decisions including:

- what the audit framework would address
- at what level the framework should be developed and applied, and how it may relate to other partnerships, agreements and programmes
- what processes of discussion, drafting and review will be followed for the development of the framework
- what funding and practical assistance is to be made available for these processes, including sharing or collaboration of costs and other requirements such as labour and practical resources
- how the framework is to be applied to the particular environmental management issues or priorities at hand
- the review period and times when the framework is to be used, whether periodically or on a regular day-to-day basis.

It was recommended that a model developed by Ngati Raukawa – the ‘Treaty House’ model – may be a practical way to ensure appropriate and efficient development processes for any audit framework. Within this model, each Treaty partner conducts its own deliberations to develop and consolidate its own values, goals, objectives and approach, before coming together to combine their respective kaupapa under the Treaty partnership.

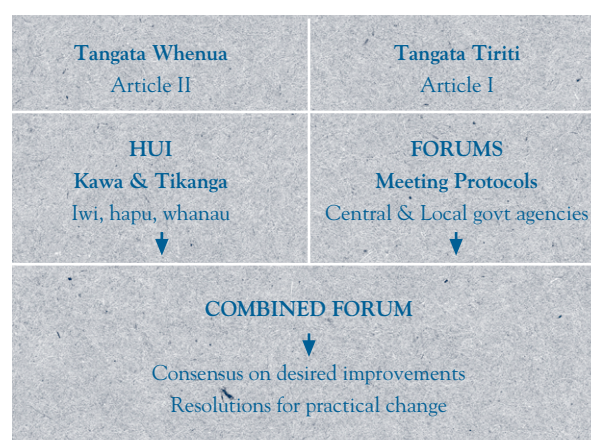


Figure 1 – The ‘Treaty House’ model

There was concern about the status of local authorities and their obligations relative to the Treaty. Under the current legislation and proposed amendments councils do not have the same status as the Crown.<sup>4</sup> This has been a matter of considerable dissatisfaction for some tangata whenua seeking to engage with local authorities in their environmental management work, and has caused confusion for councils also. The implications of local government’s Treaty status, obligations and duties for any Treaty-based audit framework would need to be carefully evaluated.

## 2.2 WHAT IS AN AUDIT?

An audit is a measuring tool, an evaluation mechanism that assesses and reports on the achievements of a management system against its stated goals and objectives. It can be based around a particular issue, an area of management responsibility, or an organisation. Environmental audits are commonly performed for compliance with the legislation and/or regulations, but they can also be set against voluntary standards or any agreed set of criteria. A monitoring and auditing process is a practical way to demonstrate fulfilment of the statutory requirements that agencies' decisions and policies are to be based on adequate information.

An audit may be undertaken by the parties involved, in a self-assessment exercise, or by an impartial external party or agency, to ensure neutrality and objectivity. An audit could assist the parties involved to develop solutions to problems that would avoid litigation (e.g. by contributing information to a mediation process). However, an audit should not prejudice other legal avenues such as appeals to the Environment Court or judicial review.

Auditing and review systems are recognised as important for an agency, company or other body to demonstrate compliance and the environmental integrity of their operations, services and products. There is an increasing trend for companies and agencies to sign up to 'Triple Bottom Line' accounting systems, which assess performance against environmental and social criteria as well as economic criteria. This is being taken further by at least one iwi to incorporate cultural values as a 'Quadruple Bottom Line'. Many companies also now seek formal substantiation of the quality of their operations and products under such systems as the international Forest Stewardship Council's certification processes for sustainably derived timber products. FSC certification requires rigorous assessment of the environmental, social and economic dimensions of the forest's management, followed by regular performance audits.<sup>5</sup>

The basic steps of any audit are:

1. To set criteria against which achievements and performance are to be assessed. Maximum clarity and precision are crucial. Consistency between the criteria, and the policies and plans of the agency or body being audited, will also be important.
2. To measure any differences between the provisions in policy and plans for the matters covered by the criteria, and the actual implementation. This requires judgements to be made, and will usually involve questioning of external parties and stakeholders, as well as the agency or body being audited.

Other factors that may be critical for an audit to be effective and meaningful include:

- agreement and commitment of the parties – agencies, iwi, hapu and other groups or bodies such as committees or NGOs – to participate (although an audit may be imposed by statute or other formal requirement)
- clarity about the overall mission, goals, and

responsibilities of the parties involved – agencies' statutory obligations for environmental management and the duties of iwi, hapu and whanau as kaitiaki – and how the audit contributes towards achieving these

- commitment of the parties to an ethic and process of continuous improvement, so that constructive change happens as a result of the audit
- clarity about the kinds of steps to be taken subsequent to the audit to address or remedy any matters identified as deficient
- an agreed process for mediation of disputed audit findings.

Some interviewees raised concerns about the principles and process of auditing. Negative associations around the term 'audit' are common, and many people felt that it could give the perception of an overly critical, punitive approach. It was suggested that another word could replace 'audit' – for example, 'review' or 'assessment'. There was also concern about the difficulties that might arise in attempting to audit intangibles. There was a view that some aspects of the participation of tangata whenua in environmental management – such as the quality of relationships, or evaluating the mauri and tapu of taonga – may be impossible to quantify under such systems. For Maori, an audit framework may need to achieve a sensitive balance between qualitative, subjective values and quantitative, more tidily measurable matters.

## 2.3 COMMITMENT OR 'BUY-IN'

The thinking of some interviewees about the concept of an audit framework revolved around issues of commitment – how to ensure a framework would be accepted, and that agencies and tangata whenua would agree to participate. The key concerns include:

- relevance of an audit framework, and the criteria or standards against which assessments are to be made, to the mission, objectives and current priorities for the parties involved
- respect for traditional information and matauranga Maori, and appropriate provisions to protect its confidentiality and sensitivity
- satisfactory involvement of the parties and other stakeholders in the development of the framework and criteria
- follow-through processes so that an audit's findings are translated into meaningful actions for improvement in systems and environmental management
- a local and/or regional focus – this was felt by many interviewees to be critical for relevance
  - to appropriately reflect the distinctive ecological character and environmental issues for each district, community, catchment or region
  - to respect the mana and rangatiratanga of tangata whenua, especially at hapu levels, the traditional base for customary authority.

