Cross cultural mediation: guidelines for those who interface with iwi

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Summary

Introduction

The principles of the *Resource Management Act 1991* (the Act) require that the relationship of Maori to the natural world, their obligations as kaitiaki, and the Treaty of Waitangi/Te Tiriti o Waitangi have a fundamental place in resource management policy and decision making. Conflict may arise between cultures as attempts are made to observe these principles.

Mediation provides one approach to resolving cross-cultural conflict. Blackford and Matunga (1991) developed process guidelines on ways to improve Maori effectiveness in environmental mediation. One of the recommendations arising out of that report was that guidelines were needed for those who are likely to interface with iwi in environmental mediation. This publication has been prepared in response to that recommendation.

The objectives of the current research were:

1. To prepare guidelines on cross-cultural mediation for agencies and individuals who interface with iwi.

2. To work towards the development of methods/models of information exchange for cross-cultural mediation.

The research approach involved:

1. Presenting the proposal to the National Maori Congress for guidance on a pan-tribal approach to the work.

2. Examining approaches used in North America and New Zealand on preparing handbooks for those involved in planning and resource management processes.

3. Using the findings from the mediation report (Blackford and Matunga, 1991) to prepare guidelines for those who interface with iwi.

4. Reviewing methods/models of presenting indigenous information in ways that can be understood by non-indigenous people.

5. Reviewing methods/models of presenting scientific information in ways that can be understood by non-experts.

6. Conferring with those involved in the Resource Management Project (directorate of the Ministry for the Environment) on insights gained into the information exchange problem area.

7. Providing guidelines for those involved in mediation to facilitate the exchange of information between cultural paradigms.

The proposal was presented to a hui of executives of the National Maori Congress, who agreed that the establishment of guidelines would be helpful, and who expressed a wish to have input into the development of national guidelines. The information contained in this publication, while not fulfilling the requirements of national guidelines, could be used as a basis for establishing national guidelines.

The method of presentation of the present guidelines was adopted after examining examples of handbooks dealing with the New Zealand situation. As well, the authors broadened their approach beyond the practical interpretation of the findings of Blackford and Matunga and the intention to focus on methods/models of presenting indigenous and scientific information, to include an approach similar to that developed by Project Waitangi. This type of approach encourages those who interface with iwi to consider their own culture first before attempting to understand what is important to Maori.

Recognition of the diversity that exists in the Maori world forced a realisation of the difficulty and indeed impracticability of developing guidelines appropriate to all tribal areas in New Zealand. Those who expect to interface with iwi should consult with local iwi to ascertain how consultation and mediation might best meet their needs.

Legislative and political context

These guidelines have primarily been developed for use within the context of the Resource Management Act. Local authorities have delegated Treaty of Waitangi obligations that are explicitly stated in the principles of the Resource Management Act. These principles are concerned with matters of national importance, which include "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga"; kaitiakitanga; and the principles of the Treaty of Waitangi. Maori, as tangata whenua, are specifically recognised in natural resource legislation by virtue of their Treaty of Waitangi 'Article II' rights of tino rangatiratanga.

Legislative opportunities for mediation

The Resource Management Act provides more opportunities for mediation than previous town and country planning legislation. Although not explicitly provided for, mediation can be used during the formulation of regional and district plans. Explicit legislative opportunities for mediation are provided on a more localised basis in relation to the resource consent application and appeal process (sections 99 and 268), and in the processes for changing, cancelling, or reviewing consent conditions, designations, heritage orders, and water conservation orders.

Potential mediation parties

This chapter examined issues of who should be involved in mediation, how to find those who should be involved, and indicated who might be excluded. A broad indication of those who should/could be involved appears in sections 88 and 93 of the Act. Suggestions were given as to how those who interface with iwi could be identified in the first case. The important contact for iwi is with those who have mana whenua over the resources in question. Those who hold mana whenua status might be identified by using channels of communication established through previous contact with iwi during the regional and district plan processes. Approaches could also be made to traditional and non-traditional organisations.

The requirement to make a written submission under section 96 in the resource consent application process could inhibit Maori from participating. Non-compliance might exclude them from further participation. Local authorities may choose to ensure that iwi are included in spite of legislative requirements.

Mediation as an option

Several factors are likely to influence parties in their decision whether or not to participate in mediation.

Laws regarding standing appear unlikely to influence the choice. Any person has a right to make a submission regarding a resource consent application and, in consequence, a right to participate in any subsequent mediation.

Past experience with other options such as Planning Tribunal hearings is another factor that might influence participation. Hearings may be formal compared to mediation, groups may lack the resources to participate

effectively, and the situation as described in the past may be institutionally racist and insensitive to Maori values and concerns.

The potential benefits and limitations of mediation were outlined to assist parties who may have no knowledge or experience of mediation. A mediator is an obvious and useful source of information concerning this process.

A general indication was given of the potential costs and benefits that might be incurred in mediation and subsequent hearings.

Preference for mediation or a hearing would depend on the perception of how well the party's interests would be served by the approach chosen. A desire to establish a legal precedent or to have influence on an environmental assessment could also influence the decision.

Non-negotiable disputes should be identified by the mediator at the outset, by carrying out a conflict assessment. In choosing this option, the parties may simply use mediation to clarify an issue or issues.

Individual parties may have preferred approaches to conflict resolution. In Maori society, for instance, traditional methods relied on consensus decision making.

The mediation process

Before the parties interface they may choose to prepare in different ways in what can be termed the pre-pre-negotiation phase. This might include cross-cultural training for those who are likely to interface with iwi, as well as training in negotiation skills.

In the pre-negotiation phase the parties involved negotiate how the mediation process will operate. There are several main areas where agreement should be sought.

Parties may have different requirements when it comes to choosing/agreeing upon the mediator/s. A team of mediators might be an appropriate compromise.

Representatives who are empowered to represent each of the parties involved must be identified and selected. Principles which guide the selection of representatives differ for iwi and those who are likely to interface with them.

Protocols or ground rules determine how the parties will work together. These may include issues such as where the negotiations will take place, the timing of negotiations, and the type of negotiating approach that will be used.

In the agenda-setting stage the parties need to decide on what they will discuss in the negotiating phase. They will outline agenda items that include the important issues for each party.

Joint fact finding involves a collective attempt to identify the information needs of the mediation parties, and the reaching of agreement as to how they will obtain such information. The point about joint fact finding is that it develops a shared knowledge base even though that knowledge will be valued differently by each of the parties. These parties may also discuss how they can raise funds to obtain the required information.

The negotiation phase and cross-cultural communication

The negotiation context will cover instances where resource consent applications are likely to give rise to tangata whenua concerns with regard to cultural and spiritual values. In this phase the parties are likely to present the information they have obtained, explore options, narrow down the range of options, choose one or a group of options, renegotiate options after consultation with constituents, and possibly reach agreement.

In cross-cultural mediation, it is possible for parties 'to talk past each other'. Factors that may contribute to that tendency include: sources of information likely to be brought to the table, means of communication, and a misreading of verbal of verbal and non-verbal language.

Information likely to have been brought to the table by those who interface with iwi will derive from different cultural paradigms. In Western cultures science is an accepted way of gaining information about the environment. Science is also used to explain the relationship of humans to nature in terms of different environmental paradigms. Information presented by scientists is likely to have been derived using what is referred to as the scientific method. Non-scientists may bring financial data and information on personal experiences to the table.

Iwi observations of the natural environment rest with kaumatua/tribal elders who pass those observations down from one generation to the next. Iwi have gained their knowledge after hundreds of years of occupation in this country. They have developed sustainable resource management methods in order to survive.

Differences in types of information may, at times, be less significant between than within cultures. Information brought to the table is likely to be influenced by differences in the goals and aims of the parties. Some people may find it difficult to accept 'other ways of knowing', or to understand a spiritual relationship with the environment that is part of a different cultural paradigm.

Methods of communicating information can differ between cultures. Those who interface with iwi are likely to present information in written form and may expect others to read background papers in preparation. Iwi have a preference for communicating information orally rather than in writing. The visual, practical approach is one which both iwi and those who interface with them may choose to use.

Due to the ease with which one's own culture is taken for granted, it is possible to misinterpret the meanings of words and actions unintentionally. Examples of spoken and unspoken language include eye contact, frowning, gratitude, physical contact, shrugging, silence, and standing and sitting.

Effective cross-cultural communication can be achieved by respecting others, being open, allowing one's ways of thinking to be questioned and challenged, being informal and adopting colloquial language, and conveying examples that are familiar to the other culture so that people can relate to them.

Cultural differences may be manifest when it comes to making decisions with regard to choosing alternatives and reaching agreement.

1 Introduction

1.1 Background to the research

The principles of the *Resource Management Act 1991* (the Act) require that the relationship of Maori to the natural world, their obligations as kaitiaki, and the Treaty of Waitangi/Te Tiriti o Waitangi (see Appendix I) have a fundamental place in policy and decision making with regard to achieving sustainable management of Aotearoa/New Zealand's natural and physical resources. Tensions inevitably arise over access to, use and management of natural resources, and parties may find themselves in dispute with others whose philosophies and cultural dynamics differ significantly from their own.

This study, which follows on from and is a companion to research carried out by Blackford and Matunga (1991), seeks to help develop a mediation process for use in cases where cross-cultural conflict arises in observing the principles of the Resource Management Act. The Blackford and Matunga research focused on ways to improve Maori effectiveness in environmental mediation as one of the necessary preliminaries to establishing a truly bicultural mediation process. One of the recommendations that emerged from that study was the need for guidelines on mediation for agencies and individuals who are likely to interface with iwi during cross-cultural disputes.

An important stage of the mediation process that is not developed in Blackford and Matunga is the exchange of information in cross-cultural conflict. This stage may be dominated by information derived from the Western scientific paradigm because it is a familiar and accepted way of viewing the world from a Western cultural perspective. Conversely, Maori environmental knowledge may not be known to or understood by decision makers. The relationship that tangata whenua developed with the natural environment after centuries of occupation in this country "was based upon a profound knowledge of te taiao (the environment), which is not described by conventional Western science" (Ministry for the Environment, 1990, p.22).

1.2 Research objectives

The Ministry for the Environment agreed to fund the present study which is based on the recommendation referred to above. The objectives of this study are:

1. To prepare guidelines on cross-cultural mediation for agencies and individuals who interface with iwi, and

2. To work towards the development of methods/models of information exchange for cross-cultural mediation.

The authors have broadened the target of this study to include community, commercial and environmental groups as well as individuals and agencies.

1.3 Research approach

The approach to this research involved the following steps:

1. presenting the proposal to the National Maori Congress for guidance on a pan-tribal approach to the work,
2. examining approaches used in North America and New Zealand on preparing handbooks for those involved in planning and resource management processes,
3. using the findings from the mediation report (Blackford and Matunga (1991)) to prepare guidelines for those who interface with iwi,
4. reviewing methods/models of presenting indigenous information in ways that can be understood by non-indigenous people,
5. reviewing methods/models of presenting scientific information in ways that can be understood by non-experts,
6. conferring with those involved in the Resource Management Project (directorate of the Ministry for the Environment) on insights gained into the information exchange problem area,
7. providing guidelines for those involved in mediation to facilitate the exchange of information between cultural paradigms.

Step 1:
The research proposal and a copy of the Blackford and Matunga report were sent to the National Maori Congress. A review of the report was presented by a member of the Justice Committee to a hui of National Maori Congress executives held at Murihiku (Invercargill) from 16-17 November 1991. The hui resolved that the report be received but

recommendations were deferred until the next hui of the Congress Executive (Solomon, Maui, Justice Committee, National Maori Congress, 1991, pers. comm.). A further paper was prepared for and taken as read by the National Maori Congress Executive Hui held at Waihi on 7 March 1992. It contained the following recommendations:

> "It is recommended on the basis of the briefing paper prepared by the Justice Committee for the Murihiku hui in November 1991 that Congress:
>
> (a) **Agree** that guidelines for people who have to work with iwi on environmental issues will be helpful and would make them more aware of and responsive to iwi concerns;
>
> (b) **Agree** that Congress should have an input into the development of national guidelines for mediation of environmental disputes" (Solomon, 1992, pers. comm.).

These guidelines are not intended to be used on a national basis but could be used to establish national guidelines for further development by key Maori organisations such as the National Maori Congress. Maruwhenua Secretariat of the Ministry for the Environment has indicated that it would welcome integrating such input and would take responsibility for facilitating that input (Jones, Shane, Maruwhenua Secretariat, Ministry for the Environment, 1993, pers. comm.).

Step 2:
The practical approach to preparing these guidelines was adopted after examining examples of handbooks in New Zealand.

Step 3:
The authors broadened their approach to Objective 1 beyond the practical interpretation of the findings from three case studies by Blackford and Matunga on the assumption that while many Maori know or understand the cultural attitudes of those who interface with iwi, it cannot be said that those who interface with iwi understand Maori tribal norms to nearly the same degree. This lack of understanding on the part of those of Western cultures can also be attributed to a lack of understanding and close scrutiny of their own (mainly Anglo-Saxon) culture. The expanded approach adopted here is similar to that developed by Project Waitangi[1]; those who

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[1] Project Waitangi was launched nationally by the Governor General, Sir Paul Reeves, during the 1980s. The Workshops are primarily for people who are not Maori but are open to all. Their aim is to allow people to address the implications of the Treaty through looking at areas such as ancestry and culture, cultural difference, pre-Treaty, Treaty and post-Treaty history, and personal and institutional racism (Waitangi Workshops, 1992).

interface with iwi are encouraged to consider their own culture/s first before attempting to understand what is important to Maori. With this understanding parties might be better placed to identify similarities and differences and to find some middle ground where compromise might be achieved.

