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# **MARLBOROUGH ENVIRONMENT PLAN**

## **Section 32 Report**

### **Chapter 3: Marlborough's tangata whenua iwi**

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## Overview

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### Background

Section 32 of the Resource Management Act 1991 (RMA) requires that in the process of reviewing its regional policy statement and resource management plans, the Marlborough District Council (the Council) must prepare and publish an evaluation report. The three documents being reviewed are the Marlborough Regional Policy Statement (MRPS), the Marlborough Sounds Resource Management Plan (MSRMP) and the Wairau/Awatere Resource Management Plan (WARMP). Each resource management plan is a combined regional, coastal and district plan.

Section 32<sup>1</sup> of the RMA requires that:

- reviewed regional policy statements and plans must be examined for their appropriateness in achieving the purpose of the RMA;
- the benefits, costs and risks of new policies and rules on the community, the economy and the environment be clearly identified and assessed; and
- the written evaluation must be made available for public inspection.

The Section 32 process is intended to ensure that the objectives, policies and methods the Council decides to include in the new resource management framework have been well-tested against the sustainable management purpose of the RMA. The Section 32 evaluation report for the proposed Marlborough Environment Plan<sup>2</sup> (MEP) has been prepared on a topic basis, centred on the policy chapters of Volume 1 of the MEP. Individual reports have been prepared on the following:

Topic	Volume 1 Chapter of the MEP
Introduction to Section 32 evaluation reports	
Marlborough’s tangata whenua iwi	3
Use of natural and physical resources	4
Allocation of public resources – freshwater allocation	5
Allocation of public resources – coastal allocation	5
Natural character	6
Landscape	7
Indigenous biodiversity	8
Public access and open space	9
Heritage resources	10
Natural hazards	11
Urban environments	12
Use of the coastal environment – subdivision, use and development activities in the coastal environment, recreational activities, fishing, residential activity, shipping activity and Lake Grassmere Salt Works	13
Use of the coastal environment – ports and marinas	13
Use of the coastal environment – coastal structures, reclamation and seabed disturbance	13
Use of the rural environment	14

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

<sup>2</sup> The Marlborough Environment Plan is a combined regional policy statement, regional plan, regional coastal plan and district plan.

## Section 32: Chapter 3 – Marlborough’s tangata whenua iwi

Topic	Volume 1 Chapter of the MEP
Resource quality – water	15
Resource quality – soil	15
Resource quality – air	15
Waste	16
Transportation	17
Energy	18
Climate change	19

Chapters 1 and 2 of the MEP are not included within the Section 32 evaluation as they provide an introduction and background to the proposed document. These chapters do not include provisions that must be evaluated in accordance with Section 32.

The Introduction report covers the scope of the review that the Council has undertaken including consultation and the nature of information and analysis that has occurred. An overview of the Council’s statutory obligations, the relationship of the MEP with other plans and strategies and working with Marlborough’s tangata whenua iwi is described. A set of guiding principles the Council has used in the development of the objectives, policies and methods for the MEP is provided. The Council acknowledges that the principles have no statutory basis and do not in themselves have specific objectives, policies or methods. However, they have been included as the philosophy and values underlying the content of the MEP and consequently help to inform the Section 32 evaluation.

The Section 32 evaluation report on the issues identified by Marlborough’s tangata whenua iwi<sup>3</sup> is set out as follows:

- Chapter description – this provides an overview of the resource management issue(s) identified by Marlborough’s tangata whenua iwi.
- Statutory obligations – the extent to which there are direct links with Section 6, 7 or 8 matters of the RMA and whether the provisions are directed or influenced by national policy statements or national environmental standards.
- Information and analysis – whether specific projects or other information have influenced the inclusion of provisions or other responses to dealing with resource management issues.
- Consultation – an overview of the extent and nature of specific consultation undertaken on the proposed provisions.
- Evaluation – an assessment of the provisions under the identified issues. Where appropriate, reference is made to supporting material that has helped to inform why a particular option has been chosen. In some cases the evaluation is undertaken on an individual provision, while in others groups of policies or methods have been assessed together.

In some parts of this evaluation report there are references to provisions within other chapters of the MEP. This is due to those provisions assisting in implementing the management framework for the subject matter of this report or vice versa. A reader should consider the evaluation for these other provisions where they are referred to in this report.

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<sup>3</sup> Eight iwi have manawhenua in Marlborough: Ngāti Apa, Ngāti Kōata, Ngāti Kuia, Ngāti Rārua, Ngāti Toa, Ngāi Tahu, Rangitāne and Te Ātiawa. Information on an individual iwi history and the relationship of each iwi with the Marlborough environment can be found in iwi management plans and the relevant Deed of Settlement. Collectively, these eight iwi are referred to in the MEP as Marlborough’s tangata whenua iwi.

## Key changes

The key changes in the MEP from the approach in the MRPS, WARMP and MSRMP are:

- There is a clearer expression of the resource management issues of significance to Marlborough’s tangata whenua iwi. Some of these are similar to those in the current MRPS, WARMP and MSRMP but there has been a grouping of different types of issues: spiritual and cultural issues of fundamental importance that relate to iwi connection to and use of natural and physical resources; relationship and process issues; and issues of significance or concern for both iwi and the wider community. Different responses have been developed to deal with these three types of issues.
- There is more direction on providing for a range of activities to occur on Māori land, including papakāinga, marae cultural activities, customary use and other activities. This approach will support economic, social and cultural development for Marlborough’s tangata whenua iwi. While the current MSRMP and WARMP indicated there would be appropriate provision made, and in the case of the MSRMP there was a marae zoning over Waikawa Marae, no specific rules were included.

## Summary of reasons for the proposed provisions

Section 32(1)(b)(iii) requires a summary of the reasons for deciding on the provisions included in the MEP. This summary of reasons for the provisions in relation to the resource management issues of significance to Marlborough’s tangata whenua iwi are set out below. A more detailed evaluation is set out in the remainder of this report and in some instances in other chapters of the MEP.