## 2.4 NATIONAL AND LOCAL LEVELS

There was a marked duality in interviewees' thinking on the usefulness of national level systems compared to local systems. Often the same person would speak equally strongly in favour of both, insisting that an audit framework would need to be *both* a flexible system of locally-focused or issue-specific assessments, *and* a broad over-arching national system covering the spectrum of environmental agencies and management activities. The interest in these larger nationwide levels was often based on a strong concern for greater consistency and coherence between the roles, responsibilities and jurisdictions of different agencies (see section 3.5). Some people also suggested that audit frameworks would need the highest profile and political endorsement, through legislation or other formal mechanisms such as a National Policy Statement (NPS), to ensure participation and compliance.

If an audit framework was to be undertaken at local or regional levels, the processes for developing it would be comparatively straightforward. A decision to develop an audit framework could emerge from particular local priorities and needs. Local or regional agencies, whether councils, DoC conservancies, or local offices of Te Puni Kokiri (TPK) or the Ministry of Fisheries, already have networks of contact and involvement with the iwi, hapu, whanau and any tangata whenua resource management units in the district or region. Integration with existing plans and processes would be more direct. Local or regional audit processes could assess and report on relationships and processes, as well as environmental outcomes.

An auditing component could be developed as part of an iwi or hapu environmental management plan, or as part of agreements between Maori and agencies such as MOUs or protocols. Mechanisms to monitor and assess the effectiveness of tangata whenua involvement, and the recognition of their rights and interests in environmental management, could be built in to the state-of-the-environment monitoring already undertaken by councils under the RMA s35.<sup>6</sup> These dimensions might be assessed as part of larger future-focused strategic exercises, such as the development of a regional or district Growth Strategy. It has been noted, however, that local-level or agency-specific audit frameworks could mean that multiple audit systems could be applied in an area or region, resulting in confusion and complication. (See section 3.5)

At the nation-wide level, however, the processes and possible mechanisms become more dauntingly complex. Achieving coordination and consistency – across the different legislative provisions, the purposes of Acts, the jurisdictions of agencies at central, regional and local levels, and the policies and procedural systems of each respective agency – would be a major undertaking.

Determining the support for a national-level audit framework would itself require exhaustive consultation and dialogue, to establish whether iwi, hapu and agencies throughout the country would agree that such a framework

is necessary, would participate in its development, and would abide by its processes and findings. Such consultation would take considerable time, funding, and commitment from both tangata whenua and agencies, with inevitable opportunity costs and impacts on other priorities.

Support for a national-level audit framework might be only partial – some iwi, hapu and agencies might reject the concept. Or, as has been the case with this small scoping study, different groups and sectors may have very different, even conflicting views as to what an audit framework should do and be. Support could be conditional for some groups, dependent upon other priorities or initiatives, such as Waitangi Tribunal claims. These kinds of difficulties in working through to agreement on national-level systems are evident in the ongoing efforts of Te Ohu Kai Moana, the Treaty of Waitangi Fisheries Commission, to gain endorsement of a model for allocation of fisheries assets.

NATIONAL	LOCAL
Consistent system across the country	Relevance to local needs, priorities and circumstances
Formal statutory or regulation status	Status and commitment determined by participants
Generalised, broad criteria to apply across a range of situations	<ul style="list-style-type: none"> <li>• Flexible, specifically targeted to particular issues and needs</li> <li>• Would respect and accommodate existing policies, plans, IHEMPs and agreements</li> </ul>
A remote, 'top-down' process	Commitment and 'buy-in' of the people directly affected
Would need a special process of its own to develop and implement	Would be grounded in existing networks and contacts
Slow, complex and expensive to develop and implement	Could be integrated with existing planning and relationship processes
Difficult to change once officially set in place	Adaptable in response to locally changing needs and priorities

Table: Key features of possible national and local frameworks

## 2.5 FORMAL STATUS

There was a range of thinking on questions around the kind of formal or statutory weight an audit framework would need to have. Some interviewees felt that unless it was based in a clear legislative requirement, an audit framework might not generate sufficient acceptance to be useful. They felt that any audit system would need to be legally binding on the parties involved, to ensure that agencies and other bodies are held accountable for their policies and for actual implementation and delivery.

Others were concerned about the potential for an audit framework to become overly bureaucratic, generating extensive procedural activity and complex, top-heavy structures without necessarily resulting in constructive change 'on the ground'. It was noted that New Zealand's agency structures for environmental management are already extremely diverse and complex.

Some of the limitations of formal ‘top-down’ approaches were identified, including:

- lack of local commitment and compliance
- remoteness from ‘the real world’
- lack of adaptability or flexibility to respond to changing circumstances
- broadly generic, vague objectives or criteria that are difficult to translate into meaningful action.

## 2.6 ADMINISTRATION

There was little clear advice from interviewees on the most appropriate place for the administration of an audit framework. Some people seemed to assume that auditing should be undertaken by Government, as the locus of the Crown’s Treaty obligations. Te Puni Kokiri was suggested as a possible appropriate agency to manage the processes of auditing. The current role of TPK in reviewing government agencies’ delivery to Maori was noted (see Case Studies: Nga Whakamaramatanga, and Current Initiatives: Nga Whakatutakitanga Hou), although some interviewees expressed concerns as to the effectiveness and scope of TPK’s work in these areas.

There was a range of thinking on the possible role of the Parliamentary Commissioner for the Environment. There was support for the Commissioner undertaking the task of developing and administering an audit framework. There were two main reasons why people felt the Commissioner would be appropriate for this. Firstly, there was the belief that the Commissioner’s independent status from Government would give the necessary neutrality and ensure integrity and freedom from political compromise or interference. Secondly, there was the perception that the Commissioner, reporting directly to the Speaker of the House of Parliament, would have the high-level profile and influence to generate political and agency commitment to an audit framework.

However under current resourcing and staffing levels, the Commissioner does not have the capacity to undertake any project of the scale, complexity and extended time frames that would be required for the development of a national-level audit framework. In respect of local or regional frameworks, the Commissioner may make suggestions, offer advice, and encourage the particular iwi, hapu and agencies concerned to undertake the development of audit systems that would be useful and workable in their local contexts.