Steps 4-6:
The intention of the approach to Objective 2 was to focus on methods/models of presenting indigenous information in ways that can be understood by non-indigenous people and methods/models of presenting scientific information in ways that can be understood by non-experts, and to confer with Ministry for the Environment staff. The expanded approach adopted in Objective 1 was also applied to Objective 2 in the belief that it would provide a preferable means of enhancing cross-cultural communication to that originally proposed.

Step 7:
The guidelines referred to in this step appear as Chapter 7 in this publication.

1.4 Parameters of study

A strong statutory base exists for pakeha to interact with iwi in shared areas of interest. The diversity that exists in the Maori world means these guidelines do not seek to cover all aspects of such interactions, nor is it possible to do so. Instead, ideas are put forward to stimulate thought on environmental issues, and to enhance the options available for those who interface with iwi on matters of concern[2]. Specific information beyond or resulting from the generalities expressed here should be sought from local iwi.

It would be both difficult and impractical to develop guidelines that were appropriate to all the different tribal areas of Aotearoa/New Zealand.

"It is fundamental to the recognition of tribal tino rangatiratanga that these guidelines are flexible so as to allow for regional variation between hapu and iwi. For this reason, the guidelines should contain a clear statement that local authorities and others who are dealing with iwi and hapu in

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[2] The authors had difficulty in choosing a collective term, for the purposes of comparison, for those people who are not Maori. General terms such as "Pakeha", "non-Iwi" and "Westerners" have their limitations. At the risk of being tedious, they have generally used the term 'those who interface with iwi' when alluding to agencies, individuals, environmental and other community interest groups.

relation to environmental matters, should develop their own unique style of consultation, co-operation and mediation to accommodate the particular characteristics and needs of tribal bodies they are dealing with. Councils must not be misled into believing that they can simply read a booklet and miraculously have all the answers dealing with tangata whenua issues. Nothing can substitute for direct dialogue with iwi or hapu concerned and preferably at alternative venues including Marae and Council chambers" (Solomon, 1992, pers. comm.).

1.5 Potential use of guidelines

The guidelines in this handbook can be used in Resource Management Act processes:

- in regional and district policy statement and plan processes where tangata whenua and others may argue that some or all of their concerns have not been taken into account (see Chapter 2),
- in the resource consent application process before an application is made,
- in the resource consent application process before notification (section 93),
- in the resource consent application process (and in the other instances referred to in Chapter 3.3) at Section 99,
- in the resource consent appeal process (section 268),

as well as in instances of cross-cultural conflict involving health, education, welfare, and so on.

2 Legislative and political context

2.1 Purpose of the Resource Management Act

The purpose of the the Act is "to promote sustainable management of natural and physical resources" (Section 5). Sustainable management means that natural and physical resources, excluding minerals, are to be managed in a way that meets the needs of different people and communities to provide for their social, economic and cultural well-being and for their health and safety. At the same time, the needs of future generations must be sustained, the life-supporting capacity of the natural environment must be safeguarded, and the adverse effects of human activities on the environment must be avoided, remedied, or mitigated.

2.2 Principles of the Resource Management Act

Those having functions, powers, and duties under the Act have the task of balancing the concerns and views of different groups in the community, including those of the tangata whenua, so that their needs can be met. In balancing these concerns those having functions and powers have an obligation to interact with iwi. Local government, as an agent of the Crown, has Treaty of Waitangi obligations. Iwi expect that the Crown will fulfil its responsibility to make sure local authorities meet those Treaty obligations.

These obligations are explicitly stated in the principles of the Resource Management Act:

Section 6	**Matters of national importance** - .... shall recognise and provide for .... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
Section 7	**Other matters** - .... shall have particular regard to .... kaitiakitanga;
Section 8	**Treaty of Waitangi** - In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the **principles** of the Treaty of Waitangi (Te Tiriti o Waitangi).

Table 2.1 Principles of the Resource Management Act.

An often asked question is why Maori as tangata whenua should be specifically recognised in natural resource legislation. It is best answered in terms of the notion of Crown/iwi partnership as expressed in the Treaty, by which the Crown assumed sovereign rights over all matters except those reserved to Maori tribes under the authority of their chiefs. No other ethnic group in Aotearoa/New Zealand has or had such an agreement with the Crown.

Other ethnic groups derive benefits from "Article III" rights because of their citizenship in this country. The Maori people share in these rights. In addition, Maori have "Article II" rights - that is, rights of tino rangatiratanga - by which they are entitled to exercise autonomy.

The cultures of other ethnic groups resident in New Zealand are sustained in their countries of origin, but Maori have nowhere to return to beyond these shores. They have prior rights of occupation in Aotearoa/New Zealand, and these rights require that bicultural issues be settled before multicultural ones can be addressed.

2.2.1 Matters of national importance

Section 6 of the Act requires that the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga are recognised and provided for in achieving the purpose of the Act.

Ancestral land as defined by the High Court in Royal Forest and Bird Protection Society v. W.A. Habgood (H.C.[M655/86]) is "land owned by our ancestors". It does not need to be in Maori title although there must be some nexus between the iwi and the land in question.

Waahi tapu are sacred sites, examples of which might be places associated with death, canoe landing sites and tribal tuahu (and other sites of cultural, spiritual and historical importance to a tribe (see Appendix II)). Waahi tapu are defined by the local hapu or iwi who exercise kaitiakitanga over them (Parliamentary Commissioner for the Environment, 1992, p.32).

Taonga are prized and sacred possessions that may have both tangible and intangible characteristics. They include things such as te reo (the Maori language), mountains, and fisheries (Crengle, 1993, p.12; Parliamentary Commissioner for the Environment, ibid.).

> *"Perhaps most significantly, they are a source of personal and collective emotional spiritual strength.... The fundamental thing to understand and accept about taonga is that ... the concept cannot easily be understood except by reference to the Maori world view"* (Crengle, 1993, ibid.).

2.2.2 Kaitiakitanga

Those exercising functions and powers under the Act must have particular regard to kaitiakitanga. (Section 7.)

The term "kaitiakitanga" is defined in section 2 to mean "the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself."

According to a joint submission made by the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League on the Resource Management Bill (1991, p.10), the definition of kaitiakitanga as set out in the Act is "unknown to Maori".

There has been considerable concern at the use of Maori terms and concepts in the Act, such as kaitiakitanga, for the reason that control over determining their meaning may be lost to non-Maori agencies such as local authorities, and the Planning Tribunal.

The concept of kaitiakitanga in fact implies a knowledge of and expertise concerning a resource or taonga, and carries a practical obligation to manage the resource wisely and to be accountable for its management to the constituent iwi. It incorporates a spiritual component, and can only be exercised by tribal custodians who have tangata whenua and mana whenua status (Matunga, Hirini, Centre for Maori Studies and Research, Lincoln University, 1993, pers.comm.).

Local authorities will no doubt be exploring ways in which to meet their responsibility to have "particular regard" to kaitiakitanga. These guidelines have not attempted to recommend how this might be achieved. It is important that each authority explore this requirement with the tangata whenua of its area.

> *"The tangata whenua who have mana over the resource will be able to determine both the characteristics of kaitiakitanga and how it should be given expression"* (Crengle, ibid., p.23).

2.2.3 Principles of the Treaty of Waitangi

Section 8 of the *Resource Management Act,* which requires local authorities to "take into account the principles of the Treaty of Waitangi /Te Tiriti o Waitangi rather than the Treaty itself, implies that the Maori and English texts of the Treaty of Waitangi are both applicable. In recent times there have been various attempts to develop Treaty 'principles' instead of having direct recourse to the Treaty.[3]

The concept of Treaty principles came into prominence with the passing of the Treaty of Waitangi Act in 1975. Since then, various attempts have been made to reconcile the Maori and English texts of the Treaty by extrapolating Treaty 'principles'. As explained by the Parliamentary Commissioner for the Environment:

> *"[I]t is a fundamental constitutional rule that the law should be both clear and accessible: people should be able to understand their rights and duties under the law and therefore it is important that there are clearly identifiable principles or guidelines by which all can know the Treaty." (Parliamentary Commissioner for the Environment, 1988, p.17.)*

However, there appears to be no broad general agreement as to what those principles are as is evident from different sets of principles that have been promulgated by:

- the Court of Appeal
- the Labour Government
- the Waitangi Tribunal
- Maori.

Court of Appeal

Of the differing sets of principles, only those expounded by the Court of Appeal have any standing in law. These principles proceed from a non-Maori, legalistic point of view, and are set down as:

1. The acquisition of sovereignty in exchange for the protection of rangatiratanga,
2. The Treaty requires a partnership and the duty to act reasonably and in good faith,
3. The freedom of the Crown to govern,
4. The Crown duty of active protection,

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[3] Interested readers can refer to Blackford and Matunga (1991) for a summary of the results of such attempts.

5. The Crown duty to remedy past breaches,
6. Maori to retain chieftainship (rangatiratanga) over their resources and taonga and to have all the rights and privileges of citizenship,
7. The Maori duty of 'reasonable co-operation', and
8. The question of whether the Treaty creates a duty to consult (Parliamentary Commissioner for the Environment, 1988, pp.112-116)

Labour Government

The third Labour Government (Department of Justice, 1989) tried to formulate Treaty-based principles by which it might carry out its obligations towards its Treaty partner. In 1989, it published a simply-worded list of principles. These are:

1. *The Principle of Government*
   The Kawanatanga Principle
   The Government has the right to govern and to make laws.

2. *The Principle of Self-management*
   The Rangatiratanga Principle
   The iwi have the right to organise as iwi and, under the law, to control the resources they own.

3. *The Principle of Equality*
   All New Zealanders are equal under the law.

4. *The Principle of Reasonable Co-operation*
   Both the Government and the iwi are obliged to accord each other reasonable co-operation on major issues of common concern.

5. *The Principle of Redress*
   The Government is responsible for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur.

A criticism of these principles is that:

> *" (they) were decided on unilaterally without consulting Maori as the other Treaty partner, and rather than serve as legal interpretations of the Treaty, indicate instead the degree to which Ministers and the Government are prepared to act"* (ibid. p.5).

They have never been ratified by the present government and are useful as an indicator of an historical position only.

Waitangi Tribunal
A further set of principles has been proposed by the Waitangi Tribunal, whose members are drawn from both Maori and Pakeha worlds. These principles include:

1. The principle of rangatiratanga or tribal authority,
2. The principle of active protection,
3. The principle of consistent delegation,
4. The principle of partnership based on good faith (ibid. pp.10-11).

Maori principles
By comparison, the kinds of Maori principles that are being consistently expressed around the country include the following themes:

1. The principle of iwi sovereignty,
2. The principle of tino rangatiratanga over iwi resources,
3. The principle of explicit consent,
4. The principle of active involvement.

These principles are significant in terms of conflict resolution as they imply:

- the right of each iwi to speak for itself,
- the right of each iwi to determine its own preferences without recourse to anyone else,
- the right of each iwi to be diverse,
- the notion that each iwi has an equivalent status to the Crown and that issues in respect of resource management need to be dealt with at the level of iwi to Crown,
- the right of [each] iwi to exercise full authority over its taonga,
- the notion that natural resources (for example seabed, waterways, harbours, fish, confiscated lands, minerals, airways and so on) which have not been explicitly transferred to non-iwi agencies, still rightfully belong to the iwi,
- the right of each iwi to be involved (at the very least) in resource management issues that affect their interests in a manner which acknowledges that the iwi's authority flows from the Treaty and/or its sovereignty as an iwi, rather than from the much lesser status of 'interest group' (Blackford and Matunga, 1991, pp 8-9).

The Treaty speaks

In all of this however, the prevailing attitude amongst Maori people is as stated by the National Maori Congress, New Zealand Maori Council and New Zealand Maori Women's Welfare League (1991, p.11) in their submission on the Resource Management Bill:

> *"The concern is that it should be the Treaty itself which speaks and not the principles developed by the Courts, or others from the Treaty".*

They see the development of Treaty principles as

> *"...an opportunity for the Crown to reinterpret the Treaty to suit its own purposes"* (Bay of Plenty Regional Council, 1991, p.15).

In any consideration of Treaty principles it must be emphasised that the Maori people do not favour interpretations formulated by the "other" Treaty partner. For this reason we have not attempted to provide guidelines with regard to implementing the principles of the Treaty as expressed in section 8 of the Resource Management Act.