- As required by Section 62(1)(b)(i) of the RMA, resource management issues of significance to iwi authorities in Marlborough are to be identified and included in a regional policy statement. In response to the issues identified, Chapter 3 of Volume 1 of the MEP, entitled ‘Marlborough’s tangata whenua iwi’ describes spiritual and cultural issues as well as relationship and process issues. Policies are included in the MEP to address cultural and spiritual issues, but some of the relationship and process issues are not able to be addressed through the MEP.
- Policy has been included to identify the principles of the Treaty of Waitangi/Te Tiriti o Waitangi that Marlborough’s tangata whenua iwi consider to be important in sustainably managing Marlborough’s natural and physical resources. The way in which these principles are taken into account will continue to evolve over time.
- A specific policy on ensuring that consultation with Marlborough’s tangata whenua iwi occurs early has been included, as only iwi can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. It is therefore important that sufficient time is allowed for appropriate iwi consultation to take place.
- Guidance for decision makers in determining resource consent and plan change applications has been included to set out those matters likely to affect the relationship of Marlborough’s tangata whenua iwi to their culture and traditions. This guidance will provide focus on the aspects of most concern to iwi.
- The Council has included policy to encourage Marlborough’s tangata whenua iwi to develop and implement iwi management plans, as ultimately this will help the Council to achieve more robust decisions on resource consent and plan change applications in relation to spiritual and cultural issues for iwi.
- Recognising that papakāinga and marae settlements are an essential means for Māori to pursue the traditional relationship with their land is important and specific direction to enable opportunities for significant activities to occur is included.
- The increase in a range of methods of implementation reflects increased knowledge and statutory changes since the first resource management documents for Marlborough were prepared. For example, the inclusion of the statutory acknowledgements method is a direct consequence of the settlement of claims before the Waitangi Tribunal. The inclusion of a method for using cultural indicators to help determine the health of

Marlborough's natural and physical resources acknowledges that such indicators have long been used by Marlborough's tangata whenua iwi to determine the health (mauri) of the natural world. A method for cultural impact assessment and cultural value reports has been included, as these reports are an effective means of providing cultural and technical input, mainly with respect to resource consent applications under the RMA.

## Description of issues

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Section 62(1)(b)(i) of the RMA requires resource management issues of significance to iwi authorities in Marlborough to be identified and included in a regional policy statement. As part of the process of preparing the MEP, a series of hui were held with Marlborough’s tangata whenua iwi to determine the resource management issues of significance for them. Three distinct groups of issues were identified through this process:

- spiritual and cultural issues of fundamental importance that relate to iwi connection to and use of natural and physical resources;
- relationship and process issues, including iwi involvement in decision making on resource consent applications and on developing policy to assist in the Council’s decision making; and
- issues of significance or concern for both iwi and the wider community, such as adequate waste management, transport issues and the protection of people and property from natural hazards.

Marlborough’s tangata whenua iwi recognise that all of these issues are interconnected and believe that Marlborough’s natural and physical resources need to be managed in an integrated and holistic way to achieve a sustainable future.

Chapter 3 of Volume 1 of the MEP, entitled ‘Marlborough’s tangata whenua iwi’, describes the first two groups of issues and provides objectives and policies to address them. There is a high degree of agreement among Marlborough’s tangata whenua iwi on these issues. However, it is important to note that in some cases, the issue identified may not be able to be resolved through the MEP. For the third group (issues of significance also of concern to the wider community), these are incorporated into other chapters of the MEP and have been evaluated for Section 32 purposes accordingly.

To help clarify the nature of the issues and to provide context for their significance, Chapter 3 initially provides information on the Treaty of Waitangi/Te Tiriti o Waitangi, including the settlement of claims before the Waitangi Tribunal, how environmental management systems of Marlborough’s tangata whenua iwi have developed and been practised through generations, the mauri of natural and physical resources and the significance of values such as kaitiakitanga, taonga and tikanga.

There are ten resource management issues of significance to Marlborough’s tangata whenua iwi:

### ***Spiritual and Cultural issues***

*Issue 3A – The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are not taken into account.*

- Marlborough’s tangata whenua iwi are concerned that past decision making processes under the RMA have not necessarily taken into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. For this reason, iwi seek to establish an effective relationship with the Council in resource management processes. This issue is reflected in a number of the other issues included in this chapter.

*Issue 3B – Regard is not given to kaitiakitanga and the ability of Marlborough’s tangata whenua iwi to exercise kaitiakitanga is not enabled.*

- Marlborough’s tangata whenua iwi have developed an environmental ethic and management system for the sustainable management of natural resources, which is embodied in kaitiakitanga. While Section 7(a) of the RMA requires the Council to have particular regard to kaitiakitanga, Marlborough’s tangata whenua iwi consider that they are not always practically able to exercise kaitiakitanga.

- Collectively, the issues that follow identify matters that impact on the ability of Marlborough’s tangata whenua iwi to exercise kaitiakitanga.

*Issue 3C – The threats to the cultural heritage of Marlborough’s tangata whenua iwi.*

- The Marlborough landscape and coastline is rich in iwi heritage. This history has a present day reality, reflected in the many sites and features connected to iwi histories, traditions and tikanga. This cultural heritage forms a significant and unique part of Marlborough’s wider heritage and is significant to all of the community, due to the link that it provides between past, present and future generations.
- Marlborough’s tangata whenua iwi believe their ability to access areas of cultural heritage has been significantly compromised in some areas of the Marlborough Sounds by uses such as jetties, reclamations, moorings and boatsheds. In addition, the destruction and degradation of cultural heritage sites, features and landscapes of significance to Marlborough’s tangata whenua iwi has occurred in the past as a result of the use of natural and physical resources, especially land resources, on or near significant sites or features. This has resulted in their disturbance, damage or complete destruction and in some cases the removal of artefacts from sites.
- Māori place names are also part of Marlborough’s cultural heritage. They provide an important link to the significance of traditional sites, historical events and spiritual associations. Many traditional place names have been lost and those that remain are under threat.
- Marlborough’s tangata whenua iwi cannot tolerate any further loss of their cultural heritage and protection of significant sites, features and place names is critical. Being able to access the features, sites or landscapes that contribute to the cultural heritage of each of Marlborough’s tangata whenua iwi is fundamental to their identity.

*Issue 3D – The impact of resource use on the mauri of natural resources.*

- Mauri is the life force that exists in all things in the natural world, comprising both physical and spiritual qualities. Marlborough’s tangata whenua iwi believe that protecting the mauri of natural resources should be the overarching goal for all resource management planning and practices in Marlborough and there is a strong desire for Māori environmental practices, such as kaitiakitanga, to be recognised and implemented.
- Water bodies are particularly significant to Marlborough’s tangata whenua iwi because water is a “life force” both spiritually (in terms of the connection to Atua) and physically in Marlborough’s dry climate. Wetlands are particularly important for their biodiversity and as a source of traditional food and are considered so significant that tangata whenua consider they should be given absolute protection. There is an ongoing concern about the volume of water abstracted from surface water bodies, the diversion of these water bodies, the loss of vegetated riparian margins and any discharge of contaminants into fresh or coastal waters and the effect this may have on the mauri of streams and rivers. Discharges of human sewage and stock effluent into water are a serious affront to the mauri of the water and Marlborough’s tangata whenua iwi are unable to use water that is contaminated in this way.
- Indigenous biodiversity on land is also part of the cultural landscape in Marlborough and the loss of any further indigenous vegetation is a significant concern, both in terms of the loss of the plants (some of which are taonga) and the habitat they provide to other indigenous flora and fauna.