In addition, some interviewees expressed doubts about the Commissioner taking the lead with an audit framework initiative. There was a strong feeling that, to respect and reflect the Treaty, and to have relevance and meaningfulness, an audit framework would need to be developed in partnership by the iwi, hapu and agencies concerned. In one interview the observation was made that the Commissioner should not ‘try to do for other people what they should be doing for themselves’.

Some interviewees also suggested or assumed that a new, specialised agency would need to be set up to develop and administer a Treaty-based environmental audit framework. In the consultation hui conducted by the Department of Internal Affairs on the proposed amendments to the Local Government Act, the idea of a ‘Maori local government commission’ was raised.<sup>7</sup>

## 2.7 CONCERNS AND PROBLEMS

Some interviewees expressed strong concerns about various problems or difficulties with the concept of an audit framework. These more negative responses to the idea were often very frankly, firmly and colloquially expressed. They include the views that:

- Trying to audit the fulfilment of the Treaty partnership in environmental management would be ‘like grasping at fog’, impossible to quantify and assess, and thus would result in confusion and frustration.
- The Treaty principles, and their implications for environmental management, are continually evolving, through case law, precedents and other formal processes. New Zealand’s understanding of the Treaty principles, and what they might mean for environmental management, is also still evolving (see Legislation: Nga Ture).
- An audit could become just an abstract academic process that seems very nice but fails to deliver real change – ‘the Emperor’s new clothes’.
- The agencies and individuals who most need to improve will be the most resistant to participate in an audit, and to accept any requirements for change in their systems or approaches.
- Auditing is retrospective, checking back on what’s been done in the past within existing systems, rather than being forward-looking, proactive and innovative to develop and foster new ideas.
- Auditing focuses on the systems and structures, when what is really important are the relationships and attitudes of all the parties involved. How to shift habitual mindsets, break down negative expectations, and develop more open, constructive approaches, are different kinds of questions from how to audit agency processes. Without changes at these personal, subjective levels, auditing could be merely formulaic and tokenistic.
- Auditing will inevitably require judgements to be made. This may involve:
  - choosing what to assess
  - subjective evaluations
  - areas of uncertainty or matters that may be difficult to determine
  - the assumptions and preconceptions of the parties or individuals involved
  - sensitive political issues.

These kinds of dimensions could adversely affect the rigour or usefulness of an audit process.

- Difficulties would arise with the fact that only one section of the population, tangata whenua, can determine the satisfactoriness or effectiveness of environmental management with regard to Maori values and the Treaty. Thus judgements would need to be made on the basis of values and tikanga that are not commonly accessible to all New Zealanders.
- The constitutional and jurisprudential implications of attempting to develop and implement a Treaty based audit framework would be complex and difficult. The implications would potentially range far wider than issues or structures of environmental management. This would raise questions about the systems and processes which the Crown has established to deal with its obligations under the Treaty, and about the balancing or weighing of Maori rights, interests and values relative to those of the rest of the New Zealand public.
- The scale and costs of the processes that would be required to develop and establish an audit framework could also be considerable. Requirements would include dialogue processes, research, upskilling participants, formalising agreements, integrating existing initiatives, and negotiating the political dimensions, whether national or local. The funding and other resources necessary, and the time it could take, should not be under-estimated.

### 3 POTENTIAL APPLICATIONS OF AN AUDIT FRAMEWORK IN ENVIRONMENTAL MANAGEMENT

Most of the people interviewed for the scoping study had a very clear sense of the problems they face in their environmental work, and the shortcomings of the current systems within which they are required to operate. The interface between Maori and New Zealand's environmental management systems is characterised by a strong sense – both amongst tangata whenua and within environmental agencies – of difficulties, obstacles, constraints and frustrations. Some interviewees were passionate in their analysis and denunciation of these various imperfections. However, there was often little more than the vaguest sense of how an audit framework might be of practical help in addressing them.

The concerns people raised are familiar, ongoing issues. All of these matters have already been identified and discussed at length – in the korero, hui and wananga of tangata whenua, in the Commissioner's 1998 *Kaitiakitanga and Local Government* investigation and 1992 *Proposed Guidelines*, and in a series of studies and reports from MfE, TPK, Local Government New Zealand, and others (see Reference and Reading List). These concerns are also consistent with a report from the Department of Internal Affairs on hui held in July and August 2001 to consult with tangata whenua on the review of the Local Government Act.<sup>8</sup>

The following summary is intended only as an indication of the major problems constraining the effectiveness of New Zealand's environmental management systems with respect to agencies' responsibilities under the Treaty and their duties in relation to the rights, interests and values of tangata whenua. There is not the space for a detailed analysis of all the concerns raised. After each section in this chapter is a brief assessment of how an audit framework might help with the issues identified.

#### 3.1 RECOGNITION AND RESPECT

Interviewees identified a range of fundamental difficulties in relation to agencies' recognition and respect for mana and rangatiratanga – the autonomy and authority of iwi and hapu guaranteed and confirmed under Article II of the Treaty. These include:

- lack of recognition of tangata whenua as Treaty partners, rather than as 'just another interest group in the community'
- the tendency for agencies to deal with particular known individuals or groups, often high-profile representatives at the iwi authority or Trust Board level, rather than engage more widely at hapu and whanau levels

- misunderstandings about representation and mandating of spokespersons
- limited acknowledgement of the validity, usefulness and sensitivity of matauranga or Maori environmental and ecological knowledge
- limited recognition of:
  - the spiritual, metaphysical and historical dimensions of environmental management
  - the balancing and inter-connectedness of social, environmental and spiritual realms under kaitiakitanga
  - the collective, consensual nature of tikanga and decision-making processes
  - the cultural and traditional significance of places, species and resources.

Other issues such as ownership of natural resources (excluded from RMA processes, and addressed under separate processes through the Waitangi Tribunal and the Office of Treaty Settlements) are nevertheless critical for tangata whenua. These concerns have been advanced through such formal actions as the WAI 262 claim,<sup>9</sup> other WAI claims in relation to natural resources, and other legal actions (e.g. foreshore and seabed cases) (see Legislation: Nga Ture).