Sections 6, 7 and 8 of the Act collectively create a strong legislative obligation on local authorities to both interact with iwi and to take cognisance of the interests and values of iwi in the management of natural resources. These sections are significant in that they indicate

> *"that Maori are not just another interest group, that their status is* ***more*** *than that of other parties i.e. they are a partner in terms of Te Tiriti and that their interests in terms of natural resources are those of te tino rangatiratanga (of which kaitiakitanga is a part).*
>
> *This is important because it will be the probable basis from which Maori approach a dispute resolution process (i.e. as the Treaty partner) and other parties will need to be aware of that clear implication of the Act and their own response to it"* (Lowe, Helen, Canterbury Regional Council, 1992, pers. comm.).

3 Legislative opportunities for mediation

The Resource Management Act provides more opportunities for mediation than previous town and country planning legislation. Although not explicitly provided for, mediation can be used during the formulation of regional and district plans. Explicit legislative opportunities for mediation are provided on a more localised basis in relation to the resource consent application and appeal process (sections 99 and 268), and in the processes for changing, cancelling, or reviewing consent conditions, designations, heritage orders, and water conservation orders.

3.1 Regional policy statements and regional and district plans

Part V of the Resource Management Act sets out the requirements on local authorities with regard to the preparation and change of regional policy statements, regional plans, regional coastal plans, and district plans.

Local authorities are permitted to include rules in their plans which prohibit, regulate, or allow activities. In making rules the local authority must:

> *"have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect" (Resource Management Act, 1991, section 68(3) and section 76(3).*

Rules may accordingly specify activities that are permitted, controlled, discretionary, non-complying, prohibited, and restricted in the coastal area. A rule may require that a resource consent be obtained for activities that are not expressly referred to in the plan.

In addition to the requirements under Part II of the Act to deal with Maori interests in natural and physical resource management, local authorities must take into account sections 61, 62, 65 and 74 (which also deal with tangata whenua/iwi interests) (see Table 3.1). Tangata whenua must be consulted in accordance with the First Schedule of the Act when regional policy and plans and district plans are being prepared or changed.

Sections 61(2)(a)(ii) 66(2)(c)(ii)	**Matters to be considered by regional council** ... relevant planning document recognised by an iwi authority affected by the regional policy statement;
Sections 61(2)(a)(iii) 66(2)(c)(iii)	**Matters to be considered by regional council** ... regulations relating to the conservation or management of taiapure or fisheries;
Section 62(1)(b)	**Contents of regional policy statements** .... matters of resource management significance to iwi authorities;
Section 65(3)(e)	**Preparation and change of other regional plans** ... a regional council shall consider the desirability of preparing a regional plan ... any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources;
Section 66(2)(c)(ii) and (iii)	**Matters to be considered by regional council** ... relevant planning document recognised by an iwi authority affected by the regional plan, and .... regulations relating to the conservation or management of taiapure or fisheries ....;
Section 74(2)(b)(ii) and (iii)	**Matters to be considered by territorial authority** ... relevant planning document recognised by an iwi authority affected by the district plan; and .... regulations relating to the conservation or management of taiapure or fisheries .... .
(See Appendix III for other sections of the Resource Management Act which relate specifically to Maori)	

Table 3.1 Iwi matters to be considered in the preparation of policy statements and plans.

3.2 Resource consent applications

Applications must be made for resource consents under section 88 of the Act to carry out activities that are not permitted in a regional or district plan. These consents include land use consents, subdivision consents, coastal permits, water permits, and discharge permits.

Table 3.2 shows the steps which are generally gone through in applying for a resource consent. Interested readers should consult the Resource Management Act for fuller details.

Section 88(4)(b)	An assessment of actual or potential effects on the environment is to be carried out in accordance with the Fourth Schedule of the Act*
Section 89	Application to territorial authorities for resource consents where land is in the coastal marine area
Section 92	Further information may be required
Section 93	Notification of applications
Section 94	Applications not requiring notification
Section 95	Time limit for notifications
Section 96	Making of submissions
Section 97	Time limit for submissions
Section 99	Pre-hearing meetings
Section 100	Obligation to hold a hearing
* An assessment of effects should include "an identification of those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted". The requirements under the principles of the Act regarding Maori concerns mean that Maori are potentially interested in or affected by **any** proposal that is submitted.	

Table 3.2 Some steps in the resource consent application process.

Section 88 requires that an assessment of effects on the environment be carried out by the applicant. Persons interested in or affected by the proposal must be identified (Fourth Schedule (1)(h)).

The Fourth Schedule (2)(a) and (d) requires that any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects, as well as any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, cultural, or other special value for present or future generations, be considered.

After the assessment the Section 93 notification requirement serves to ensure that persons likely to be interested in or affected by the proposal are aware of the application. Notifications of applications are served on:

- every person (other than the applicant) who is known by the authority to be an owner or occupier of any land to which the application relates;
- such persons who are (in the opinion of the consent authority) likely to be directly affected by an application, including adjacent owners and occupiers of land, where appropriate;
- iwi and other authorities as the consent authority considers appropriate.

As well, notifications of applications must be publicly notified and displayed.

Section 96 specifies that "(a)ny person may make a submission to a consent authority about an application for a resource consent that is notified in accordance with section 93".

Section 99 (Pre-hearing meetings) provides an opportunity for dispute resolution processes such as mediation and facilitation to be used during the resource consent application process to reduce or avoid the need for a local authority hearing (section 100):

3.3 Changing, cancelling, or reviewing consent conditions, designations, heritage orders, water conservation orders

Pre hearing meetings can also be organised:

- during the process of changing or cancelling consent conditions (section 127) where sections 88-121, with necessary modifications, apply;
- when consent authorities wish to review consent conditions (section 128) where sections 93 and 96 to 102, with necessary modifications, apply;
- for designation requirements (sections 168-169) where sections 92, 93 and 95 to 103, with necessary modifications, apply;
- for heritage order requirements (sections 189-190) where sections 92, 93, and 95 to 103) with necessary modifications, apply;
- for water conservation order applications under section 201 where sections 99-101, with all necessary modifications, apply (see section 206(3)).

3.4 Appealing a consent authority's decision

If issues are not resolved through a pre-hearing meeting then an application may proceed to a local authority hearing under section 100. Any decision reached may be appealed to the Planning Tribunal (Section 120). Any person making a submission under section 96 (as well as the applicant or consent holder) has the right to appeal the consent authority's decision.

Section 268 provides a second opportunity for mediation, conciliation or other processes to be used before and at any time during a Planning Tribunal hearing. With the consent of the parties the Tribunal can ask one of its members or anyone else to conduct mediation, conciliation or other processes to help resolve a matter before it.

3.5 Conflict resolution approaches

The Resource Management Act does not attempt to define or interpret facilitation, mediation, or conciliation referred to in sections 99 and 268. Negotiation often forms the basis of these other approaches.

Negotiation is a process in which two or more parties discuss or assess whether some settlement or resolution of issues of concern to them is possible. It differs from the other approaches in that it does not require third party intervention.

Facilitation is the simplest form of third-party intervention in a dispute. An intermediary can play a vital role in enabling negotiations to begin and helping them to continue. The facilitator focuses almost solely on managing the process rather than volunteering his or her own ideas. He or she is concerned with the practical and procedural aspects of meetings as well as with using different techniques to enhance communication between or amongst the parties. A skilled facilitator will also work to create a favourable climate for joint problem solving (Susskind and Cruikshank, 1987, pp.152-162).

Conciliation is not referred to in major literature on environmental dispute resolution and appears to be used mainly in the industrial relations field. In that arena the major role of a conciliator is "to convene conciliation councils for the hearing of disputes of interest and to take such steps as he (sic) deems advisable with intent to procure fair and amicable voluntary settlements of such disputes" (Woods, 1963, cited in Howells and Cathro, 1986, p.14). A conciliator acts as a neutral third party and assists the disputants by guiding, exploring, interpreting, advising and cajoling to get the parties to settle their own disputes and to reach their own agreements.

Environmental mediation as it has developed and been practised in North America has been written about extensively. It is a voluntary, collaborative, non-adversarial, joint problem-solving approach to decision making that advocates the sharing of information. It is based on dialogue and communication. Mediation is generally adopted where two or more potentially conflicting parties meet with an independent third party when they are unable to resolve issues of concern by negotiating on their own.

In mediation, the parties may negotiate their own process, negotiating approach, how information will be shared, the selection of the mediator, and their own final agreement. The mediator encourages the parties to focus on underlying concerns rather than on a particular outcome. Parties bargain with each other and attempt to make trade-offs which do not compromise their own fundamental interests or values. The major difference between mediation and the other approaches outlined here is that the mediator's involvement is much more substantial.

The mediator may caucus with the parties separately if they are agreeable. He or she may also be privy to information given in confidence by the parties. By acting as a repository for such information, the mediator is in a unique position to suggest options that any one party would be unable to do from a limited amount of information. A skilled mediator will ensure that he or she has a good knowledge of the substantive issues that concern each party. He or she will then be well placed to understand what each party may be willing to trade and what is probably non-negotiable.

4 Potential mediation parties

In Chapter 3 some of the stages in the resource management process where mediation can be used were identified. The guidelines proposed below are relevant to cross-cultural mediation in any of those instances but the discussion focuses on the resource consent application process as a practical example.

4.1 Who should be involved?

Identification of those who should be consulted in the resource consent application process and who may subsequently be involved in mediation (sections 99 or 268) is assisted in broad terms by sections 88 and 93 of the Resource Management Act (see Chapter 3).

Those who own or occupy the actual land or land adjacent to the area that the application relates to are likely to be notified of the application. The ownership of land in a 'Western' sense rests on the notion of individuals owning land. The land law of New Zealand is based on "the concepts of possession and title and absentee ownership" (O'Keefe, 1985, p.22). The owner/s in this sense may be Maori or Pakeha.

Sections 6, 7, and 8 of the Act recognise Maori notions of 'ownership' that are diametrically opposed to that described above (see Chapter 2). These sections alert resource consent applicants to the areas in which cultural effects on iwi in the neighbourhood or the wider community, and/or effect/s on natural and physical resources that have spiritual or cultural values, might occur.

The nature of the issue/proposal determines who or which Maori structural unit (iwi, hapu, whanau) should be involved. By definition, any issue/proposal which will have an impact on the natural and physical resources within any tribal territory will be of interest/concern to that tribe, and they should therefore be involved.

4.2 How to find those who should be involved

Details about the owners or occupiers of land according to New Zealand land laws are generally available from local authorities or Valuation New Zealand.

An applicant should be encouraged to approach local community groups and leaders to begin identifying where socio-economic effects may occur and whether, and by whom, any aesthetic, recreational, scientific, historical, spiritual or cultural or other special values may be held. Residency is often sufficient as a criterion for involvement.

Where those cultural and spiritual values relate to Maori, it is presumed that local authorities will have already established consultation processes with tangata whenua for regional policy and regional and district plan preparation - although there are likely to be wide variations in the way authorities have fulfilled this requirement. Even if this process has been carried out satisfactorily it may still be difficult for resource consent applicants to identify tangata whenua who are likely to be affected by a specific proposal.

It has been suggested that:

> *"... perhaps the important first contact is with those who have mana whenua over the resources or in relation to the matter at issue"* (McDonald, 1991, p.8).

Mana whenua is a pivotal determinant of Maori land rights, and denotes customary rights to oversee and regulate land and water resources within the tribal territory. It is generally expressed by organisational groups such as hapu (tribal subdivisions) and whanau (family units), and is bestowed by whakapapa (genealogical) linkages to ancestors associated with the resource or area. It can be exercised regardless of whether legal title to the resource or area is held; that is, it cannot be extinguished as it rests upon authority deriving from an ancestor or ancestors who remain the same, regardless of current "ownership" of the resource or area.

Those who hold mana whenua status may be identified by using the channels of communication established through previous contact with iwi during the regional/district policy and plan processes. In the absence of established links an initial approach might be made to runanga or trust boards, Government departments dealing with Maori affairs, pan-tribal organisations such as the Maori Women's Welfare League, and Maori social and sporting bodies. These types of organisations are non-traditional structures, however, and should not be the only groups approached just because they may be most accessible.

The following suggestions may assist those who are required to consult with iwi in the resource consent application process:

- All parts of Aotearoa/New Zealand have tangata whenua.

- Consult at all levels. Do not assume that the first person approached is the right person or the only person likely to be affected by the proposed activity.

- If necessary, attend marae fora to listen to tangata whenua debate on who holds the right to speak on particular issues. Iwi will decide for themselves who has the mandate to speak on their behalf.

- The lack of a high profile in a non-Maori context does not exclude or invalidate an identified tribal representative.

- Representation may include one or more tribal individuals or groups e.g. if a river flows through more than one tribal district. All those who claim to have a mana whenua right to be involved should be involved.

- In the event of contention between two or more tribal groups within an area, non-iwi should not attempt to interfere but should leave those groups to settle matters for themselves.

- A diversity of units exists within tribes as well as between them. A tribe might be represented by:

  · members of a rural community, where traditions and cultural practices have been carried on for generations, as well as by

  · urban or city dwellers, who may or may not have gained an interest in or an awareness of tribal matters from non-traditional sources.

- People claiming to hold Maori values need not live near the site or even within the district. Do not assume, therefore, that because there are no obvious Maori settlements or individual Maori living in the area that there are no relevant concerns.