*Issue 3E – Difficulties in accessing and using cultural resources in traditional ways.*

- Marlborough’s tangata whenua iwi traditionally relied upon the flora and fauna of the District for their survival. Natural resources are not only used for food, but have traditionally been used in cultural practices and activities such as medicine, weaving, carving and other arts.
- Across New Zealand and Marlborough, the natural environment has been highly modified. The loss of ecosystems has resulted in a corresponding decrease in the

number and variety of mahinga kai and a reduction in the abundance and quality of ngā kai (traditional foods) and mātaītai (seafood) within them. Marlborough’s tangata whenua iwi believe that this places even more significance on the areas that remain. They also believe that remaining mahinga kai are still being affected by resource use, especially those uses and activities in rivers, wetlands and coastal areas.

- The change in land tenure that occurred with European settlement has created difficulties for Marlborough’s tangata whenua iwi in accessing mahinga kai, as well as areas that contain other cultural resources. Legal barriers can also prevent the harvest of traditional kai and other cultural resources, such as the protection afforded to endangered species.
- Difficulties accessing mahinga kai and using traditional foods have an impact upon the mana of Marlborough’s tangata whenua iwi, as this adversely affects the ability of iwi and whānau to provide for their family and to care for guests. It also compromises their mana by impairing their ability to fulfil their role and responsibilities of kaitiakitanga. Furthermore, it presents barriers to the maintenance and enhancement of traditional cultural practices.

*Issue 3F – The provision of papakāinga.*

- In Marlborough, particular iwi and/or whānau retain significant tracts of land, which is held in multiple ownership of iwi or whānau members and in most cases has not been developed or has only been developed in a minimal way by the owners. Māori have a special spiritual and cultural attachment to this land, described as Māori land in terms of the Te Ture Whenua Māori Act 1993. Additionally, some land returned to iwi through settlement processes and in freehold title is regarded by Marlborough’s tangata whenua iwi as Māori land.
- There is a strong desire among Marlborough’s tangata whenua iwi to provide papakāinga on Māori land to meet the housing and social needs of iwi members. This could be the provision of a single or small number of houses for whānau or iwi members, through to small settlements involving kaumātua housing, kōhanga reo, cottage industries, places of worship and a marae. The intention is to improve the quality of life for whānau and iwi in a manner consistent with their cultural values and customs. However, it is recognised that papakāinga must be developed in a manner that is consistent with the surrounding environment, in particular that the physical needs of the settlement, in terms of water supply and waste disposal, should be met without adverse effects on the environment.

**Relationship and Process Issues**

*Issue 3G – Lack of representation and recognition of iwi values in decision making processes.*

- Marlborough’s tangata whenua iwi share a collective concern that their spiritual and cultural values are not being recognised in resource management decision making and believe that this is contributing to Issues 3A to 3F. The two areas of particular concern are resource consent applications and resource management policy development. They believe that greater involvement in decision making would better fulfil the Council’s obligations under the Treaty of Waitangi/Te Tiriti o Waitangi and in doing so would ensure spiritual and cultural values are given appropriate recognition.
- Marlborough’s tangata whenua iwi believe that they share a common goal with the Council of sustaining the environment and natural resources. They therefore welcome the opportunity to explore ways of improving their participation in resource management decision making processes as a practical expression of kaitiakitanga.

*Issue 3H – The importance of consulting with iwi.*

- Marlborough’s tangata whenua iwi believe it is important for a resource consent/plan change applicant to consult with the relevant iwi authority where the interests of an iwi may potentially be affected by a proposal. Consultation with the iwi authority allows an assessment of cultural effects to be carried out and where necessary, the preparation of a cultural impact assessment as part of the process of assessing environmental effects. Principles of good consultation have been established over time and these should be followed to achieve the best possible outcome for all parties.



- Marlborough’s tangata whenua iwi accept that consultation will not necessarily guarantee an agreement with the resource consent/plan change applicant. However, they believe that consultation is required to ensure identification and quantification of all potential effects of a proposal on the interests of an iwi authority.

*Issue 3I – Capacity of iwi to be able to effectively take part in resource consent processing and policy development.*

- Even if mechanisms were put in place to enable greater participation in resource management decision making by Marlborough’s tangata whenua iwi, the iwi believe they do not currently have the capacity to effectively take part in the two processes that they have the greatest interest in: resource consent processing and policy development.
- The response of each iwi therefore varies, with some focussing on the iwi management plans, some establishing strong resources for consultation and response to applications for resource consent and others focussing on involvement in policy development. The importance of recognising these varying abilities and approaches will enable selection of the most effective method or methods of obtaining an understanding of the values of iwi and providing for their involvement in resource management procedures affecting their rohe.

*Issue 3J – Cross boundary issues with an overlap in rohe of Marlborough’s tangata whenua iwi.*

- The rohe or tribal boundary of each of Marlborough’s tangata whenua iwi has changed over time as a result of migration and occupation. While this situation has stabilised, in many cases there is still an overlap of rohe. This makes it difficult for the Council and others (such as resource consent applicants) to establish who exercises kaitiakitanga in a particular area. This can lead to iwi not being consulted as they should be or conversely, being consulted when they need not be. This can cause frustration for all involved in resource management processes, including the iwi authorities.
- Rohe do not coincide with local government boundaries. This means that the rohe of a number of Marlborough’s tangata whenua iwi extends beyond the boundaries of the Council. In these circumstances, the iwi must deal with more than one local authority. This can be problematic where the local authorities concerned perform RMA functions and undertake RMA processes differently, and at different stages/timeframes. This can force each iwi to adjust the way they participate in and provide an input to RMA processes.

## **Statutory obligations**

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The RMA sets up a special relationship between iwi, the Crown and local authorities. The relationship is initially identified through the purpose and principles of the RMA, whereby those seeking to achieve the purpose of the RMA must recognise and provide for as a matter of national importance in Section 6 the following:

- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;
- the protection of recognised customary activities; and
- the protection of historic heritage from inappropriate subdivision, use and development.

The RMA further requires that particular regard is had to kaitiakitanga (Section 7) and that the purpose and principles of the Treaty of Waitangi/Te Tiriti of Waitangi are taken into account in sustainably managing Marlborough’s natural and physical resources.

The Treaty of Waitangi/Te Tiriti of Waitangi is the basis for the rights and responsibilities of the Crown and Māori. It is recognised in resource management through Section 8 of the RMA, which states that in achieving the purpose of the RMA the principles of Te Tiriti shall be taken into account.