It will also be important to recognise and respect the contributions of kawanatanga, including:

- the roles, functions and powers of agencies under statute, to manage the environment, biodiversity and natural resources
- the duties of agencies to fulfil the policies, programmes and instructions of Government and, for local authorities, their ratepayers and communities
- the efforts being made with various initiatives such as those outlined in the Case Studies: Nga Whakamaramatanga, and Current Initiatives: Nga Whakatutakitanga Hou.

#### *How might an audit framework help?*

*An audit framework could assess, evaluate and report on the systems agencies and tangata whenua have in place, including such mechanisms as:*

- criteria developed for partnership and interactions between agencies and tangata whenua
- agencies' identification of appropriately mandated representatives and of geographical areas of interest (rohe or takiwa)
- the nature and frequency of contact between iwi, hapu and agencies, and participants' satisfaction
- the extent of agencies' recognition and utilisation of Maori environmental knowledge and values, and the safeguards provided for sensitivity of such information
- the number of iwi or hapu environmental management plans in place in an agency's region or area, and the extent of their recognition in agency environmental policies and management processes
- the processes and capacities of iwi and hapu for their participation in environmental management (e.g., iwi or hapu resource management units).

## 3.2 ACTIVE PARTICIPATION

In order to address their statutory obligations most agencies and councils have developed various systems for consultation with tangata whenua. But for some iwi and hapu, consultation is not an adequate fulfilment of the legislative requirements and the Treaty, nor effective in terms of improving their involvement in environmental management. They feel strongly that continually being in 'react mode', responding to agencies and consent applicants, is achieving little for tangata whenua, and they now seek more direct and early participation in processes.

Representation issues were also raised in the scoping study, with concern about the limited numbers of Maori staff within agencies, especially at senior policy and decision-making levels, concern for appropriate appointments of Maori commissioners for hearings, and concern about the low numbers of Maori elected councillors. The model developed by Environment Bay of Plenty for the provision of dedicated Maori seats on the regional council<sup>10</sup> has been advanced as an option for other councils (see section 3.6).

Some iwi and hapu have advanced ideas for co-management of special places, or for the devolution or delegation of agencies' environmental management functions – most notably under the provisions for transfer of local government functions, powers and duties under section 33 RMA. However to date, no council has actually undertaken a s33 transfer to tangata whenua. There has been uncertainty about capacities and skills, concern about tracking responsibility, resourcing issues, and agency resistance to change.

In other environmental and conservation areas, there has been considerable debate about co-management or devolved management.<sup>11</sup> While for some iwi and hapu this has not yet resulted in the kinds of collaborative working partnerships being sought, some projects have been established which build on the commitment and practical contributions of tangata whenua (see Case Studies: Nga Whakamaramatanga).

#### *How might an audit framework help?*

*An audit framework could assess the extent and effectiveness of:*

- Maori staffing numbers and levels, Maori representation on councils and committees, and other Maori personnel (e.g. hearings commissioners)
- systems for early involvement of tangata whenua in agencies' planning, policy processes, decision-making and strategic initiatives
- systems for tangata whenua involvement in resource consent processing (e.g. in screening consent applications and providing information)
- contributions of agency personnel and experts to iwi and hapu environmental initiatives (e.g. development of IHEMPs)
- satisfaction of both tangata whenua and agencies with the opportunities for their input and participation at all levels
- co-management or devolved management programmes, and their achievements and costs relative to agencies retaining control.



### 3.3 ACCOUNTABILITY, OR 'WALKING THE TALK'

Under New Zealand's current environmental management structures there is a general lack of formal accountability systems for agencies' fulfilment (or otherwise) of their responsibilities to tangata whenua and the Treaty.

Most agencies and councils have statements relating to these responsibilities in their policies, strategies and plans.<sup>12</sup> Tangata whenua involvement in the development of those statements has ranged from consultation to contracting the drafting to the iwi. However for some iwi and hapu, agencies' actual implementation in their day-to-day activities and processes often falls sadly short of the promise of the statements in the official documents.

There are some processes for monitoring and review of agencies' performance (see Case Studies: Nga Whakamaramatanga). Examples include:

- the work of Te Puni Kokiri in its reviews of government departments such as DoC<sup>13</sup>
- an audit commissioned by Environment Waikato of its implementation of its Treaty responsibilities<sup>14</sup>
- the New Zealand Conservation Authority's (NZCA) report and discussion paper on DoC's provisions for Maori customary use of traditional natural resources and materials.<sup>15</sup>

However, such processes tend to be ad hoc, limited in their focus on a single particular issue or agency, and have not necessarily resulted in prompt or substantive change.

There are also few systems of redress or sanctions for agencies' under-performance or failure to deliver on either environmental management or Treaty based obligations. The principal recourse for dissatisfied iwi and hapu is to take the issues to the Courts – an adversarial process that can be prohibitively expensive, complicated, stressful and slow, and can have uncertain and sometimes undesired outcomes. A judicial review can only challenge matters of procedure, as opposed to the actual environmental outcomes. However, an appeal of a council's decision to the Environment Court is broader and may result in that decision being changed.

Claims to the Waitangi Tribunal, in relation to natural resources and places, can also be extremely lengthy and uncertain processes. The Tribunal can only make recommendations, and a separate negotiation process is then required for settlement with the Crown. The Crown has discretion in regard to Tribunal recommendations; some are not implemented, such as the Tribunal's 1993 recommendation for a change to s8 RMA, which has not yet led to any legislative amendment.<sup>16</sup>

Some interviewees mentioned concerns about iwi and hapu environmental management plans (IHEMPs), and the quality, relevance and implementation of such plans. Given the Treaty guarantee of rangatiratanga, the limited resourcing available to most iwi and hapu, and the RMA's very broad, generic definition of such plans,<sup>17</sup> any process to audit tangata whenua development of and delivery on IHEMPs would need to be undertaken with the greatest sensitivity.