- Even if there are Maori living in the area it does not necessarily mean that they are tangata whenua. There is a difference between Maori residents of an area who claim mana whenua status and those who claim this status elsewhere. The latter are taura here (literally, 'the tie that binds'). They are Maori who are not tangata whenua for a particular area. They claim tangata whenua status elsewhere, in an area where they are not living (Parliamentary Commissioner for the Environment, 1992, p.32).

- Be inclusive rather than exclusive. If in doubt, contact everyone.

(McCreary and Gamman, 1990; McDonald, 1991; Matunga, 1993, pers.comm.; Parliamentary Commissioner for the Environment, 1992; Rickard, 1989, p.24).

4.3 Who might be excluded?

The requirement to make a written submission under section 96 might inhibit some, particularly Maori, from participating. This is because many Maori prefer to make oral rather than written submissions/presentations. If they have not complied with this requirement it could be assumed that they would be excluded from further involvement in pre-hearing meetings or consent authority hearings and appeals, unlike those who have made a written submission (sections 99(1), 101(2)(b) and 120(b)).

Even if iwi have not lodged a written submission, however, there is nothing to prevent local authorities, of their own volition, seeking to include iwi in any processes to ensure that 'better' resource decisions result. Local authorities have a statutory obligation to comply with the consultation provisions in the Resource Management Act, irrespective of whether iwi have lodged submissions or not.

5 Choosing mediation as an option

5.1 Influencing factors

In Chapter 3 the legislative provisions which enable parties likely to be affected by the granting of a resource consent to use mediation to clarify issues or resolve disputes were outlined. Each party needs to weigh up whether mediation is likely to offer a better means of achieving its desired goals and aspirations than a consent authority hearing under section 100 or a Planning Tribunal hearing under section 272.

> *"The motivation to find alternatives to traditional [i.e. Court] dispute resolution processes for controversial environmental issues has come from the discontent of the parties with certain aspects of traditional adversarial processes. When the decisions in a dispute are seen as choices between winners and losers or when decisions are based on narrow procedural grounds, the interests of one, and sometimes all, of the parties to the dispute often remain unsatisfied"* (Bingham, 1986, p.2).

The decision to choose mediation, at least initially, over a hearing depends on a number of factors. These include the applicable laws and regulations, the experiences and resources of the parties, their calculations of how well their interests might be served in mediation (Huser, 1983, p.3) and an evaluation of the possible consequences of going to the negotiating table (Bacow and Wheeler, 1984, p.42).

5.1.1 Right to stand

Laws regarding standing appear unlikely to influence the choice. Those making a submission in accordance with section 96 have the right to participate both in mediation (section 99) and in consent authority hearings (section 101). During the appeal process "... (a)ny person having any interest in the proceedings greater than the public generally, and any party to the proceedings, may appear ..." section 274).

5.1.2 Experience of other options

The party's past experience with other options (such as Planning Tribunal hearings) may influence the decision whether or not to participate in mediation. An inquiry into public needs for legal services (Advisory Committee on Legal Services, 1986) reported that:

"The public's right to participate in planning, resource exploitation and local body decisions appears to be seriously undermined and at times nullified, by ignorance, cost and the intimidating nature of proceedings... They felt the situation was institutionally racist, excluding Maori participation by too many judges being ignorant and insensitive to Maori values and concerns; overly formal, intimidating and inappropriately adversarial proceedings; and discriminates against objector groups who are unable to marshall expert evidence or assistance because they lack resources and money. Under present procedures people still felt they needed professional expertise to be effective. Maori people can rarely afford lawyers, and there are few who are sensitive to te tikanga Maori" (ibid. pp. 86-87).

5.1.3 Knowledge or experience of mediation

Another type of influence might be whether parties have sufficient knowledge or experience of mediation and how it might be preferable to a hearing, for example. Those who have little or no experience or knowledge might choose to contact a mediator to learn about the mediation option.

Table 5.1 outlines some of the potential benefits and limitations of environmental mediation.

Potential benefits	**Limitations**
- concerns which may be legally irrelevant in a court (Planning Tribunal) are likely to be relevant in mediation, - the informal approach is less intimidating than the formality of the Tribunal system, - other groups who made submissions are able to understand what only the applicant may have learned through prior consultation, - the opportunity is available to create unique solutions instead of leaving outcomes to the consent authority or the Planning Tribunal,	- not useful if issues concern non-negotiable values, - cannot change imbalances in power that exist in the wider society, - there may be inequalities in resources, - there may be imbalances in negotiating expertise, - there may be inequalities in scientific and technical expertise, - it is not useful for setting critical legal precedents, - some parties may be unwilling to declare their own position, - some parties may not be prepared to negotiate in good faith, - agreements reached may not be acceptable to consent authorities or to the Planning Tribunal.

Table 5.1 Potential benefits and limitations of environmental mediation.

5.1.4 Financial costs and benefits

The issue of the resources needed to participate will be a critical one. The applicant may have to bear some or all of the costs (section 36(1)(b)) of mediation under section 99 or a consent authority hearing under section 100, unless the consent authority agrees to remit some or all of those costs (section 36(5)). Tables 5.2 and 5.3 provide examples of the kinds of costs and benefits that might be incurred in each case.

Costs[1]	Benefits
Council members' daily fee[2] (possible three members)	Not having incurred the costs of mediation or facilitation (Table 5.3)
Council members' travel allowance[2]	
Staff time - administration - writing up decision[3]	
Other?	

1. Generally borne by the applicant (section 36) although not always (section 36(5)).
2. Standard scale of charges.
3. Time taken depends on complexity of decision.

Table 5.2 Costs and benefits of a hearing under section 100. Source: Blackford, 1992(b).

Costs[1]	Benefits
Intermediary[2, 3] - dispute assessment - mediation Training negotiators[4] Bringing information Legal advice Independent expert/s Staff time - administration - writing up decision[3] Other?	Possible outcomes (i) Dispute resolved = saving of hearing costs (Table 5.2) (ii) Dispute not resolved = saving of some hearing costs through clarification of issues Timing of outcome[5]

1. Generally borne by applicant (section 36) although not always (section 36(5)).
2. Number of intermediaries involved.
3. Duration.
4. Optional.
5. An outcome that is achieved quickly is of higher value than one achieved over a longer duration.

Table 5.3 Costs and benefits of mediation under section 99 (pre-hearing meeting). Source: Blackford, 1992(b).

It is difficult to calculate the likely costs a party might incur in participating in mediation under section 268 or in a Planning Tribunal appeal hearing. Tables 5.4 and 5.5 provide examples of the kinds of costs that could be anticipated.

Costs[1]	Benefits
Filing fee of appeal[2] Hearing - providing evidence - witness fees - legal advice - producing documents (s.278) - party representatives appearing - Other?	Not having incurred costs of mediation or conciliation (Tables 5.5) Saving of some hearing costs through clarification of issues Timing of outcome[3]

1. Borne by all parties.
2. Borne by the party appealing the decision.
3. Likely to have major impact on indicator ratio in cases of prolonged activity.

Table 5.4 Costs and benefits of a hearing under section 272. Source: Blackford, 1992(b).

Costs	Benefits
Intermediary[1, 2] - dispute assessment - mediation Training negotiators[3] Administration Legal advice Independent expert Bringing information Other?	Potential outcomes (i) Dispute resolved = saving of hearing costs (Table 5.4) (ii) Dispute not resolves = saving of some hearing costs through clarification of issues Timing of outcome[4]

1. Number of intermediaries involved.
2. Who pays is not known if it is not a Planning Tribunal member.
3. Optional.
4. An outcome that is achieved quickly is of higher value than one achieved over a longer duration.

Table 5.5 Costs and benefits of mediation under section 268. Source: Blackford, 1992(b).

5.1.5 Achieving aims/goals

Preference for mediation or a hearing will also depend on how well the party perceives its interests will be served by the approach chosen. Some may hope to see a legal precedent established and will therefore opt for a Planning Tribunal hearing in an appeal situation. Community and environmental groups who oppose projects may see the Tribunal option as a critical line of defence (Cormick, 1987, p.308). Others might expect to have more influence on an environmental assessment through involvement in mediation at the pre-hearing stage.

5.1.6 Non-negotiable disputes

Another influence on mediation is the situation where one or more of the parties adopts a fixed position from which it does not intend to move. This leaves no 'negotiating space' within which the parties can make trade-offs in order to reach an agreement. Such a situation should be identified by the mediator when carrying out a conflict assessment. The other parties may need to decide whether to proceed without that party/ies and risk the fact that the excluded party/ies may attempt to undermine any agreement that is later reached. The party/ies who are unwilling to compromise may opt for the consent authority or Planning Tribunal hearing in the hope that their goals or aims prevail. Alternatively the party/ies may simply choose

to use mediation to clarify issues in order to save time and money at any subsequent local authority or Planning Tribunal hearing.

5.1.7 Preferred approaches to conflict resolution

Individual parties may have preferred approaches to conflict resolution that would influence their decision. For example, the face-to-face dialogue that is an integral part of the mediation process mirrors the traditional Maori decision-making process (Gray, Maurice, Centre for Maori Studies and Research, Lincoln University, 1990, pers. comm.). In Maori society traditional methods of conflict resolution allowed everyone who wished to express a point of view to do so, after which a consensus decision was reached. This decision was generally voiced by tribal leaders who carried out the role of mediator. Consensus decision making allows people to participate in their own destiny (ibid.). It also achieves a finely tuned balance between individual opinions and the collective action that follows the decision-making process.

How the consultation within the resource consent application process (section 88) has proceeded may influence whether or not tangata whenua choose to participate in mediation. If the consultation has been carried out in an appropriate way, iwi may be predisposed to considering mediation.

6 The mediation process

If the parties agree to mediation they can expect to go through three phases. (See Appendix IV for details). These phases are:

- the preparation or pre-negotiation phase,
- the negotiation phase, where issues are discussed, options are identified and evaluated and agreement is possibly reached,
- the post-negotiation phase which addresses implementation and monitoring of the agreement (Susskind and Cruikshank, 1987, pp.142-143).

In addition, Blackford and Matunga (1991, p.43) developed the concept of a pre-pre-negotiation phase where each party might prepare before interacting with other parties.

6.1 Pre-pre-negotiation preparation

6.1.1 All parties

All parties prepare in various ways, before interfacing with others. This may involve:

- Deciding on the fundamental concerns and values they wish to address through the mediation process. This could be done by:
  - listing and prioritising their reasons for pursuing mediation,
  - discussing the least they are prepared to accept or concede as a result of the mediation process.
- Relaying to the mediator their interests and concerns with regard to the issues(s) to be negotiated, and the scope of those interests and concerns.

6.1.2 Iwi

In addition iwi preparation might include:

- A statement of requirements for participation such as recognition of rangatiratanga and mana whenua status with regard to the resource issue(s) at stake,

- A request for iwi training in negotiation skills, and/or understanding the Resource Management Act,

- Checking with the consent authority to ensure that the information it holds relevant to tangata whenua is assembled in advance, to avoid 'consultation overload' (Parliamentary Commissioner for the Environment, 1992, p.25). This may save costs later.

6.1.3 Those who interface with iwi

Preparation for those who interface with iwi might include taking some or all of the following steps to educate themselves further on Maori issues:

- reading tribal histories of the area so that an idea is gained of where local iwi are "coming from",

- attending preliminary hui/marae meetings in order to gauge iwi reaction to coming negotiations,

- undertaking training in cross-cultural awareness, obligations to tangata whenua under the Resource Management Act, and/or negotiation skills.

A recent study on local consultation with tangata whenua (ibid. p.29) reports that:

> *"[t]he strongest message received from tangata whenua was the need for decision-makers to understand and respect Maori values. Most decision-makers are non-Maori and have had little opportunity to learn of these values or why local tribes have special status as tangata whenua by virtue of the Treaty of Waitangi".*

Appendix V indicates some areas where cross-cultural training might facilitate communication during the negotiation phase.

6.2 Pre-negotiation phase

In this phase it is recommended that all the parties involved negotiate how the mediation process will operate. Parties may then be more likely to find the middle ground when it comes to negotiating the actual issues in dispute. A principle on which negotiations might be based is expressed in the different sets of Treaty of Waitangi principles (see Chapter 2) as partnership based on good faith.

The main areas where agreement should be sought include:

- the mediator
- representation
- protocols
  - venue
  - time frames
  - negotiating approach
- agenda setting
- joint fact-finding
  - funding.

(Much of the background information to each of these stages has been drawn from Susskind and Cruikshank, 1987, pp.94-117.)

6.2.1 The mediator/s

> *"The helper, however he or she entered the process, will probably have to spend a substantial amount of time meeting with potential stakeholders to convince them that a negotiated approach can work.... This means that the intermediary needs to be well versed in the actual practice, and not just the theory, of dispute resolution"* (Susskind and Cruikshank, 1987, p.140).

Those who interface with iwi are likely to expect that a mediator should:

- be seen to be impartial and independent in terms of his/her relationship with any of the parties,
- be neutral by submerging his/her sense of what is 'best' and focus on what is important to the parties,
- be trustworthy in keeping information given in confidence by any of the parties (ibid., p.163).

By comparison iwi may require that a mediator should:

- be familiar with Maori protocol and tribal structures and tikanga,
- be capable of facilitating iwi power-sharing,
- be bicultural or be assisted by kaumatua if they are not Maori,
- preferably be Maori if only one mediator is chosen.