## Section 32: Chapter 3 – Marlborough’s tangata whenua iwi

It is the position of Marlborough’s tangata whenua iwi that the Council is a partner to Te Tiriti. This position stems from the delegation of functions for managing natural and physical resources to local government through the RMA. It is the view of Marlborough’s tangata whenua iwi that this delegation also confers Treaty of Waitangi/Te Tiriti o Waitangi obligations. In contrast, the Council’s position is that the Crown alone is a partner to Te Tiriti. However, the Council does acknowledge that it has obligations to Māori as a result of the provisions of the RMA, especially through Sections 6, 7 and 8. The Council and Marlborough’s tangata whenua iwi have chosen to put this divergence of position to one side and focus on creating and maintaining an effective working relationship under the RMA. A consultative relationship between the Council and Marlborough’s tangata whenua iwi is important in providing for the relationship of Marlborough’s tangata whenua iwi with resources and in upholding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

In order to take into account the principles of Te Tiriti, those principles must first be understood. Through the Courts and Waitangi processes, six principles have emerged:

- the obligation to act reasonably and in good faith;
- rangatiratanga;
- a duty to consult;
- active protection;
- partnership; and
- mutual benefit.

This list is not definitive, nor are specific principles always directly applicable to the range of circumstances that might arise under the RMA. Furthermore, these principles are constantly evolving as Te Tiriti is applied to particular existing and new situations and the Council and tangata whenua must continue to consult and negotiate with each other as to how the principles of Te Tiriti should apply to resource management in Marlborough. The MEP has been prepared in the spirit of Te Tiriti and its principles.

In developing a regional policy statement, regional plan or district plan, the Council must take into account any relevant planning document recognised by an iwi authority and lodged with the Council, to the extent the document has a bearing on resource management issues for Marlborough<sup>4</sup>. These documents are commonly referred to as iwi management plans. Iwi management plans are generally prepared as an expression of rangatiratanga to help iwi and hapū exercise their kaitiaki roles and responsibilities. These plans are a written statement identifying important issues regarding the use of natural and physical resources in the rohe of an iwi and often cover more than RMA matters.

At the time the MEP was prepared not all of Marlborough’s tangata whenua iwi had prepared iwi management plans. Subsequently, resource consent applications or plan changes made after the MEP becomes operative may need to consider the resource management related provisions of an iwi management plan not already lodged.

Additionally, the RMA requires that the resource management issues of significance to iwi authorities in Marlborough must be included in a regional policy statement (Section 62(1)(b)(i)).

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<sup>4</sup> In addition, the Council also has obligations in respect to planning documents prepared under the Marine and Coastal Area (Takutai Moana) Act 2011, where the content of those documents has a bearing on resource management issues in the region. At the time the MEP was notified, no such management plans were in place.

## National Policy Statements

The New Zealand Coastal Policy Statement 2010 (NZCPS) includes Objective 2, which states:

*To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:*

- *recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*
- *promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;*
- *incorporating mātauranga Māori into sustainable management practices; and*
- *recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

Policy 2 of the NZCPS sets out in more detail how the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and kaitiakitanga are to be achieved in respect of the coastal environment. Policy 6(1)(d) also has relevance in terms of activities in the coastal environment where there is direction to ‘*recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them.*’

The National Policy Statement for Freshwater Management 2014 (NPSFM) requires regional councils to involve iwi and hapū in the management of freshwater, work with iwi to identify tāngata whenua values and interests and reflect these in the management of and decision making regarding freshwater.

The start of the NPSFM includes a statement that recognises the national significance of freshwater and Te Mana o te Wai. For the purposes of the NPSFM, Te Mana o te Wai represents the innate relationship between te hauora o te wai (the health and mauri of water) and te hauora o te taiao (the health and mauri of the environment) and their ability to support each other, while sustaining te hauora o te tāngata (the health and mauri of the people). The recognition and expression of the national significance of freshwater and Te Mana o te Wai is reflected in the national values contained in Appendix 1 of the NPSFM. The national values incorporate tāngata whenua values at a high level and the National Objectives Framework (NOF) process set out in Policy CA2 allows for regional flexibility in the way tāngata whenua values are defined and expressed by each iwi and hapū. The provisions for this have been included within Chapter 15 - Resource Quality (Water, Air, Soil) of Volume 1 of the MEP.

## Deeds of Settlement

Marlborough’s tangata whenua iwi have all signed Deeds of Settlement with the Crown to address breaches of the Treaty of Waitangi/Te Tiriti o Waitangi. The historic claims of each of Marlborough’s tangata whenua iwi have been settled as follows:

- Ngāi Tahu were settled in the 1990s, culminating in the *Ngāi Tahu Claims Settlement Act 1998*.
- The settlements for Ngāti Apa, Ngāti Kuia and Rangitāne are set out in the *Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014*.
- The settlements for Ngāti Kōata, Ngāti Rārua and Te Ātiawa o Te Waka-a-Māui are set out in the *Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014*.
- The settlement for Ngati Toa is set out in the *Ngati Toa Rangatira Claims Settlement Act 2014*.

In the Deeds of Settlement and associated legislation, the Crown acknowledges that it acted in repeated breach of the principles of Te Tiriti in its dealings with the respective iwi and apologises for the hardship and suffering that this has caused. These documents also set out the means of compensation for each iwi, including cultural redress. The Crown’s acknowledgments and apologies are based on historical accounts as described in the applicable legislation/deed.

Included within each deed is provision for the establishment of a River and Freshwater Advisory Committee. The Advisory Committee will provide a foundation for the participation of iwi with interests in Te Tau Ihu in the management of rivers and freshwater in Marlborough, Tasman and Nelson. This committee is intended to work in a collaborative manner with the common purpose of promoting the health and wellbeing of the rivers and freshwater within the jurisdiction of the relevant councils.

As recorded in the relevant Deed and legislation, Ngāti Tama ki Te Tau Ihu have statutory acknowledgements within Marlborough. Prior to the Settlement, the Council understood that the rohe of Ngāti Tama ki Te Tau Ihu was fully within the Nelson/Tasman region. It is acknowledged that Ngāti Tama ki Te Tau Ihu is not referred to in Chapter 3 of the MEP, and therefore also not in this report, as the iwi has not been part of the consultation process. However, it is recognised that Ngāti Tama ki Te Tau Ihu is one of the Te Tau Ihu iwi and therefore will be part of the Council - Te Tau Ihu iwi relationship in the future.

## Other legislation

A range of other legislation helps to inform the provisions for Marlborough’s tangata whenua iwi, some of which is included in other chapters of the MEP.