#### How might an audit framework help?

*An audit framework could directly address the limited review and accountability mechanisms under current systems. The statements in agencies' policies, strategies and plans would logically provide the basis for criteria against which an audit would be carried out of the agencies' 'on-the-ground' implementation and activities. An audit would not itself provide improvements, but could identify and clarify those areas of an agency's systems where effort and attention are required.*

*An audit framework might not have direct relevance for the resolution of Waitangi claims except where such claims are made in relation to natural resources and their management, the policies and practices of environmental agencies, or the environmental legislation.<sup>18</sup>*

*Damage to or losses of natural taonga of significance to tangata whenua could be reported, and the reasons behind the occurrence of such adverse impacts identified (e.g. an agency's failure to consult, or Maori interests being outweighed). Such data could help identify particular aspects of agencies' systems that with improvement, could minimise the risks of further damage and loss in future.*

### 3.4 PRACTICAL REQUIREMENTS

Some interviewees raised concerns about the practical requirements for participation in current systems for environmental management. Agencies currently use a number of mechanisms for involving tangata whenua in their work, including:

- iwi liaison officers or Maori planners
- Maori advisory committees
- discussion hui
- training programmes for staff and elected councillors
- assistance for special projects and the development of iwi environmental management plans.<sup>19</sup>

However difficulties identified by interviewees include tightly constrained resourcing, and the limited knowledge, skills and experience of many participants, whether agency personnel, elected councillors, or iwi and hapu representatives.

There can be enormous overload for all parties involved, 'hui'd out' by consultation rounds on a wide range of issues. The demands of agency processes often result in poor understanding, under-attendance, or a lack of preparation and follow-through. Some tangata whenua representatives recommended that agencies should coordinate their hui and consultation processes for the sake of efficiency and coherence. It was suggested that a central coordinating, networking and advisory office could be established to:

- help the various environmental management agencies to synchronise, plan and schedule their consultation processes more effectively
- assist iwi, hapu and others to find their way around in the complexities of agencies' processes and statutory jurisdictions, and to give information and guidance for tangata whenua on where to take an environmental concern or problem.

Interviewees highlighted the need for more capacity-building for iwi, hapu and agency personnel, and for people to gain the practical experience and confidence so they can engage effectively with processes (whether on the marae or within the formal procedures of agencies). The importance of training and awareness programmes for elected councillors and key decision-makers, as well as agency staff, was noted. Training initiatives within agencies can be ad hoc, although some provide more purposeful training such as te reo classes, or the Department of Conservation's Pukenga Atawhai programme.

Lack of information, and limited access to information, was also raised as a problem both for tangata whenua and agencies. Increased information and awareness are needed on:

- the Treaty, tribal histories, New Zealand history, and the values and worldviews of both Maori and Pakeha cultures
- local environmental issues, conditions, ecosystems, and needs
- management issues and initiatives (e.g. processes to develop plans or strategies)
- provisions of the RMA and other statute, and case law precedents
- the roles, responsibilities and obligations of agencies to tangata whenua under the relevant legislation
- consultation, dialogue and mediation models, partnership and consensus models.

However, over the years a number of studies have been undertaken and useful guidelines and advisory documents prepared by agencies and Maori (see Reference and Reading List). These include information about legislation and processes, and helpful advice for agencies, iwi and hapu for the processes of dialogue and for the development of effective working relationships. Given these existing materials, there would seem little justification for further expenditure of agencies' time and resources on the production of new guidelines and advice. While some statutory details or points of agency procedures may change over time, the basic principles for good consultation, implementing the Treaty, and practical engagement between agencies, iwi and hapu, as outlined in the advice and guidelines already available, are continuingly relevant.

Iwi and hapu have requested funding and practical assistance from agencies for their participation in environmental management processes, but agencies – with often limited budgets themselves, and a host of other demands upon them – have found it difficult to provide assistance at the levels sought. Issues include:

- a perceived lack of political will
- allocations for only part of the requirement for the task or project at hand
- difficulties in accessing funding or eligibility
- the lengthy time taken in making applications and processing them
- agency managers' reluctance to set precedents or raise expectations.

The area of practical capacities also includes the all-important mindsets – the attitudes, values, views and worldviews of each individual involved in environmental management, Maori and Pakeha. These are affected by a range of factors including age, education, experience and background. Interviewees reported differences in attitude and approach at different levels within agencies – for example, between junior staff and older managers, or between local operational staff and more 'remote' policy and political levels. In addition there are the agency or sectoral 'cultures', patterns of approach and behaviour that can be extremely powerful and influential. These collective mindsets or paradigms can be determined by formal or statutory requirements, or they may be the result of historical and wider societal patterns.

Amongst tangata whenua, there can be low or negative expectations of their opportunities for involvement with agencies. These patterns are often the product of previous negative experiences, difficulties, misunderstandings or disappointments.

These personal and agency-culture aspects are critically important influences on all parties' capacities for achieving progress towards improved environmental outcomes and positive working relationships – yet they are also the hardest to define and discuss. They can be stubbornly tenacious, but they are also continually shifting and evolving. They are deeply interwoven with a myriad of other complicating factors, many of which may have nothing to do with environmental management or the particular issue at hand.

#### *How might an audit framework help?*

*An audit framework could report directly on such quantifiable matters as:*

- *funding and other support provided for tangata whenua participation and for iwi and hapu initiatives such as environmental management plans, training programmes or wananga*
- *education, information and training programmes for agency staff and elected councillors, and the effectiveness and outcomes of such programmes*
- *the frequency and demands of different agencies' consultation processes, attendance and satisfaction levels, and the outcomes of these processes.*

*It would be more difficult for a formal audit process to delve into the hearts and minds of agency staff, elected councillors, and iwi and hapu representatives, to try to assess values and mindsets. However other kinds of processes – such as hui, workshops or other opportunities for dialogue – may give an indication of progress with such intangibles.*

### 3.5 CLARITY AND CONSISTENCY

For many people, the multiplicity of the issues and groups with which they have to deal is a source of continuing frustration. The sheer complexity of New Zealand's processes can be very daunting, and both Maori and agency personnel seek greater clarity and consistency.

For iwi and hapu, the right to their ancestral identity, mana and rangatiratanga is a fundamental right guaranteed under the Treaty. The uniqueness and independence of each group is basic to its strength, as are the sustaining inter-relationships of whakapapa and whanaungatanga. However, there can be expectations (whether overt or implicit) under some agency processes, that the complex interweavings and distinctions of whakapapa can be streamlined for the sake of procedural efficiency.