A balance between Maori mediators and those who are not Maori could be sought. A satisfactory compromise might be to include a team of mediators who meet the requirements of and are acceptable to all parties. Expect a diversity of response from iwi in every situation.

6.2.2 Representation

This step involves the identification and selection of appropriate people who are empowered to represent each of the parties involved. A large number of parties may wish to be involved at the outset. The groups involved may agree to reduce that number in some way and to find appropriate ways of ensuring that all interests are represented.

Representation for those who interface with iwi is likely to differ from that of iwi.

- Those of Western cultures are more likely to participate as individual political units (Vasil, 1990, p.136).

- Representatives may be elected representatives of community or environmental groups or spokespeople selected on the basis of their knowledge of particular aspects of issues and/or experience in negotiating.

- Accountability to the group may be achieved through a sole representative.

- Individuals may wish to represent themselves.

- Spokespeople may be selected through special election where no formal organisation exists (Susskind and Cruikshank, 1987, p.105-107).

With iwi representation the following may occur:

- Iwi may put up one spokesperson or a mediation team.

- Representatives may be accompanied by a whanau group which not only provides moral support and encouragement but ensures that principles of obligation and accountability back to the parent body are observed. iwi representatives will expect to report back regularly to parent group(s), especially if mediation takes place in a setting where the parent group has restricted access.

- It is the prerogative of iwi to appoint their own representative(s), and the appropriateness of such choices should be decided by the group(s) concerned and not by outside interests.

- In general, Maori do not speak for others unless they have been appointed to do so by the group concerned.

- Where Maori groups are not able to agree on representation the opportunity should be given for all to speak.

6.2.3 Protocols

The protocols or ground rules about how the parties will work together should be addressed before negotiations begin. These may include where the negotiations will take place, time-frames within the Resource Management Act, and a negotiating approach.

6.2.3.1 Venue

Common venues for meetings for those who interface with iwi include council chambers and town, community, and school halls.

- Such venues may be seen to be neutral in that they belong to the community and as such are open to all those who wish to attend.

- Council chambers are generally more formal than community venues.

- Meetings tend to follow standard procedures which may or may not be familiar to those attending.

- Opening formalities may be brief or dispensed with for lack of time. Participants may be left to initiate contact with each other if the chairperson does not include introductions in the meeting procedure.

- Food is not necessarily offered, unless those attending choose to include a 'business lunch' as part of the agenda.

- English is the language most likely to be spoken.

To many Maori the marae is the obvious place in which to meet. This can be either a recognisable marae complex or a non-traditional building that has been designated as such.

- Marae protocol promotes open debate, so that consensus may be obtained more readily in a marae setting than in one where access by the wider group is limited or restricted.

- A marae setting gives confidence to those who may have important contributions to make but are overawed by the formality of unfamiliar surroundings.

- Marae have space to accommodate large gatherings and support groups. Accountability may be facilitated by holding negotiations where all have access to the proceedings.

- Maori protocol stresses the importance of welcoming visitors and making them known to each other. Maori rituals of greeting are directed at breaking down barriers.

- Marae protocol may vary as tribal groups are not entirely bound by custom.

- Maori may be spoken during the proceedings. This could be intimidating to those who do not understand the language (Levine, 1987, p.429).

No venue can be considered to be totally neutral. Parties may choose to rotate the venue so that mediation proceedings can take place in a marae, and in a town hall or council chambers. Marae protocol can be expressed in a non-Maori setting by providing for greetings and the sharing of food. Iwi are likely to expect an opening observance such as karakia at all meetings.

A mediator may propose a venue that could be accepted by all parties as being neutral for at least the first meeting (Susskind and Cruikshank, 1987, p.141).

6.2.3.2 Time-frames

A period of no more than 25 working days is allowed between the time when submissions close and when a hearing may be held (section 101). This requirement reflects attitudes to time that are intended to meet the needs of a commercial world where 'time means money' and where business transactions are carried out within very precise time-frames.

However, iwi may have trouble meeting legislative time limits because:

- The sequence of events is often more important than an arbitrarily imposed deadline.

- Iwi prefer to act upon issues rather than to react to them.

- The Maori decision-making process of consensus is based on discussing an issue at a series of meetings until agreement is reached. Although this process may appear time-consuming, its value lies in the social alignment produced by allowing those who wish to "have their say".

- Events may "begin when auspicious and end when complete" (Hay, 1990, p.356).

The parties may agree to invoke the powers in section 37 to waive and extend time limits at the outset, to allow Maori processes to proceed in a proper manner. A compromise might consist of setting a specific deadline to go part way towards meeting the needs of the consent applicant.

6.2.3.3 Negotiating approach

Before the substantive negotiations begin, the parties need to agree on an appropriate approach.

Craig (1989, p.26) accuses mediation and negotiation approaches of being heavily 'eurocentric' and argues that 'interest-based' and 'objective' bargaining advocated by Fisher and Ury (1981), for example, is more compatible with non-indigenous approaches to policy conflict. Craig believes there is a risk of the essential emotionality and subjectivity involved in indigenous claims being undermined. Indigenous claims "have maximum validity if they are embedded in their culture and lifestyle".

The approach developed by the Waitangi Tribunal based on marae-centred venues and procedures for its hearings is one means by which this issue could be addressed. Mediation meetings could be hosted by the group that has filed a submission. The other parties "come(s) to their home, as their guest, to respectfully hear them" (Levine, 1987, p.421-429). Providing hospitality also assists in building relationships between the parties.

The marae may be a particularly appropriate venue when iwi are presenting their case to the other parties.

6.3 Agenda setting

This is a critical juncture in the process when the parties will need to decide on what they will discuss in the negotiation phase. The initial set of substantive issues should be neither too broad to discourage continuing nor too narrow to exclude important issues for one or more of the parties. Further,

> *"... if the agenda is too limited, there may not be enough items to 'trade' - that is, those issues that the participants value differently may not emerge, and a creative, integrative settlement may not be possible"* (Susskind and Cruikshank, 1987, p.110).

The concerns that are included as potential agenda items will presumably be those voiced in submissions made under section 96. Collectively the parties should break down what can be a complex task into manageable pieces by grouping the potential agenda items under broader headings and putting the headings into a priority list.

The agenda should be sufficiently flexible to be renegotiated if necessary to accommodate additions or refinements.

6.4 Joint fact finding

This is the stage where parties need to establish collectively what they know and do not know about the issues, contexts, and experiences relating to the resource consent application. The mediator may also encourage the parties to describe, even in very general terms, the kinds of information that would persuade or assist each of them to change to their assumptions or opinions. Potential tasks include:

- identifying the type of information required,
- identifying information gaps,
- looking for ways of obtaining the necessary information.

The parties should aim to gather the relevant data/information jointly in an effort to avoid what is referred to as 'advocacy science' where expert is pitted against expert. The point of joint fact finding is to develop a shared knowledge base even though that knowledge will be valued differently by each of the parties.

It should be noted that:

- Iwi will determine what information is needed with regard to their relationship with the natural world.
- Iwi may wish to invoke section 42 of the Act, that is the protection of sensitive information in order to avoid serious offence to tikanga Maori or to avoid disclosure of the location of waahi tapu.

Agreement may need to be reached on how access to and sharing of information, and confidentiality will be dealt with. Potential issues include:

- the use of information that is commercially confidential or sensitive.
- how to obtain material that might be relevant that is not readily available.
- the control and use of knowledge revealed by kaumatua.

The consent applicant will have already carried out an environmental assessment as required under the Act (section 88). Particular scientific and/or technical information may be unavailable, however, because the scientist has not published it in an academic journal or presented his/her

findings at a conference of peers. Other information may be available at a relatively high price or unavailable because of commercial confidentiality.

From an iwi perspective, the sharing of information may be looked on with doubt or suspicion. Reasons for iwi reluctance to share what they know about the natural environment might include:

1. A fear of commercial exploitation or misuse of Maori-derived information, such as using it for individual or commercial gain. Those who interface with iwi should:

   - Seek kaumatua approval or consent before disseminating information in ways which distance it from direct iwi supervision and control.

   - Observe fully any restrictions which may be imposed on the subsequent use of information and resource materials.

   - Acknowledge all original sources and repositories of information. The question of indigenous intellectual property rights is at present being explored by iwi.

2. A reluctance to be "put down" because of previous experience(s) of dismissive treatment of indigenous information. Those who interface with iwi should:

   - be patient and courteous in the face of aggressive, defensive, or withdrawn attitudes, so that worthwhile channels of communication may be opened up.

3. A reluctance to admit to lack of information. Those who interface with iwi should:

   - refrain from asking if there is any suggestion that the information being sought is not available. If it is known, it will either be proffered or a valid reason given for withholding it.

6.4.1 Funding

A major issue to be faced by the parties is how information that is gained will be paid for. Legal aid is available but strict criteria apply.

The consent authority might be willing to waive charges for supplying readily available information to iwi to demonstrate goodwill and a genuine

effort to ensure that the principles of the Act relating to Maori interests are applied.

Iwi will require access to sources of funding for research and consultation/hui needed to present their concerns adequately and effectively.

Community and environmental groups are unlikely to have sufficient resources available. The creation of a pool of funds (Susskind and Cruikshank, 1987, p.145; McCreary and Gamman, 1990, p.6) to which all parties contribute, according to their ability, helps to address the imbalance between those groups who can and who cannot afford expert advice. This option also circumvents credibility problems potentially faced by groups contesting a project if they are seen to accept money directly from the proponent (Susskind and Cruikshank, 1987, p.205). The pool can then be used for the benefit of all the parties to seek the information that all agree is needed. Local iwi could be contracted to undertake part of the necessary research (Shields and Webber, 1992, p.47).

7 The negotiation phase and cross-cultural communication

7.1 Negotiation context

Concerns and responses to resource management and environmental issues are expressed within different cultural paradigms. This highlights the value of cross-cultural training and the negotiation of protocols as recommended in the previous chapter.

Some of the substantive issues which can arise for tangata whenua relate to the matters described in the principles of the Resource Management Act; that is, their relationship with their ancestral lands, water, sites, waahi tapu, and other taonga, kaitiakitanga and the principles of the Treaty, and how these might be affected by activities proposed in any one of the categories of resource consent (land use and subdivision consents, water, discharge, and coastal permits). Applications which impinge upon tangata whenua rights in terms of sections 6, 7, and 8 of the Act, will almost certainly be challenged.

Examples of applications over which tangata whenua may express concerns include:

(a) an application to discharge wastes over fishing reefs, which raises concerns over the protection of traditional food gathering resources from physical and metaphysical pollution.

(b) an application to establish oxidation ponds near a waahi tapu, which raises concerns over the loss of the sacred character of that place through close association with discharges or body wastes.

(c) an application for the subdivision of land containing a waahi tapu or mahinga kai (food gathering source). This could raise concern over access to a waahi tapu being cut off or becoming dependent upon the goodwill of new owners.

(d) an application to discharge water from one source into another, which raises concerns for the violation of the natural order by bringing the mana and mauri (life force) of two different bodies of water into conflict.

7.2 At the interface

When all the available information is ready, face-to-face deliberations can occur. The mediation/negotiation phase may involve the following steps (see Appendix IV):

- present information
- explore the options - concerns may be amended in the light of new information
- narrow down the range of options
- choose one or a group of options
- renegotiate options after consultation with constituents
- final agreement/partial agreement/non-agreement.

The phenomenon of 'talking past each other' is a universal one and not restricted solely to cross cultural situations. However, when people of different cultures attempt to communicate there is a greater chance that they will "misread each others' words and actions, respond inappropriately, and judge each other ... in the light of their own standards" (Metge and Kinloch, 1984, p.9). The following discussion will focus on particular factors that may contribute to the tendency to 'talk past each other'; that is, sources of information likely to be brought to the table, means of communication, and a misreading of verbal and non-verbal language. Suggestions follow as to how these factors could be addressed in mediation. The discussion relates to the steps above in different ways and at different stages.

7.3 The information brought to the negotiating table

In Western cultures science is an accepted way of gaining information about the environment (see Appendix V). Some paradigms use science to tell us that the relationship of humans to nature is characterised by domination and exploitation; others use science to tell us that humans are in a reciprocal relationship with nature (Pepper, 1990, p.8).

The cultural filter of science "... informs, affects and determines our conception of nature at three levels" (ibid. p.37). At the first level, science provides the major philosophy that tells us about our relationship to the environment and in so doing displaces alternative sources of natural knowledge. At the second level, scientific theories embody concepts of the relationships humans have with nature, such as theories of evolution. The third level is the methodology by which humans describe their relationships

with nature: humans are the subject or observer of nature, and nature is the object under observation. The scientific method is the means by which we gain so-called 'objective' knowledge about the environment. In Western cultures science is typically regarded as the repository of truth, with the objectivity of scientific knowledge being highly valued.

The scientific method that has been developed over time is characterised by:

- The need to adopt a testable method (verifiable or falsifiable), with the findings of experiments being rigidly documented in detail.

- The reporting in a traditional style with the focus on convincing other scientists of particular findings in order to advance scientific knowledge and to add another 'piece' to a growing picture.