### ***Marine and Coastal Area (Takutai Moana) Act 2011***

The purpose of the Marine and Coastal Area (Takutai Moana) Act 2011 is to ensure protection of all legitimate interests of New Zealanders in the marine and coastal area and to recognise the mana tuku iho of iwi, hapū and whānau as tangata whenua. The Act provides for recognition of customary interests in the common marine and coastal area (a subset of the marine and coastal area). It extends from mean high water springs to the outer limit of the territorial sea and generally includes the marine and coastal area within these limits. The Act takes account of the intrinsic, inherited rights of iwi, hapū and whānau, derived in accordance with tikanga and their mana-based relationship to the marine and coastal area and provides for the recognition of customary interests and rights in the common marine and coastal area.

### ***Fisheries Act 1996***

Part 9 of the Fisheries Act 1996 gives effect to the obligations stated in the Treaty of Waitangi Fisheries Claims Settlement Act 1992. Part 9 sets out tools to provide practical recognition of the right in relation to fisheries under Article 2 of the Treaty of Waitangi/Te Tiriti o Waitangi. Taiāpure and mātaītai reserves are included in the suite of management tools available for the purpose of recognising and providing for customary food gathering.

### ***Historic Places Act 1993***

The purpose of the Historic Places Act 1993 (HPA) is *‘to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand’* (Section 4(1) Historic Places Act 1993). Section 4(2)(c) states that *‘In achieving the purpose of this Act, all persons exercising functions and powers under it shall recognise the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.’*

### ***The Local Government Act 2002***

This Act has a number of provisions relating to the Treaty of Waitangi/Te Tiriti o Waitangi and Māori involvement in decision making processes. Section 4 (Treaty of Waitangi) states that *‘in order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.’*

## Information and analysis

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No specific investigations or monitoring activities have been undertaken to inform the review of the provisions for Marlborough’s tangata whenua iwi. As part of the consultation process, staff collated information already held by the Council to assist the Iwi Working Group that was established as part of the review. This included information on the location and extent of multiple-owned Māori land in terms of the Te Ture Whenua Māori Act 1993 and the number and location of coastal structures around the Marlborough Sounds.

## Consultation

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In 2006, the first round of consultation was initially undertaken solely for the review of the MRPS and saw the distribution of a community flyer to all ratepayers advising of the review. The aim of this exercise was to find out the community’s views on the most important resource management issues that Marlborough would face over the next ten years. Approximately 380 responses were received, although very few comments were received specifically on issues related to Marlborough’s tangata whenua iwi.

- One response commented on a lack of appropriate response to dealing with allocating space for marine farming for iwi in terms of the Maori Commercial Aquaculture Settlement Act 2004. The respondent believed there should be mechanisms within the reviewed regional policy statement to make possible the creation and/or allocation of new space for aquaculture. However, another respondent suggested the settlement should be achieved by buying existing farms and providing for as few new ones as possible.
- Only one other specific comment was made concerning iwi issues: that there needs to be recognition in the regional policy statement of how papakāinga are intended to be provided for in the resource management plans.

Throughout 2007 a series of discussion papers were prepared by the Council to help focus on the issues to be included in the new regional policy statement. No specific discussion paper was prepared on iwi issues, however the discussion papers that were prepared did take into account a range of issues of concern to iwi. These issues were identified by the Council through previous involvement with iwi and related in large part to the matters contained in Sections 6(e), 7(a) and 8 of the RMA.

In 2007 the Council approached each of the eight iwi authorities in Marlborough to establish an appropriate process to identify resource management issues of significance to iwi. This resulted in the establishment of an Iwi Working Group (IWG) intended to comprise of one nominated representative from each of the iwi authorities, with the specific role of assisting the Council in the review of the regional policy statement.

Ngāti Apa discussed their involvement in the IWG at an early stage. On the basis that they had a limited rohe in Marlborough, Ngāti Apa made the decision not to participate in IWG hui, reassured that iwi interests would be adequately represented by other representatives. Representatives from six of the remaining seven iwi authorities have regularly attended the 27 hui held since 2007. The IWG’s focus has been on the identification and expression of issues of significance to Marlborough’s tangata whenua iwi, which resulted in the development of Chapter 3 of Volume 1 of the MEP. All eight Te Tau Ihu iwi received all correspondence and documents throughout the consultation with the IWG, regardless of whether representatives attended the hui.

The IWG also reviewed all other available draft policy provisions to assess the extent to which the issues they have identified are addressed by objectives, policies and methods in other chapters of the MEP. This has improved the integration of policy responses with iwi resource management principles and ensured that policy responses take into account tikanga where appropriate.

The IWG and Council staff have also had regard to the three iwi management plans lodged with the Council in preparing the MEP. These are:

- Te Tau Ihu Mahi Tuna Eel Management Plan;
- Ngāti Kōata No Rangitoto Ki Te Tonga Trust - Iwi Management Plan; and
- Te Rūnanga o Kaikōura Environmental Management Plan.

Subsequent to developing Chapter 3, two further iwi management plans were lodged with the Council: the Te Rūnanga O Ngāti Kuia Pakohe Management Plan and the Te Ātiawa Ki Te Tau Ihu Iwi Environmental Management Plan.

Chapter 3 was formally presented to the Council’s Regional Planning and Development Committee in June 2014 by representatives of the IWG.

## Evaluation for Issues 3A to 3J

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*Issue 3A – The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are not taken into account.*

*Issue 3B – Regard is not given to kaitiakitanga and the ability of Marlborough’s tangata whenua iwi to exercise kaitiakitanga is not enabled.*

*Issue 3C – The threats to the cultural heritage of Marlborough’s tangata whenua iwi.*

*Issue 3D – The impact of resource use on the mauri of natural resources.*

*Issue 3E – Difficulties in accessing and using cultural resources in traditional ways.*

*Issue 3F – The provision of papakāinga.*

*Issue 3G – Lack of representation and recognition of iwi values in decision making processes.*

*Issue 3H – The importance of consulting with iwi.*

*Issue 3I – Capacity of iwi to be able to effectively take part in resource consent processing and policy development.*

*Issue 3J – Cross-boundary issues with an overlap in rohe of Marlborough’s tangata whenua iwi.*

### Appropriateness of Objective 3.1

*Objective 3.1 – The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are taken into account in the exercise of the functions and powers under the Resource Management Act 1991.*

#### **Relevance**

Objective 3.1 is clearly focussed on addressing Issue 3A in which the IWG have identified that past decision making processes under the RMA by the Council have not necessarily taken into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. The objective reflects the statutory obligation set out Section 8 of the RMA.