There is as much fragmentation within kawanatanga as amongst tangata whenua. Iwi and hapu find it complicated and inefficient to deal with several different agencies, each with different legislation, policies, structures and processes, including:

- divisions of management responsibility for interconnecting natural systems into administratively tidy agency jurisdictions
- variability in statutory references to the Treaty and other requirements in legislation, and the need for updating of older statutes<sup>20</sup>
- variability in the policies, plans and procedural systems of different councils
- the vagueness of wordings in legislation and some policies and plans (e.g. 'take into account')
- overlappings and lack of integration of the roles of councils, DoC conservancies and other agencies
- continual change in the statutory and policy contexts, with amendments to legislation,<sup>21</sup> regular reviews of agencies' policies and plans,<sup>22</sup> and wider strategic processes, such as the current Oceans Policy Review
- inconsistencies between different levels, divisions or units within the same agency.

#### *How might an audit framework help?*

*An audit framework could report on:*

- initiatives for co-ordination across different environmental management structures and jurisdictions
- significant inconsistencies between different systems, plans and policies (as opposed to flexible approaches at local levels)
- liaison between agencies.

*An audit framework could assist agencies to deal with the autonomy and multiplicity of different iwi, hapu and whanau groupings by reporting on agencies' identification of appropriately mandated representatives and of geographical areas of interest (rohe or takiwa) and the other matters suggested above at section 3.1.*

### 3.6 LEGISLATIVE CHANGES

The Local Government Act 1974 is currently under review and the Local Government Bill 2001 proposes to repeal most of the Act. The 1974 Act is highly prescriptive about what councils can do, whereas the Bill reverses this by giving councils a restricted general power of competence. With increased discretion comes increased accountability for both financial reporting and community consultation.

The Bill has a Treaty clause that requires councils to 'recognise and respect the principles of the Treaty of Waitangi'. This clause is not intended to give councils the status of a Treaty partner; councils remain separate from the Crown. Currently the Act has no Treaty or Maori provisions; however, under the RMA councils already have obligations to tangata whenua, which will not change. The Bill includes proposed changes to the procedures that local government uses in decision-making so that:

- Maori can contribute (12(e), 63) and are consulted (66(1)(c))
- relationships with the environment are taken into account (62(c))
- this contribution is reported on (Schedule 8 clause 23).

The Bill also includes amendments to the Local Electoral Act 2001 that will enable communities to choose a Maori representation system with Maori wards and constituencies (Schedule 20).

#### *How might an audit framework help?*

*An audit framework could provide a strong practical base of information to assist local authorities in the fulfilment of their proposed new obligations to report on their provisions for Maori contribution and consultation. Establishing an audit framework, to monitor and assess the involvement of tangata whenua and the recognition of Maori values, could give councils a useful 'head start' on the new accountability requirements proposed in the Local Government Bill.*

### 3.7 OTHER WAYS OF DOING BETTER

Some interviewees expressed considerable doubt as to whether an audit framework, whatever form it might take, would be the best way of making progress and fulfilling their goals for involvement and appropriate management of natural and physical resources and other taonga. People had other ideas – regardless of whether or not an audit framework might be established – for constructive ways to address the problems and improve New Zealand's systems for participation of tangata whenua in environmental management. These are briefly outlined below.

## IWI OR HAPU ENVIRONMENTAL MANAGEMENT PLANS

Interviewees acknowledged that IHEMPs, as formal statements developed and endorsed by tangata whenua, could provide the basic framework against which the work and processes of agencies could be assessed. People felt that IHEMPs are already doing much of what an audit framework might help agencies to do, including:

- determining manawhenua and clarifying the mandate of iwi and hapu
- establishing tangata whenua goals, objectives, priorities and expectations for appropriate management of natural and physical resources, other taonga, and the wider environment in the rohe
- providing frameworks and guidance for engagement with agencies and practical involvement in their activities.

There was strong concern that any audit framework must not cut across, confuse or diminish the status of IHEMPs.

Interviewees noted that the processes of developing and establishing an IHEMP can be difficult for iwi and hapu, with few incentives, often little resourcing available, and pressure of other priorities. It was also noted that, as well as being an important kaupapa in itself, an IHEMP should be a starting-point or catalyst for more effective iwi and hapu participation in environmental management. There will be requirements and commitment needed from the iwi and hapu concerned, and from agencies, to implement an IHEMP and achieve meaningful improvements for relationships and for the environment.

## IWI OR HAPU ENVIRONMENTAL MANAGEMENT UNITS

The role and achievements of the resource management units or offices established by iwi or hapu were recognised as positive contributions. These units can undertake a wide range of activities from the basis of the kaitiaki responsibilities of the iwi or hapu, including environmental planning, input into consents processing, consultation with developers and agencies, research, contributions to agencies' processes, as well as practical hands-on work. While it is vitally important that such units maintain a solid basis of contact with their iwi whanui networks and local hapu levels, they can assist agencies by providing a point of contact, and facilitating communication between tangata whenua and the more technical and scientific dimensions of agencies' processes.

## CO-MANAGEMENT, DEVOLUTION OR TRANSFER ARRANGEMENTS

The opportunities with management models that either devolve or transfer environmental management responsibilities to iwi or hapu, or establish collaborative working partnerships between tangata whenua and agencies, have been mentioned above (see section 3.2).

## MEMORANDA OF UNDERSTANDING AND OTHER AGREEMENTS

Some interviewees mentioned MOUs, protocols, charters or other forms of agreement established between tangata whenua and agencies for various purposes ranging from a general statement of relationship and good faith, to detailed management plans for a specific site or resource. There is uncertainty about the legal status of these kinds of agreement,<sup>23</sup> and there is also concern at the potentials for MOUs to shift influence from 'flax-roots' hapu levels to broader, more political iwi levels. Nevertheless MOUs can serve a useful role:

- facilitating interactions between tangata whenua and agencies
- providing a framework within which communication about environmental values and objectives can occur
- providing formal recognition of the relationship and the mana of the respective parties
- making specific arrangements for particular tasks, which may include active participation and the sharing of costs, labour and other requirements
- establishing locally-sanctioned standards against which an audit process might be carried out.

Any audit framework would need to respect and accommodate such agreements, which have usually been developed and finalised through extensive processes of dialogue and negotiation.