- An approach which involves establishing a hypothesis about how life supposedly works.

- A reductionist approach which focuses on one small part of a much greater whole, (although this approach is being modified to look at the nature of the relationship between parts of the whole).

- The tackling of cause and effect.

- Statistical measures of certainty and probability which relate to risk and uncertainty.

- A reliance on a controlled/artificial setting.

Non-scientists, who may include people such as politicians, managers, farmers, commercial, environmental, and community groups, may bring to the table types of information that are dissimilar to those of scientists. Financial data and personal experiences are two such examples.

Iwi observations of the natural environment are essentially holistic and reflect a cyclical awareness. These observations rest with kaumatua/tribal elders who pass on to those whom they feel are worthy, the accumulated wisdom that has come down to them in their turn. This wisdom and the means of obtaining it has generally never been written down. It is passed on in oral form from one generation to the next.

"[T]angata whenua .... carry with them an ancestral obligation to ensure that the treasures they have inherited are managed wisely and passed on in good health to the next generation. They have also inherited sustainable resource management methods, developed after an early trial and error

period and proven over hundreds of years to be effective in the New Zealand environment." (Parliamentary Commissioner for the Environment, 1992, p.21).

"Iwi have been in Aotearoa for centuries. We have lived close to the land and cared for the natural resources of the country. We have a knowledge of the environment and a sense of sustainable management without equal here. For the benefit of the whole community, Maori and non-Maori, it makes sense to use the experience, knowledge and wisdom of Maori in environmental planning" (McDonald, 1991, p.8)

In general, iwi have had to observe sustainable harvesting methods from dire necessity; that is, they refined their methods of conserving resources as a matter of survival for themselves and their descendants.

7.4 Implications of information from different cultural paradigms

Differences in types of information may, at times, be less significant between than within cultures. Some non-scientists and iwi groups may bring information based on subjective understanding compared to the objective data brought by scientists. Such information is likely to be influenced by differences in the goals and aims of the parties.

> *"The concern of land-based communities is one of survival and continued existence; the concern of environmentalists is the preservation of the environment and the need to preserve pristine areas before harmful activities destroy what is left of our natural areas"* (Taylor *et al*, 1988, p.91).

A resource applicant, on the other hand may, for example, wish to secure a site for sewage treatment and disposal to meet community health standards, or to establish a private enterprise to meet commercial objectives.

Iwi goals and aims will revolve around the protection of cultural and spiritual values. The information they bring may describe a spiritual relationship of tangata whenua with their environment that cannot be explained or understood in terms of Western scientific thought.

The environmental scientists' dilemma is seen by one overseas commentator as a rejection of traditional knowledge as being "anecdotal, non-quantitative, and amethodical" because it does not correspond well with Western intellectual ideals of 'truth' (Nakashima, 1990, p.23). That is, they may find it difficult to overcome a deeply ingrained and ethnocentric prejudice against other ways of 'knowing'.

When it comes to Maori cultural and spiritual values there is the potential for one party to propose technical solutions to address a cultural perception that may not be understood by those who interface with them (Blackford and Matunga, 1991, p.32). In one case before the Waitangi Tribunal, for example, the Tribunal found that, "discharge into it (the Kaituna River), 'no matter how scientifically pure', was contrary to Maori cultural and spiritual values ....." (Levine, 1987, p.435). Metaphysical pollution can occur with the mixing of water from one living source or catchment area with another, such as the one-time proposed discharge by Glenbrook Steel of Waikato-drawn water into the Manukau Harbour. This would have violated the natural order by bringing the mana and mauri of two different bodies of water - one fresh, one salt - into conflict.

In light of these differences mediation participants are encouraged to:

- think consciously about their own world view and not to assume that it is the only one or indeed the right one, but simply one of a number,
- accept that some issues will be non-negotiable because of deeply-held beliefs,
- respect difference and show a willingness to accept things that can not be understood,
- look for shared values,
- be prepared to have their ways of thinking questioned and challenged.

7.5 Means of communicating information

Once the information has been obtained it will be presented and fully discussed during the process. Differing cultural preferences for communication may become apparent.

It can be difficult for those who generate knowledge in accordance with the scientific method to reduce what may be complex concepts to a level sufficiently simple for non-experts to understand. Findings that are intended to further scientific knowledge may be used in a political decision-making process that requires a degree of simplification and/or clarification that is not easy to achieve. A further dimension is that of risk and uncertainty, for example, where non-expert perception often differs from that of experts.

Those who interface with Iwi may present information that has been communicated through articles in scientific journals and books, conference papers, etc. from both New Zealand and overseas sources. The information presented may be highly technical at times and likely to be in written form. Participants are likely to be asked to read background papers in preparation for the mediation. Alternative means of communication could be the use of visual displays such as slides, charts, and models.

Iwi have a recognised preference for communicating information orally rather than in writing. Written records are regarded as supplementing rather than replacing oral information. Iwi have faith in oral information because of the strict learning procedures which accompanied the transmission of such information from one generation to the next.

If the parties agree to use the negotiating approach proposed in Chapter 6.2.3.3, opportunities should be available for elders to expand on concerns by recounting iwi case histories and other oral records. The knowledge that iwi need to support their case is contained in the heads of those elders called upon to give expert evidence.

> *"What is most striking about expert testimony in the (Waitangi) Tribunal setting from an anthropological perspective is that the various expert witnesses, who in a courtroom situation provide the kind of scientific and analytical data that can overwhelm the apparently less 'rational' or 'objective' Maori perspective, are subordinated on the marae to witnesses expert in Maori culture"* (Levine, 1987, p.431).

Visual and practical demonstrations "on the ground" can also give those who interface with iwi a better understanding of the iwi position. In the Whanganui River minimum flow appeals the Whanganui River Trust Board arranged for Tribunal members to understand aspects of their evidence by arranging for travel on the river, visits to marae on the river and the viewing of archival films of life at those marae in the 1920s (*Electricity Corporation of N.Z. Ltd and Whanganui River Maori Trust Board* v *Manawatu-Wanganui Regional Council*, 1990, p.12). Personal testimonies of fishermen were also heard (Ritchie, James, University of Waikato, 1991, pers. comm.).

The visual, practical approach is one which both iwi and those who interface with them can relate to, and could be resorted to frequently.

When protocols are developed in the pre-negotiation phase the parties may agree to appoint a technical translator (Blackford and Matunga, 1991, p.55) to facilitate understanding by non-experts.

7.6 Misreading the signs in cross-cultural communication

These different approaches have the capacity to inform; alternatively they may lessen the effectiveness of the communication exchange.

Due to the ease with which one's own culture is taken for granted, it is possible to misinterpret the meanings of words and actions unintentionally, and to go on perpetuating such errors until or unless they are pointed out. For instance, body language may be regarded as more generally typical of Maori while verbalisation can be more typical of the mainstream culture in Aotearoa/New Zealand. Thus both sides may run the risk of missing vital clues. Those who interface with Maori people may miss non-verbal signs, while Maori may not listen to everything that is being said. Examples of spoken and unspoken language include:

Eye contact: Those from Western cultures generally prefer others to look directly at them as they feel that this indicates interest and undivided attention, while to Maori, eye-to-eye contact may foreshadow opposition and a conflict of personalities.

Frowning: To Pakeha, this is often an expression of disapproval; to Maori, one of puzzlement or a request for help.

Gratitude: Pakeha generally expect gratitude to be expressed in words; Maori may express it (either then or later) with reciprocal gestures and/or acts of kindness.

Physical contact: To Maori, physical contact in the form of a hug or the touch of a warm hand expresses friendship, support, sympathy, thanks, and other indicators of loving concern. Pakeha appear cold and withdrawn through not acting this way in public, or to all comers.

Shrugging: Pakeha often use this gesture to mean "I don't care", Maori to mean "I don't know".

Silence: To Pakeha, silent attention denotes a mark of respect during speech making. Maori audiences, however, often talk quietly amongst themselves, and may even move about in a limited way while someone else is speaking. Silence to those who interface with iwi may represent an embarrassing breakdown in proceedings. To Maori, silence may simply represent a pause before moving on to the next stage of the proceedings.

Standing and sitting: Pakeha stand as a mark of respect, whereas Maori feel that to elevate one's head above that of a kaumatua or other superior is to assert one's mana inappropriately. This is especially true on the marae, where a person who is obliged to leave during a speech does so in a crouching manner, so as to lessen the impact of his/her personality on that of the speaker. In non-marae settings, Maori may attribute attitudes of arrogance or condescension to Pakeha who "stand over them" while addressing them.

(Much of the background information in this section has been drawn from Metge and Kinloch, 1984, pp. 8-32.)

7.7 Achieving effective cross-cultural communication

Cross-cultural communication can be more effectively achieved by:

- tolerating ambiguity, being non-judgemental, personalising one's observations, and having empathy for others (Ruben in Harris and Moran, 1979, pp.52-53),
- being open, honest, patient, and respectful,
- allowing one's ways of thinking to be questioned and challenged,
- developing an ability to listen without judgement or over-reaction to what is stated (and what is left unstated) (Taylor *et al*, 1988, p.90),
- being informal, and adopting colloquial language,
- reducing scientific information to one or two main themes,
- conveying examples that are familiar to the other culture so that people can relate to them,
- ensuring that technical matters, legislation, and council policy relevant to iwi concerns are explained in non-technical terms,
- being aware of cultural assumptions and language differences.

7.8 Identifying options and reaching agreement

A range of options may need to be developed by the parties in order to settle on one or several options which all parties find satisfactory. Just as the issues or concerns may be culturally determined, so may the range of options that will be considered. If the mediator has been entrusted with the concerns of all the parties he/she will be in a good position to know what can and cannot be compromised (Susskind and Cruikshank, 1987, p.163). The options chosen must be consistent with the purpose and the principles of the Resource Management Act.

One study on problems of cross-cultural communication observed that Pakeha expect

> *"to debate and make some if not all the necessary decisions at the one meeting, to express disagreement by making and applauding formal statements to that effect, and to settle decisions by taking a vote"* (Metge and Kinloch, 1984, p.26).

It is unlikely that any of the necessary decisions or agreements will be reached in one mediation meeting. Some participants may wish to express their view by voting (Blackford and Matunga, 1991, p.31), but as one of the fundamental characteristics of mediation is the reaching of agreement by consensus, voting may not be considered appropriate.

According to the same study, Maori require several meetings; an exploratory one where they can

> *"make up their minds about the wisdom, sincerity and motives (of the person explaining the issue) which they consider as relevant as abstract arguments"* (ibid.).

plus subsequent meetings to examine alternatives and decide between them. The time between meetings is used for sounding out their views with others. In the study, Maori are seen to prefer consensus decision making to voting.

> *"When a clear majority view has emerged from the debate, it is summed up and articulated by a speaker of high status, so that everyone knows exactly what the final position is. At this point, ideally the remaining dissenters formally 'give up' their opposition and throw their weight behind the majority so that the decision is unanimous. If they feel too strongly to do this, they carry silent dissent one stage further and either walk out or fail to turn up when action is taken"* (ibid.).

Parties need to ensure that the solutions they opt for do not simply transfer a problem to another site and subsequently engender new conflict. In an application to discharge wastes onto a fishing reef, for example, choosing an alternative site would not be a satisfactory solution. Metaphysical pollution would still arise, destroying the value of an off-shore fishing ground.

The final outcome of mediation may be:

- a clarification of some or all of the issues,
- making a recommendation to a higher authority,
- reaching agreement on a particular course of action,
- improved communication between or amongst the parties,
- no resolution of the conflict.

If the parties reach agreement over one or several options they will want the agreement to be formally implemented as agreed. There are no general guidelines as to how implementation may occur. Each case is unique and will depend on the parties and the circumstances.

- Those who interface with iwi should note that iwi will want to be involved in implementation and monitoring of implementation.

Whakamutunga

Conflicts may arise because of different philosophies with regard to the natural world, different views on people's relationship with the natural environment and how it should or should not, be used. In order to try and understand the substantive issues in cross-cultural disputes, parties need to have at least a basic understanding of cultural differences.

> *"... [T]he Government has present and potential problems in overcoming the misconceptions, prejudices, stereotypes and fears of many New Zealanders. It is probable that one of their largest fears is that of the unknown, for they have little or no idea of what it is to be Maori. Thus the importance of education is further underlined" (Macpherson et al., undated).*

When people of different cultures show a sensitivity and respect for their diverse perspectives, they open up channels for communication and create the 'space' that is critical for negotiations to begin.

(A brief indication ONLY is given here of the following terms, some of which are explained elsewhere in this publication. Greater clarification should be sought from local iwi).

hapu: A tribal sub-section; also means 'to be pregnant.'

hui: An assembly, group, gathering; to gather, assemble.

iwi: Nation, people, tribe; also refers to bones.

kaitiaki: In its simplest form refers to the guardian of a resource or taonga. (Consult with local iwi for the full implications of this term).

Karakia: Generally now refers to a prayer.

kaumatua: An elder, a repository of tribal wisdom.

kawanatanga: Governance e.g. that exercised by the governors of New South Wales on behalf of the Queen (see Waitangi Tribunal, 1992, p.26).

mahinga kai: Traditional resource areas; places where food is gathered or produced.

mana tupuna: Spiritual and customary authority derived from the ancestors through one's line of descent.

mana whenua: Spiritual and customary authority derived from the land and its resources.