This objective is particularly relevant in the coastal environment, for which the NZCPS sets out certain requirements to give effect to Te Tiriti through Objective 3 and Policy 2. In addition the NPSFM sets out how Te Tiriti is the underlying foundation of the Crown–iwi/hapū relationship with regard to freshwater resources. The NPSFM also notes that addressing tāngata whenua values and interests across all of the wellbeings and including the involvement of iwi and hapū in the overall management of freshwater are key to meeting obligations under the Te Tiriti.

The Council considers Objective 3.1 is highly relevant in addressing a resource management issue, is focussed on achieving the purpose of the RMA, is within the scope of higher level documents and overall will help the Council to carry out its statutory functions.

#### **Feasibility**

Section 8 of the RMA has been in existence since the RMA was enacted in 1991. Since then the principles of the Treaty of Waitangi/Te Tiriti o Waitangi have evolved through the Courts and Waitangi Tribunal processes and the current principles are:

- the obligation to act reasonably and in good faith;
- rangatiratanga;
- a duty to consult;
- active protection;
- partnership; and
- mutual benefit.

This list is not definitive, nor are the specific principles always directly applicable to the range of circumstances that might arise under the RMA. Marlborough’s tangata whenua iwi acknowledge that these principles are constantly evolving as Te Tiriti is applied to particular existing and new situations, including how the principles should apply to resource management in Marlborough. Though it has

been identified that the principles of Te Tiriti have not always been taken into account in resource management matters, the Council is now in a better position to be able to achieve the objective. There is potentially some ongoing level of risk and uncertainty as to how well the Council implements the principles, but the clearer expression of these principles should make achieving the objective more feasible.

### **Acceptability**

This objective provides a clear directive from the IWG to address a resource management issue of significance and to that extent it is consistent with the outcomes sought by the IWG. The Chapter 3 provisions have not been widely consulted on (other than through the IWG) and as such, the views of the wider community on this objective are unknown. However, the objective is considered acceptable as it does not result in unjustifiably high costs on the community or parts of the community. This is especially the case given the objective is more or less a reflection of the direction in Section 8 of the RMA.

## **Appropriateness of Objectives 3.2 and 3.3**

*Objective 3.2 – Natural and physical resources are managed in a manner that takes into account the spiritual and cultural values of Marlborough’s tangata whenua iwi and respects and accommodates tikanga Māori.*

*Objective 3.3 – The cultural and traditional relationship of Marlborough’s tangata whenua iwi with their ancestral lands, water, air, coastal environment, waahi tapu and other sites and taonga are recognised and provided for.*

### **Relevance**

Objectives 3.2 and 3.3 are intended to address issues 3B, 3C, 3D and 3E. They also help to address the purpose and principles of Section 6 of the RMA, providing for as a matter of national importance the following:

- the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;
- the protection of recognised customary activities; and
- the protection of historic heritage from inappropriate subdivision, use and development.

The RMA further requires that particular regard is had to kaitiakitanga (Section 7) and that the purpose and principles of the Treaty of Waitangi/Te Tiriti of Waitangi are taken into account in sustainably managing Marlborough’s natural and physical resources.

The objectives also help give effect to the NZCPS and NPSFM.

### **Feasibility**

The objectives are considered to be feasible within an acceptable level of risk and uncertainty. They are able to be achieved within the Council’s powers and resources, although the Council may not always have the appropriate skills to make a determination about whether a particular proposal will result in the objectives being achieved. This is why the Council has included a method that, depending on circumstances, a commissioner with expertise in tikanga Māori may be appointed to a committee charged with hearing and deciding upon an application. This has occurred in previous resource consent and plan changes hearings.

### **Acceptability**

The objectives provide a clear directive from the IWG to address resource management issues of significance. To that extent Objectives 3.2 and 3.3 are consistent with the outcomes sought by the IWG. The Chapter 3 provisions have not been widely consulted upon outside the IWG and as such wider community views about this objective are unknown. However, the objectives are considered acceptable as they do not result in unjustifiably high costs on the community or parts of the community.

## Appropriateness of Objective 3.4

*Objective 3.4 – Opportunities for development on Māori land that meet the needs of the landowners and respects the relationship of Marlborough’s tangata whenua iwi with land, water, significant sites and waahi tapu.*

### **Relevance**

Objective 3.4 has been included directly in response to the issue raised by the IWG to improve the quality of life of whānau and iwi in a manner consistent with their cultural values and customs. Planning policies and rules within former resource management plans have potentially limited how Marlborough’s tangata whenua iwi have been able to use their own land. The objective is therefore relevant in enabling a range of activities to occur on Māori land, including papakāinga, marae cultural activities, customary use and other activities. This approach will support economic, social and cultural development for Marlborough’s tangata whenua iwi.

The objective is focussed on achieving the purpose of the RMA as well as giving effect to a range of Part 2 matters. It is also within the scope of higher level documents, especially Policy 6(1)(d) of the NZCPS where (in relation to the coastal environment) the Council is required to “*recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them.*”

### **Feasibility**

The objective is considered to be feasible within an acceptable level of risk and uncertainty. Marlborough’s tangata whenua iwi recognise that any development must be undertaken in a manner that is consistent with the surrounding environment. Other provisions within the MEP will assist in guiding the appropriate level of development, including in relation to water quality, effluent disposal, water availability, landscape and so on. In this regard the objective is able to be achieved within the Council’s powers, skills and resources.

### **Acceptability**

Objective 3.4 provides a clear directive from the IWG to address a resource management issue of significance, especially Issue 3F. To that extent it is consistent with the outcomes sought by the IWG. The Chapter 3 provisions have not been widely consulted upon (other than through the IWG) and as such the views of the wider community are unknown. However, the objective is considered acceptable as it does not result in unjustifiably high costs on the community or parts of the community.

## Appropriateness of Objective 3.5

*Objective 3.5 – Resource management decision making processes that give particular consideration to the cultural and spiritual values of Marlborough’s tangata whenua iwi.*

### **Relevance**

Through a number of the issues described in 3A to 3J, Marlborough’s tangata whenua iwi have clearly identified that current decision making processes on resource management matters do not always appropriately consider the cultural and spiritual values of Marlborough’s tangata whenua iwi. While there has been ongoing consultation between the Council and Marlborough’s tangata whenua iwi in the preparation of the MEP, it is important that this continues into the future as the MEP is implemented and monitored. On-going consultation and involvement in decision making will help to ensure that the cultural and spiritual values of Marlborough’s tangata whenua iwi are given recognition. The inclusion of Objective 3.5 will ensure this happens.