## DIALOGUE PROCESSES

Some interviewees felt that many of the difficulties faced by agencies and tangata whenua could be addressed by improving and increasing dialogue and discussion. This could take the form of hui on marae, workshops or seminars, educational field trips, reports and papers, or information on a website. The kaupapa would be to build understanding and awareness across a range of priority areas, including:

- the Treaty and the rights and interests of tangata whenua
- historical and cultural associations with places and taonga
- the spiritual and metaphysical values inherent in natural resources and places
- the historical and philosophical foundations of Pakehatanga, the guiding principles and societal expectations that underpin the work of New Zealand's various environmental agencies.

## OTHER PROCESSES AND INITIATIVES

In the course of the scoping study, a diverse range of existing processes and initiatives between agencies and tangata whenua were identified that seek to improve the responses of agencies to their Treaty obligations, to improve the participation of tangata whenua in environmental management, and to maximise the opportunities of that involvement. They are summarised in the Current Initiatives: Nga Whakatutakitanga Hou, and include:

- reviews of agency policies and strategies
- training, capacity-building and upskilling programmes
- information including practical ‘how-to’ toolkits and guidance
- support for the development of iwi or hapu environmental management plans
- research and support for the retention and utilisation of matauranga Maori
- practical ‘hands-on’ environmental protection and restoration projects.

Many of these initiatives are already well under way. Many of them have extensive budgets and levels of commitment from the agencies concerned. They are often focused on the particular roles, statutory responsibilities or geographical area of the respective agency, but many try also to locate these immediate requirements within the larger Treaty and environmental contexts.

Generally these kinds of initiatives indicate a level of awareness amongst agencies of the challenges and demands they face in responding to the Treaty provisions in legislation, and to the expectations and opportunities of tangata whenua involvement.

The critical point however, in relation to the concept of developing an audit framework, is that there are already significant numbers of such projects and programmes, across the spectrum of environmental management agencies or sectors. There are also other major initiatives under way to address the relationships between Maori and the Crown, in areas of policy and service delivery that only indirectly impact upon environmental matters, such as the social services programme *Communities and Government – Potential for Partnership, Whakatapu Whakaaro*.<sup>24</sup>

#### TIKANGA MAORI FRAMEWORK PROPOSAL

Another model that has been proposed by claimants in the WAI 262 claim to the Waitangi Tribunal is for a nationwide Tikanga Maori Framework of Protection and Development.<sup>25</sup> This framework would be based in tikanga Maori and reflect Maori cultural values, and would ensure the management, utilisation and protection of resources in accordance with Maori cultural values and preferences. It has been suggested that such a framework would be developed by Maori through a comprehensive process of consultation resourced via an allocation of funds from the Crown as part of the remedies package for the WAI 262 claim.

#### NATIONAL POLICY STATEMENT (NPS)

Interviewees also raised the possibility of an NPS for sections 6(e), 7(a) and 8 RMA, as was recommended in the Commissioner’s 1998 *Kaitiakitanga and Local Government* report; at the time that recommendation was rejected by Hon Simon Upton, Minister for the Environment. An NPS is currently being developed for Biodiversity. Some interviewees expressed doubt about the effectiveness of the only existing NPS, the New Zealand Coastal Policy Statement (the Department of Conservation is to undertake a review of the New Zealand Coastal Policy Statement in 2003).

Interviewees felt that in the provisions for NPSs, the RMA already provides a mechanism for establishing standards and achieving consistency. An NPS would apply only to those areas of environmental management responsibility covered under the RMA.

## 4 CONCLUSIONS

In undertaking this scoping study, the Commissioner has sought to explore the concept of a Treaty based environmental audit framework, to assess the potential usefulness of such a framework for tangata whenua and agencies in their environmental management work, and to tease out the major implications for the possible development and application of such a framework. In addition, the scoping study has been a very revealing window onto the difficulties faced by many people, both Maori and agency personnel, in their efforts to improve tangata whenua involvement in New Zealand's environmental management – and onto the opportunities for positive, practical improvements.

The following conclusions and suggestions are offered to assist agencies and tangata whenua in their environmental management work.

### KEY CONCLUSIONS

1. There is **no clear consensus** amongst interviewees about the concept of an audit framework, its potential uses or usefulness, its desirability, or the processes that would be necessary to develop a framework.

Based on the findings of this study, it would not be appropriate or productive, at this point in time, for the Commissioner to undertake the development of a Treaty based environmental audit framework.

2. There are significant differences in the feasibility of an audit framework at **local and regional** levels compared to a possible **nation-wide** system.

Developing a single over-arching national-level audit framework would be extremely complex, demanding of time and resourcing, and uncertain in its outcomes. The idea of a national-level audit framework would be ill-advisable. However, there would be greater feasibility and potential relevance with local or regional audit frameworks. One critical factor is that any effective audit framework would need to be based firmly in the experience, wisdom and practical requirements of the people who would be using it. Thus the thinking of practitioners and kaitiaki 'on the ground' would be essential.

Further discussion and consideration of the opportunities of local or regional audit frameworks, by iwi, hapu and environmental management agencies with statutory responsibilities to tangata whenua and their interests, will be necessary to determine appropriate initiatives. Where local or regional groups and agencies do decide to explore or to develop an audit framework, the Commissioner will continue to contribute suggestions and advice to assist these processes.

## WHERE TO NEXT?

This study has identified two critically important principles to guide the efforts of agencies and tangata whenua in any initiative to develop local or regional audit frameworks, and to improve the effectiveness of their work and relationships in environmental management.

1. **Active participation** of all the relevant parties – iwi, hapu, whanau and agencies – will be necessary in all stages of the development and application of any audit framework, in order to:

- recognise and respect the rangatiratanga and mana of tangata whenua as confirmed and guaranteed under the Treaty
- ensure commitment or 'buy-in' to the concept of an audit framework and the processes for its development and application
- ensure that the audit framework will be relevant and meaningful for the environmental management work, values and priorities of the parties involved
- ensure appropriate recognition and integration with existing initiatives, agreements and systems.

2. The usefulness of any audit framework will depend on its having a clear focus on **kaitiakitanga** and the **environmental outcomes** that the agency, iwi or hapu intend to achieve. There are risks that such a framework might become an additional layer of bureaucratic procedure, overlapping and confusing existing processes, and further complicating New Zealand's existing systems of statutes, agencies, programmes and policies. Auditing may assist in resolving some of the problems and difficulties that practitioners, both Maori and agencies, are experiencing with the current systems. However, there are important limitations in what any audit can achieve in itself, and there would need to be appropriate mechanisms for taking the findings of an audit and developing practical actions from them to address any deficiencies identified.