Maori: An indigenous inhabitant of Aotearoa/ New Zealand; originally, the term meant 'normal, usual' (in contrast to those things that were introduced into the country).

marae: The complex of buildings and the open place in front of them where iwi gather on formal occasions; also refers to the open space ('marae atea') itself.

mauri: Life force.

pakeha: A term applied to anyone who is not Maori.

Reo, te: The Maori language (a taonga in the fullest sense of the word).

runanga: A tribal assembly or council.

taiapure: 'An area of coastal water set aside under the Maori Fisheries Act 1989 as a local fishery because of its special significance to an iwi or hapu, either as a source of food or for spiritual or cultural reasons' (Auckland Regional Water Board, 1990, p.192).

tangata whenua: Literally, 'people of the land', in contrast to strangers or visitors; those with mana whenua in a given area.

taiao: Natural environment.

taonga: The prized possessions and values of the Maori. These include material and spiritual elements such as ancestral lore, cultural heritage, the language ('te Reo'), the land and its resources, whakapapa and people. As with so much else of tikanga Maori ('the Maori way of doing things'), clarification must be sought from iwi themselves.

taura here: Literally, 'the rope that binds'; those who affiliate back to a tribal area other than the one they are living in.

tikanga: The state of being right, proper, correct; the right way of doing things; custom, meaning.

tino rangatiratanga: Absolute authority; the right to tribal self management as determined by cultural and spiritual preferences.

waahi tapu: Literally, 'sacred places', such as burial grounds and other sites of historical and cultural significance (see Appendix II). The exact location of some waahi tapu may never be disclosed by those having mana whenua in a given area.

whakamutunga: Conclusion, a bringing to an end.

whakapapa: Genealogy, line of descent.

whanau: A family unit; also means 'to be born.'

References

Advisory Committee on Legal Services, 1986. *Te whainga i te tika: in search of justice.* Department of Justice, Wellington.

Bacow, L.D. and Wheeler, M. 1984. *Environmental dispute resolution.* Plenum Press, New York.

Bay of Plenty Regional Council, 1991. *Principles of the Treaty of Waitangi and their relationship to the functions and duties of the Regional Council.* Bay of Plenty Regional Council, Tauranga.

Bingham, G. 1986. *Resolving environmental disputes: a decade of experience.* The Conservation Foundation, Washington, D.C.

Blackford, C. 1992a. A review of environmental mediation - theory and practice. *Information paper No. 34.* Centre for Resource Management, Lincoln University, Canterbury.

Blackford, C. 1992b. Guidelines for monitoring additional dispute resolution processes within the Resource Management Act. *Information paper No. 39.* Centre for Resource Management, Lincoln University, Canterbury.

Blackford, C. and Matunga, H. 1991. Maori participation in environmental mediation. *Information paper No. 30*, Centre for Resource Management, Lincoln University, Canterbury.

Boulding, K. 1966. The economics of the coming spaceship earth. Ed. H.E. Jarrett. *Environmental quality in a growing economy.* John Hopkins Press, Baltimore.

Colby, M. 1990. Environmental management in development: the evolution of paradigms. *World Bank discussion papers No. 80.* The World Bank, Washington, D.C.

Consedine, R. 1992. Waitangi Workshops. Promotional leaflet. Robert Consedine, Christchurch.

Cormick, G. 1987. Environmental mediation. *In:* Lake, R.W. (Ed.). *Resolving locational conflict.* Center for Urban Policy Research, Rutgers University, New Brunswick.

Craig, D. 1989. Resolution of conflict in Australian water management: Aboriginal interests and perspectives. Resolution of conflict in Australian water management workshop conducted by the Centre for Resource and Environmental Studies (CRES), Australian National University, 6-8 December 1989, Canberra.

Crengle, D. 1993. *Taking into account the principles of the Treaty of Waitangi.* Ministry for the Environment, Wellington.

Department of Justice, 1989. *Principles for Crown action on the Treaty.* Department of Justice, Wellington.

Electricity Corporation of N.Z. Ltd and Whanganui River Maori Trust Board v The Manawatu-Wanganui Regional Council (1990), New Zealand Planning Tribunal, Wellington.

Fisher, R. and Ury, W. 1981. *Getting to yes: negotiating agreement without giving in.* Hutchison Business, London.

Harris, P. and Moran, R. 1979. *Managing cultural differences.* Gulf Publishing Co., Houston.

Hay, R. 1990. Cross-cultural perspectives from Banks Peninsula. Unpublished Ph.D. thesis. University of Canterbury, Christchurch.

Howells, J.M. and Cathro, S.H. 1986. *Mediation in New Zealand: attitudes of the mediated.* The Dunmore Press Ltd, Palmerston North.

Huser, V. 1983. Mediation and arbitration of planning and municipal disputes. Proceedings of a seminar on an alternative for dispute resolution, 19-20 April, 1982. Mediation as a decision-making process. *The Planning Forum Series, No. 1*, May 1983. Faculty of Extension, University of Alberta, Edmonton.

Levine, H. 1987. The cultural politics of Maori fishing: an anthropological perspective on the first three significant Waitangi Tribunal hearings. *Polynesian Society Journal 96(4):*421-443.

McCreary, S. and Gamman, J. 1990. Finding solutions to disputes: it can be done well. *Planning quarterly 100*:3-9.

McDonald, P. 1991. Consultation with iwi. *Planning quarterly 103*:8-10.

Macpherson, J., Davies, A., Davis, A., O'Reilly, R., and Sweney, E. Undated. Particular concerns for the Maori with regard to the *Resource Management Act 1991*. Unpublished report. Centre for Maori Studies and Research, Lincoln University.

Metge, J. and Kinloch, P. 1984. *Talking past each other: problems of cross-cultural communication,* Victoria University Press, Wellington.

Ministry for the Environment, 1990. *Environmental research agenda 1990.* Ministry for the Environment, Wellington.

Moore, C.W. 1986. *The mediation process: practical strategies for resolving conflict.* Jossey-Bass Publishers, San Francisco.

Nakashima, D.J. 1990. Application of native knowledge in EIA: Inuit, Eiders and Hudson Bay Oil. Prepared for the Canadian Environmental Assessment Research Council. Canadian Environmental Assessment Research Council, Hull (Quebec).

National Maori Congress, New Zealand Maori Council and New Zealand Maori Women's Welfare League, 1991. A collective submission on supplementary order Paper No. 22. Wellington.

New Zealand Statutes. *Treaty of Waitangi Act 1975.*

New Zealand Statutes. *Resource Management Act 1991.*

O'Keefe, J. 1985. A Maori cultural land traditional dimension in land planning law. *Planning quarterly 77:*19-22.

Parliamentary Commissioner for the Environment, 1988. *Environmental management and the principles of the Treaty of Waitangi: report on Crown response to the recommendations of the Waitangi Tribunal 1983-1988.* Parliamentary Commissioner for the Environment, Wellington.

Parliamentary Commissioner for the Environment, 1992. *Proposed guidelines for local authority consultation with tangata whenua.* Parliamentary Commissioner for the Environment, Wellington.

Pepper, D. 1990. *The roots of modern environmentalism.* Routledge, New York.

Rickard, B. 1989. Maori values in the current approvals process. *Planning quarterly 94*:23-25.

Royal Forest and Bird Protection Society v. *W.A. Habgood (H.C.[M655/86]) 1986.*

Shields, E. and Webber, C. 1992. The cost of consultation. *Terra Nova*. p.47.

Susskind, L. and Cruikshank, J. 1987. *Breaking the impasse.* Basic Books Inc., New York.

Taylor, L. *et. al,* 1988. The importance of cross-cultural communication between environmentalists and land-based people. *The workbook. 13(3)*:90-100.

Vasil, R. 1990. *What do the Maori want.* Random Century, Auckland.

Bibliography

Auckland Regional Water Board. 1990. *Manukau Harbour water quality management plan*. Auckland Regional Water Board, Auckland.

Barlow, C. 1991. *Tikanga whakaaro*, Oxford University Press, Auckland.

Gray, M. and Saunders, L. Undated. A policy framework for traditional Maori society. Unpublished report for the Ministry for the Environment. Centre for Maori Studies and Research, Lincoln University, Canterbury.

Hohepa, P. 1978. Maori and Pakeha: the one-people myth. (Ed.) King, M. *Tihe mauriora*, Methuen, New Zealand.

Fuglesang, A. 1982. *About understanding: ideas and observations on cross-cultural communication*. Decade Media Books, New York.

Gamman, J. Undated. The effects of culture on environmental negotiations: advice for the mediator. Department of Urban Studies and Planning, Massachusetts Institute of Technology, Cambridge.

Gamman, J. and McCreary, S. 1991. Environmental conflict resolution: mediation and negotiation with an emphasis on resolution of cross-cultural conflicts. Course reader and workbook for the professional training workshop in the Maori community. University of California, Santa Cruz and University of Berkeley, California.

Kawharu, I.H. 1989. (Ed). *Waitangi: Maori and pakeha perspectives of the Treaty of Waitangi*. Oxford University Press.

Kelsey, E.J. 1989. The principles of the Treaty of Waitangi. Unpublished report for the Ministry for the Environment. Centre for Resource Management, University of Canterbury and Lincoln College, Christchurch.

King, M. (Ed.) 1981. *Te ao hurihuri: the world moves on: aspects of Maoritanga*. Longman Paul, Auckland.

Manatu Maori. 1991. *Wahi tapu: protection of Maori sacred sites*. Manatu Maori, Wellington.

Marsden, M. 1981. God, man and universe: a Maori view. (Ed.) King, M. *Te ao hurihuri: the world moves on: aspects of Maoritanga*. Longman Paul, Auckland.

Marsden, M. 1988. The natural world and natural resources: Maori value systems and perspectives. Resource Management Law Reform. Part A. *Working paper No. 29.* Ministry for the Environment, Wellington.

Metge, J. 1984. *In and out of touch: whakamaa in cross-cultural context.* Victoria University Press, Wellington.

Metge, J. and Kinloch, P. 1984. *Talking past each other: problems of cross-cultural communication,* Victoria University Press, Wellington.

Minhinnick, N. Undated. *Establishing kaitiaki.* The Print Centre, Auckland.

Ministry for the Environment. 1991. *Resource management: consultation with tangata whenua.* Ministry for the Environment, Wellington.

Ministry for the Environment. 1992. *The Resource Management Act: kia matiratira: a guide for Maori.* Ministry for the Environment, Wellington.

Mulgan, R. 1989. *Maori, pakeha and democracy.* Oxford University Press, Auckland.

New Zealand Planning Council. 1988. *Pakeha perspectives on the Treaty.* New Zealand Planning Council, Wellington.

Novitz, D. and Willmott, B. 1989. *Culture and identity in New Zealand.* GP Books, Wellington.

Orange, C. 1988. *The Treaty of Waitangi.* Allen & Unwin/Port Nicholson Press, Wellington.

Orange, C. 1989. *The story of a Treaty.* Allen & Unwin/Port Nicholson Press, Wellington.

Renwick, W. 1991. The undermining of a national myth: the Treaty of Waitangi 1970-1990. *Stout Centre Review 1*(4).

Renwick, W. 1991. *Sovereignty and indigenous rights: the Treaty of Waitangi in international contexts.* Victoria University Press, Wellington.

Ritchie, J. 1992. *Becoming bicultural.* Huia Publishers, Wellington and Daphne Brassell Associates Press, Wellington.

Waitangi Tribunal Report. 1992. *The Te Roroa report 1992,* Wai 38, 5WTR. Brooker and Friend, Wellington.

Appendix 1 The Treaty of Waitangi

The English text

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Translation of Maori text[4]

Victoria, the
Queen of England,
in her concern to
protect the chiefs and
subtribes of New Zealand and
in her desire to preserve their
chieftainship and their lands to
them and to maintain peace and
good order considers it just
Her Majesty's Subjects who have

to appoint an administrator
one who will negotiate with
the people of New Zealand to the
end that their chiefs will agree
to the Queen's Government being
established over all parts of this
land and (adjoining) islands and also
because there are many of her subjects
already living on this land and others
yet to come.
So the Queen desires to establish
a government so that no evil will
come to Maori and European living
in a state of lawlessness.
So the Queen
has appointed me,
William Hobson a captain in
the Royal Navy to be Governor for
all parts of New Zealand (both those)
shortly to be received by the Queen
and (those) to be received hereafter
and presents to the chiefs of the
Confederation chiefs of the subtribes
of New Zealand and other chiefs these
laws set out here.

[4] Taken from Kawharu (1989:321).

Article the First

The Chiefs of the Confederation of Confederation
and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

The First

The Chiefs of the Tribes of New Zealand

and all the chiefs
who have not joined
that Confederation give
absolutely to the Queen
of England forever
the complete
government

over their
land.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

The Second

The Queen of England
agrees to protect the
chiefs, the subtribes
and all the people of
New Zealand in the
unqualified exercise
of their chieftainship
over their lands,
villages
and all
their treasures.
But on the other hand
the Chiefs of the
Confederation and all
the Chiefs will sell
land to the Queen
at a price
agreed to
by the person
owning it and by
the person buying it
(the latter being) appointed
by the Queen as her purchase agent.