### **Feasibility**

Objective 3.5 is considered to be feasible within an acceptable level of risk and uncertainty. It can be achieved within the Council’s powers and resources, although as is the case for Objectives 3.2 and 3.3 the Council may not always have the appropriate skills to make a determination about whether a proposal will have adverse effects on the cultural and spiritual values of Marlborough’s tangata whenua iwi. For this reason, depending on circumstances a commissioner with expertise in tikanga Māori may be appointed to a committee charged with hearing and deciding an application.



**Acceptability**

This objective provides a clear directive from the IWG to address a resource management issue of significance. To that extent it is consistent with the outcomes sought by the IWG. The Chapter 3 provisions have not been widely consulted upon (other than through the IWG) and as such the views of the wider community are unknown. However, the objective is considered acceptable as it does not result in unjustifiably high costs on the community or parts of the community.

**Assessment of provisions to achieve Objectives 3.1 to 3.5****Policy 3.1.1**

Policy 3.1.1 – Management of natural and physical resources in Marlborough will be carried out in a manner that:

- (a) takes into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, including kāwanatanga, rangatiratanga, partnership, active protection of natural resources and spiritual recognition;
- (b) recognises that the way in which the principles of the Treaty of Waitangi/Te Tiriti o Waitangi will be applied will continue to evolve;
- (c) promotes awareness and understanding of the Marlborough District Council’s obligations under the Resource Management Act 1991 regarding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi among Council decision makers, staff and the community;
- (d) recognises that tangata whenua have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the Resource Management Act 1991 accords iwi a status distinct from that of interest groups and members of the public; and
- (e) recognises the right of each iwi to define their own preferences for the sustainable management of natural and physical resources, where this is not inconsistent with the Resource Management Act 1991.

**Benefits**

Marlborough’s tangata whenua iwi are concerned that past decision making processes under the RMA have not necessarily taken into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. The policy therefore identifies the principles of Te Tiriti that Marlborough’s tangata whenua iwi have determined are important in terms of sustainably managing Marlborough’s natural and physical resources and that the way in which these principles are taken into account will continue to evolve over time.

**Costs**

No additional costs over and above those applied under the current framework of the MRPS, MSRMP and WARMP are expected. The expression of matters in (a) to (e) simply define more clearly how the principles of Te Tiriti should be applied in a Marlborough context.

**Efficiency**

The policy is considered efficient as, if applied correctly, there should be a low total cost to all members of society and a high corresponding benefit to community wellbeing.

**Effectiveness**

The policy will be effective in achieving Objective 3.1 directly given the focus on the Treaty of Waitangi/Te Tiriti o Waitangi. However, the policy will also be effective in indirectly achieving the other objectives. Policy 3.1.1 will help to address Issue 3A in which, as indicated in the Benefits evaluation, Marlborough’s tangata whenua iwi consider that past decision making processes under the RMA have not always taken into account the principles of Te Tiriti.

**Policy 3.1.2**

Policy 3.1.2 – An applicant will be expected to consult early in the development of a proposal (for resource consent or plan change) so that cultural values of Marlborough’s tangata whenua iwi can be taken into account.

**Benefits**

The policy recognises that only Marlborough’s tangata whenua iwi can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

This means that iwi are in the best position to determine whether a proposal will affect areas of significance for iwi. The policy has an expectation that consultation with iwi will occur early in the planning of a proposal so any impacts are appropriately identified and addressed. This is the main benefit of the policy.

### **Costs**

There is no cost from the direction in the policy to consult early. There could be costs associated with consultation, especially if a cultural impact assessment is required, although that is already an expected part of a resource consent or plan change process.

### **Efficiency**

It is more efficient for an applicant to consult early. Early consultation may lead to cost savings as there will be opportunities to consider alternatives if there is a possibility that there may be adverse effects on cultural values. There are potentially greater costs (directly and through loss of time) if consultation is left until the resource consent process has begun.

### **Effectiveness**

Policy 3.1.2 will be particularly effective in achieving Objective 3.3 to ensure that the cultural and traditional relationship of Marlborough’s tangata whenua iwi with their ancestral lands, water, air, coastal environment, waahi tapu and other sites and taonga are recognised and provided for. The policy will also be effective in dealing with Issues 3A to 3E and importantly will be most effective in addressing Issue 3H, which highlights the importance of consultation with iwi. Within this issue there a list of principles setting out what good consultation is; this includes early consultation as well as allowing enough time for consultation.

### **Policy 3.1.3**

Policy 3.1.3 – Where an application for resource consent or plan change is likely to affect the relationship of Marlborough’s tangata whenua iwi and their culture and traditions, decision makers shall ensure:

- (a) the ability for tangata whenua to exercise kaitiakitanga is maintained;
- (b) mauri is maintained or improved where degraded, particularly in relation to fresh and coastal waters, land and air;
- (c) mahinga kai and natural resources used for customary purposes are maintained or enhanced and that these resources are healthy and accessible to tangata whenua;
- (d) for waterbodies, the elements of physical health to be assessed are:
  - i. aesthetic and sensory qualities, e.g. clarity, colour, natural character, smell and sustenance for indigenous flora and fauna;
  - ii. life-supporting capacity, ecosystem robustness and habitat richness;
  - iii. depth and velocity of flow (reflecting the life force of the river through its changing character, flows and fluctuations);
  - iv. continuity of flow from the sources of a river to its mouth at the sea;
  - v. wilderness and natural character;
  - vi. productive capacity; and
  - vii. fitness to support human use, including cultural uses.
- (e) how traditional Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakāinga and taonga raranga are to be recognised and provided for.

### **Benefits**

Policy 3.1.3 sets out the matters that must be assessed by decision makers when considering an application for resource consent or a plan change in which there is a likelihood that particular values of significance to iwi may be adversely affected. The matters to be assessed in relation to the mauri of waterbodies are particularly detailed, given the significance of water resources to iwi. Significant cultural, environmental and social benefits are likely to result from implementing this policy.

### **Costs**

No additional costs are expected in assessing an application, but the criteria provide direction for decision makers. To that extent costs may be reduced because there is a defined focus for decision makers.

### **Efficiency and Effectiveness**

For the same reasons as set out in the Costs evaluation, Policy 3.1.3 is considered to be efficient and effective in achieving Objectives 3.1 to 3.5.

### **Policy 3.1.4**

Policy 3.1.4 – Encourage iwi to develop iwi management plans that contain:

- (a) specific requirements to address the management of coastal waters, land and air resources, including mauri, and in relation to Sections 6(e), 7(a) and 8 of the Resource Management Act 1991;
- (b) protocols to give effect to their role of kaitiaki of water and land resources;
- (c) sites of cultural significance;
- (d) descriptions of how the document is to be used, monitored and reviewed; and
- (e) the outcomes expected from implementing the management plan.