There are a range of **other mechanisms and processes** that could address many of the problems and constraints identified in the current systems for tangata whenua participation in environmental management. An essential component and precursor of any initiative will be improving processes for dialogue and communications, to build understanding, share information, increase awareness and identify priorities. Other constructive opportunities include:

- increased investment in training, education and capacity-building for agency staff, elected representatives and iwi and hapu representatives
- development of partnership agreements such as MOUs or protocols
- development of co-management or devolved management systems, such as transfers to iwi of council functions under section 33 RMA, or innovative collaborative partnerships for the management of particular areas, taonga species or natural resources

- increased investment in the development and implementation of iwi and hapu environmental management plans, and in processes for these plans to be appropriately recognised and integrated in agencies' plans and activities
- support for the establishment and operations of iwi and hapu resource management units, to coordinate and facilitate tangata whenua environmental initiatives and involvement in agencies' processes
- processes to address agencies' cultures and ways of operating, to foster the development of kaupapa, approaches and objectives that are visionary and innovative, and that take agencies beyond basic compliance with their statutory obligations to more proactive, courageous and generous working relationships with tangata whenua
- practical improvements in agencies' procedures, methods and systems including:
  - processes that foster and facilitate tangata whenua participation
  - recognition and respect for mandated representatives at iwi, hapu and whanau levels
  - recognition and respect for matauranga Maori, the environmental knowledge and experience passed down through the generations
  - coordination of processes and systems between agencies, notably synchronising consultation rounds for greater coherence and efficiency.

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Heather Baggott, Office of Treaty Settlements  
Andrew Bignell, DoC  
Julie Black, Tuhoe, Nga Whenua Rahui/DoC  
Terry Broad, Ngai Tahu  
Linda Constable, Te Runanga o Ngai Tahu Kaupapa Taiao manager  
Te Aue Davis, Maniapoto  
Edward Ellison, Te Runanga o Ngai Tahu Deputy Kaiwhakahaere  
Jacqui Eves, Office of the Auditor-General  
Pania Gray, Te Puni Kokiri  
Piripi Grimshaw, Te Runanga o Ngai Tahu customary fisheries manager  
Jim Guthrie, Anderson Lloyd Caudwell  
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Nicola Wheen, University of Otago  
Parekura White, Ngati Porou, ERMA/Nga Kaihautu

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- 1 Parliamentary Commissioner for the Environment, 1997. A new five-year strategic plan is to be developed in September 2002.
- 2 Hirini Matunga, 1997, pp 113-4.
- 3 In this report, the general term 'agencies' includes local authorities, Crown departments and ministries, and other Crown entities such as the Environmental Risk Management Authority.
- 4 Local Government New Zealand, 1999. A review of the legal and political issues surrounding the relationship of local government to the Treaty of Waitangi. Paper by Chen and Palmer.
- 5 Parliamentary Commissioner for the Environment, 2001a, p 59. Forest Stewardship Council, [www.fscoax.org/index.html](http://www.fscoax.org/index.html).
- 6 This section requires local authorities to gather information as necessary to carry out effectively their functions under the RMA; to monitor the state of the environment of its region or district, the suitability and effectiveness of policy statements and plans for the region or district, and the exercise of resource consents that have effect in the region or district; and to make relevant information available to the public.
- 7 Department of Internal Affairs, 2001.
- 8 Ibid.
- 9 The 'indigenous flora fauna and other taonga' claim, lodged in regard to the management, use, commercialisation, export and patenting of native plants and animals, of the genetic resources inherent within those taonga, and the whakapapa, intellectual property and traditional knowledge associated with them.
- 10 Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001.
- 11 Sunde et al, 1999 and Howard and Moller, eds, 2000.
- 12 Nuttall and Ritchie, 1995.
- 13 Te Puni Kokiri, 1998; Te Puni Kokiri, 2002.
- 14 Kowhai Consulting Ltd, 2000.
- 15 New Zealand Conservation Authority, 1997.
- 16 Waitangi Tribunal, Ngawha Geothermal Resource report, 1993 (WAI 304), p 155: "We recommend that an appropriate amendment be made to the Resource Management Act 1991 providing that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall act in a manner that is consistent with the principles of the Treaty of Waitangi."
- 17 Defined as any 'relevant planning document recognised by an iwi authority affected by the [council's policy or plan]' (RMA s 61(2)(a)(ii), 66(2)(c)(ii), 74(2)(b)(ii)).
- 18 Examples include the WAI 262 claim for indigenous flora and fauna and other taonga, and the Wairarapa claim (WAI 741, now integrated with other claims for that area) relating to (amongst other matters) the policies and practices of councils and DoC.
- 19 Parliamentary Commissioner for the Environment, 2001b. Outcome Evaluation of *Kaitiakitanga and local government: Tangata whenua participation in environmental management*.
- 20 For example, the proposal to the NZ Conservation Authority for "omnibus change to all legislation that sits subsidiary to the Conservation Act 1987... [so that these statutes] are in parallel reviewed and appropriately amended to bring the subsidiary legislation into line with s4 of the Conservation Act." Edward Ellison, 2001, *Deficiencies in Conservation Subsidiary Legislation*, Agenda Paper 10.1, NZCA meeting 10 and 11 October 2001.
- 21 For example, the RMA has undergone many amendments and there are currently significant changes before the House of Representatives that have passed through the select committee process. The Government has stated that the Hazardous and New Organisms Act 1996 will be changed by strengthening the Treaty clause. The Local Government Act Bill 2001 was introduced in December 2001 with the intention to completely overhaul the existing Act.
- 22 The Conservation Act 1987 s17H(4)(b) requires the Director-General of Conservation to review Conservation Management Strategies and Conservation Management Plans no later than ten years after the date of their approval (inception) [s17H(c) provides for an extension]. The National Parks Act 1980 s46(3) requires that all management plans be reviewed within a ten-year time frame. The Resource Management Act 1991 s79 requires regional and territorial authorities to commence a review within ten years of the plan becoming operative.
- 23 Mfodwo, 2000.
- 24 Ministry of Social Policy, 2001.
- 25 Solomon, 2001.

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