Article the Third

In consideration thereof

Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(Signed) W Hobson
Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified --
Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

The Third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

(Signed) W. Hobson
Consul and Lieutenant-Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi

having seen the shape of these words

which we accept and agree to

record our names and our marks thus.
Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Appendix II Waahi tapu

A number of waahi tapu were identified by H.P. Matunga in his Statement of Evidence to the Waitangi Tribunal (referred to in Waitangi Tribunal 1992, p.339). In that evidence, the following types of sites were identified:

- Places associated with death i.e. burial grounds and caves, trees, mudflats
- Places where people died, and where bodies rested
- Battle fields
- Burial places of placenta
- Tribal tuahu (altars)
- Sources of water for healing and death rites
- Ara purahoura - sacred pathways for messengers
- Mauri stones and trees
- Carved poupou representing ancestors
- Pa sites and papakainga
- Canoe landing sites
- Sacred mountains, rivers, lakes and springs
- Sites such as rivers and mountains named in whakatauki
- Mahinga kai i.e. birding, cultivation, fishing, forest and mineral resource sites
- Toka taunga ika (rocks which identify fishing grounds)
- Waahi taonga mahi a ringa i.e. resource sites for Maori art resource material i.e. kiekie, flax, pounamu etc
- Confiscated land
- Ara i.e. pathways connecting tribal areas and resource sites
- Landscape features which determine iwi and hapu boundaries
- Mythological sites
- Historic sites
- Waahi whakamahara i.e. sites recognised as memorials to events.

It should be noted that this list is not necessarily complete.

Appendix III Sections of the Resource Management Act relating specifically to Maori

Part I	
Section 2(1)	definitions including kaitiakitanga, iwi authority, maataitai, mana whenua, tangata whenua, taonga raranga, tauranga waka, tikanga Maori.
Part II	
Section 6(e)	the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga is a matter of national importance.
Section 7(a)	requirement to have particular regard to kaitiakitanga.
Section 8	requirement to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
Part III	
Section 11(1)(c)	references to Maori Affairs Act 1953 re subdivisions and
11(2)	State-Owned Enterprises Act 1986 s.27D.
Section 14(3)(c)	reference to geothermal water and tikanga Maori.
Part IV	
Section 33(1) and (2)	provision for transfer of functions, powers or duties to another "public authority" which includes to an iwi authority.
Section 39(2)(b)	recognition of tikanga Maori and receiving evidence in Maori.
Section 42(1)(a)	protection of information to avoid serious offence to tikanga Maori and disclosure of the location of waahi tapu.
Part V	
Section 45(2)(h)	reference back to section 8 (Treaty of Waitangi) in the context of statements of government policy.
Section 58(b)	refers to protection of waahi tapu, tauranga waka, mahinga maataitai and taonga raranga in New Zealand coastal policy statements.
Section 61(2)(a)(ii)	in preparing regional policy statements, regional councils to have regard to relevant planning documents which are recognised by an iwi authority and to any regulations relating to taiapure fisheries.
Section 62(1)(b)	regional policy statements to state matters of resource management significance to iwi authorities.
Section 65(3)(e)	regional council to consider preparing a regional plan where tangata whenua have concerns about their cultural heritage in relation to natural and physical resources.

Section 66(2)(c)(ii) and (iii)	in preparing regional plans, a regional council shall have regard to any planning document recognised by an iwi authority, and to any regulations in relation to taiapure fisheries.
Section 74(2)(b)(ii) and (iii)	in preparing district plans, territorial authorities shall have regard to any planning document recognised by an iwi authority, and any regulation in relation to taiapure.
Part VI	
Section 93(1)(f)	notification of iwi authorities re resource consent applications.
Section 104(4)(g)	when considering a resource consent application, consent authorities are to have regard to Part II.
Section 140(2)(h)	section 8 (Treaty) reference for Minister's power of call-in.
Part VIII	
Section 171(1)(e)	when considering a requirement for a designation, a territorial authority shall have regard to Part II.
Section 187(a)(ii)(b)	Minister of Maori Affairs or local authority may act as heritage protection authority. Either may act on own motion or own iwi authority recommendation.
Section 189(1)(a)	notice may be given to a territorial authority for the protection of an area of significance to tangata whenua.
Part IX	
Section 199(2)(c)	refers to protection of water body considered to be significant in accordance with tikanga Maori.
Section 204(1)(c)(iv)	iwi authorities to be notified of application to special tribunal, for water conservation order.
Part X	
Section 249(2)	reference to Maori Land Court Judge eligible as alternate Planning Judge.
Section 250(1)	Minister of Maori Affairs to be consulted on the appointment of Planning Judge or alternate Planning Judge.
Section 253(e)	Planning Tribunal members to have a mix of knowledge and experience which includes Treaty of Waitangi and kaupapa Maori.
Section 254(1)	Minister of Maori Affairs may support appointment of Planning Commissioner.
Section 269(3)	Planning Tribunal to recognise tikanga Maori where appropriate.
Section 276(3)	the Planning Tribunal may receive evidence in Maori and the Maori Language Act 1987 applies to the Tribunal's proceedings.

Part XIII (This Part not yet in force) Section 345(3)	Hazards Control Commission to give effect to the special relationship between the Crown and te iwi Maori as embodied in the Treaty.
Part XIV Section 353	notices and consent re Maori land.
First Schedule **Part 1** Clause 3(1)(d)	requires local authorities preparing policy statements or plans to consult the tangata whenua through iwi authorities and tribal runanga.
Clause 5(4)(f)	local authority to provide copy of proposed policy statement or plan to tangata whenua through iwi authorities and tribal runanga.
Second Schedule **Part I** Clause 4(c)	matters to be provided for in regional policy statements and plans include provision re waahi tapu.
Part II Clause (2)(c)	matters to be provided for in district plans provisions re waahi tapu.

Source: Parliamentary Commissioner for the Environment, 1992, pp.35-37.

Appendix IV The mediation process

Phase One	Prenegotiation

Getting started

- The potential parties (those who believe their interests are likely to be affected by any decisions made) need to be identified and contacted by the mediator.
- Agreement has to be reached amongst the parties to consider mediation to help resolve the conflict.
- The consensus-building process has to be described to parties.
- An initial meeting has to be held and other logistics discussed.

Representation

- Parties need to choose a spokesperson(s) or team leaders.
- Initial parties help to identify missing groups.
- Strategies have to be devised for representing different interests if there is a large number of parties involved.

Drafting protocols, agenda setting and selecting a mediation strategy

- Draft protocols have to be prepared based on past experience and the concerns of the parties. Ground rules and behaviourial guidelines need to be established.
- An agenda-setting process has to be determined.
- The mediator helps parties to assess approaches to conflict management and resolution and then to choose an approach.

Defining issues

- Issues of concern to the parties have to be identified. Agreement needs to be gained on the scope of the issues. This provides a framework for the fact finding/information gathering stage.

Joint fact finding

- Fact finding/information gathering protocols have to be established.
- Technical consultants, advisors etc. need to be identified. Relevant data about the substance of a conflict are collected and analyzed. Accuracy of data must be verified.
- Funds have to be raised and administered in a resource pool.
- The mediator can act as a repository for confidential or propriety information.

Phase Two	Negotiation

Inventing options
- The parties propose a range of potential options, with the mediator contributing options too. A lowering of commitment to fixed positions or a single alternative is encouraged.
- Sub-committees are set up to draft options.

Packaging
- The mediator meets privately with each group to identify and test possible trades, and then suggests a potential agreement package for the group to consider.

Written agreement
- The mediator works with a subcommittee to produce a draft agreement.
- The mediator assists in producing a procedure to create a single text.
- A preliminary draft of a single text is prepared.

Binding the parties
- The mediator holds the bond, and approaches outsiders if necessary on behalf of the group.
- The mediator helps to invent new ways to bind the parties to their commitments.

Ratification
- The parties are helped by the mediator to 'sell' the agreement to their constituents.
- The mediator ensures that all representatives have been in touch with their constituents.

Final bargaining
- Reaching agreement occurs either through a gradual convergence of positions, final leaps to package settlements, development of a consensual formula, or establishment of a procedure to reach a substantive agreement.

Phase Three	Implementation or post-negotiation

Linking informal agreements and formal decision making
- The mediator works with the parties to invent linkages.
- The mediator approaches elected or appointed officials on behalf of the group.
- The mediator identifies the legal constraints on implementation.

Monitoring and evaluation
- The mediator serves as the monitor of implementation and convenes a monitoring group.
- An evaluation procedure is established.

Renegotiation
- The mediator reassembles the participants if subsequent disagreements emerge, and helps to remind the group of its earlier intentions.

(compiled from models by Susskind and Cruikshank (1987) and Moore (1986))

Appendix V Cross-cultural awareness

The following insights into Maori and Western cultures are intended to highlight differences in their relationships with nature. Non-Maori participants may need to look first at their own culture's relationship with nature before attempting to understand that of tangata whenua.

Western relationships with the natural environment

There is no single Western view of the environment but rather a set of paradigms. These paradigms or world views reflect particular relationships between a society and the bio-physical world and that relationship is manifest in the way a society carries out its economic and socio-cultural activities (Colby, 1990, p.3).

Colby provides one taxonomy which distinguishes five paradigms as representing various points on a continuum:

- frontier economics,
- environmental protection,
- resource management,
- eco-development, and
- deep ecology.

Distinct lines cannot be drawn between these views, and there is an increasing amount of free movement between them.

Until the late 1960s frontier economics (Colby, 1990, pp.9-12) was the dominant environmental paradigm in industrialised societies. It regarded nature both as an infinite supply of natural resources to be used for human benefit and as an infinite sink for pollution and ecological degradation arising from the development and consumption of those benefits.[5]

[5] The term 'frontier economics' was developed by Boulding (1966).

Frontier economics is characterised by:

- a belief in technological progress,

- a belief in the ability of humans to substitute in some way for scarce resources,

- the view that nature exists for human benefit, to improve human well-being in a material sense. In this paradigm humans dominate nature.

A growing awareness in the 1960s that natural resources were indeed finite and that the environment did not have the capacity to absorb unrestrained pollution and continuing environmental degradation spawned contemporary challenges to this traditional attitude.

One of these challenges, the environmental protection (Colby, 1990, pp.16-19) paradigm, represents a 'modest variation' to frontier economics. It is mainly concerned with:

- ameliorating the effects of human activities rather than looking for ways to improve development practices and the resilience of ecosystems,

- taking small areas of common property under State control and bringing them into a system of national parks or wilderness areas to achieve preservation or conservation objectives,

- carrying out environmental protection primarily for the benefit of humans.

The resource management (Colby, 1990, pp.19-23) paradigm is aligned with the theme of sustainable development and is characterised by, amongst other things:

- a concern over natural resource exhaustion,

- an awareness of the interdependence of resources,

- a concern for the environment that is based on the recognition that harming the environment is harmful to economic activity, and that humans need to 'manage' nature.

The eco-development (Colby, 1990, pp.23-30) paradigm rests on the restructuring of the relationship between society and nature so that:

- human activities are reorganised to work co-operatively with ecosystem processes and services,
- eco-development does not place nature either above or below humanity, but adheres to an ethic of co-development.

Deep ecology (Colby, 1990, pp.13-15) is at the opposite end of the continuum to frontier economics. It is a developing philosophy which is concerned with:

- the ethical, social and spiritual aspects of the relationship between nature and human economic and socio-cultural activities,
- humans who are seen to be in harmony with nature and often 'under' nature,
- ecosystems which are accorded intrinsic values and biospecies equality,
- a greater use of indigenous management and systems of technology,
- economies that are oriented towards non-growth.

Continuum of environmental paradigms.

Frontier economics	Environmental protection	Resource management	Eco-development	Deep ecology
Humans dominate over nature	Nature provides benefits for humans	Humans need to 'manage' nature	Nature and humans are in co-operation	Humans in harmony with or 'under' nature

Maori relationship with the natural environment

Maori views of the environment reflect the diversity of iwi groupings, which have their own ways of expressing their relationship to the natural world around them. In spite of this diversity, however, a common theme runs through many of these accounts; that is, the story of how Rangi the sky father and Papatuanuku the earth mother were separated by their offspring, so that life might proceed upon the earth.

One of the sons of Rangi and Papa was Tane, the tutelary deity of the forests, who mated with various female beings to bring into existence the different life forms that we know today. These included rocks, trees, birds and insects, and eventually humankind itself. Thus, according to popular Maori belief, all belong to the same universal family, and are connected to each other through whakapapa (genealogy) links back to their common ancestor, Tane.

The concept of the relatedness of all things is reinforced by the use of the word whanau (family) which also means 'to be born', and of hapu (sub-tribe) which also means 'to be pregnant'. Significantly, the word for land (whenua) refers also to the afterbirth, which was returned to Papatuanuku as the nourisher and sustainer of her children - a practice which reinforces the idea that humans are born out of the landscape. Equally significantly, the word for tribe (iwi) refers also to bones, in recognition of the ancestral remains that lie buried in that same landscape.