### **Benefits**

There is a significant cultural, social and environmental benefit in encouraging Marlborough’s tangata whenua iwi to develop iwi management plans as these documents will help to achieve two significant outcomes. Firstly, it will help the Council meet its requirements relating to Māori in the resource management planning process, especially when preparing new resource management policy and plans. Secondly, the plans will help iwi themselves identify and express the values and relationships they have with their resources and how they should be protected, maintained or enhanced. Iwi management plans can provide a framework for consultation both for plan review and resource consent processes.

### **Costs**

There are no costs to the community from the policy as it is one of encouragement rather than direction.

### **Efficiency and Effectiveness**

For the reasons set out in the Benefits evaluation, Policy 3.1.4 is both efficient and effective in helping to achieve Objectives 3.1 to 3.5 and deal with a number of resource management issues of concern to Marlborough’s tangata whenua iwi. In particular, if the matters identified within (a) to (e) of the policy are included within an iwi management plan, partnerships, trust and ultimately good relationships between iwi and the Council will be built and strengthened.

### **Policy 3.1.5**

Policy 3.1.5 – Ensure iwi management plans are taken into account in resource management decision making processes.

### **Benefits**

Having encouraged Marlborough’s tangata whenua iwi to prepare iwi management plans, it is important that they are then taken into account by the Council when making decisions on resource management matters. The Council is required by the RMA to take iwi management plans into account when preparing a regional policy statement or regional and district plans. In terms of decision making on resource consent applications, subject to Part 2 the Council must have regard to other matters which it considers relevant and reasonably necessary to determine an application (Section 104(1)(c)); this could include having regard to iwi management plans. As more iwi management plans are prepared and lodged, it will be important they receive from the Council the appropriate recognition in decision making. There are opportunities through consideration of iwi management plans to enhance the understanding of cultural values of the Marlborough’s iwi.

### **Costs**

The Council is obligated to consider iwi management plans. Their consideration should occur during a resource consent or plan change application and the costs will lie with an applicant. Where iwi management plans are taken into account during plan-making processes, the costs of this will lie with the wider community.

### **Efficiency and Effectiveness**

For the reasons set out in the Benefits evaluation, Policy 3.1.5 is both efficient and effective in helping to achieve Objectives 3.1 to 3.5 and deal with a number of the resource management issues of concern to Marlborough’s tangata whenua iwi.

### **Policy 3.1.6**

Policy 3.1.6 – Enable opportunities for marae and papakāinga development on Māori land that provides for a range of functions including living, working, cultural activities and recreation where it is of a scale, extent and intensity that is determined by the physical characteristics of the site, surrounding environment and tikanga Māori.

### **Benefits**

The policy recognises that papakāinga and marae settlements are an essential means for Māori to pursue the traditional relationship with their land. The policy encourages and strengthens this relationship by enabling development of Māori land, provided it is consistent with the matters set out in the policy. There are clear cultural and social benefits from Policy 3.1.6. Additionally, it helps to give effect to the policies of the NZCPS, including in a general sense Policy 2 and in particular Policy 6(1)(d), where in relation to the coastal environment the Council is required to “*recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them.*”

### **Costs**

Limited costs are expected to be incurred from this policy, although unless well-managed there is the potential for environmental costs if adverse effects occur from over-development of land. However, Marlborough’s tangata whenua iwi recognise that any development must be undertaken in a manner that is consistent with the surrounding environment. In particular, the physical needs of the settlement in terms of water supply and waste disposal should be met without adverse effects on the environment.

There is a difference between what might normally be allowed by rules on undeveloped land (especially rural land) and what is proposed through the policy. There may be a perception that there is an additional cost to develop areas outside of Māori land. However, this difference in cost, if there is one, is considered justified as the policy assists in giving effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and Section 6(e) of the RMA.

### **Efficiency and Effectiveness**

Policy 3.1.6 is efficient and effective in achieving Objective 3.4, which aims to maintain and strengthen the traditional relationship of Marlborough’s tangata whenua iwi with land, water, significant sites and waahi tapu by enabling a range of activities to occur on Māori land, including papakāinga, marae cultural activities, customary use and other activities. The costs of doing this are likely to result in a low cost to all members of the community but a high benefit to Marlborough’s tangata whenua iwi.

### **Policy 3.1.7**

Policy 3.1.7 – Foster a principle of partnership between Marlborough’s tangata whenua iwi, the Marlborough District Council and statutory management agencies on an ongoing basis to give effect to Policies 3.1.1 to 3.1.6.

### **Benefits**

Policy 3.1.7 highlights that to give effect to the other objectives in Chapter 3, a partnership between Marlborough’s tangata whenua iwi, the Council and statutory agencies, such as the Department of Conservation, will be necessary. The partnership principle is reflective in the holistic approach of iwi to resource management. Fostering partnerships with Marlborough’s tangata whenua iwi will assist in increasing capacity for iwi to add value to resource management decision making processes.

Additionally, at times non-statutory groups will combine with the Council and iwi in the context of community involvement in the management of natural and physical resources.

### **Costs**

There is a whole-of-community cost in fostering and maintaining partnerships with Marlborough’s tangata whenua iwi on an ongoing basis. However, as expressed in Policy 3.1.1 there is recognition that tangata whenua have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the RMA accords iwi a status distinct from that of interest groups and members of the public. The costs of this policy are therefore a reflection of a statutory process. However, the Council believes that developing effective partnerships with iwi is important and that regardless of what form the partnerships are expressed, a fundamental component will be simple good faith.

### **Efficiency**

There is a whole-of-community benefit from Policy 3.1.7 that exceeds the cost of developing the partnerships. These partnerships will help to increase the Council and the community’s understanding of the Māori world view and, importantly, enhance decision making.

### **Effectiveness**

The principle of partnership is considered to be fundamental in achieving all of the objectives in Chapter 3 as well as addressing the identified issues in 3A to 3J. The last two issues, concerning the capacity of iwi to effectively take part in resource management matters and dealing with the overlap in rohe between iwi, are effectively beyond the ability of the Council to respond through the MEP. However, through developing partnerships with each of Marlborough’s tangata whenua iwi, it is more likely that these issues can be appropriately recognised and worked through.

## **Methods of implementation**

When compared with the current MRPS and the two resource management plans, there are a number of new methods of implementation in the MEP to deal with the resource management issues of concern to Marlborough’s tangata whenua iwi. It is also important to acknowledge that not all of the methods of implementation to address these issues are included in Chapter 3; many other chapters within the MEP contain methods that directly or indirectly help to address the issues identified in Chapter 3. For example, Chapter 15 - Resource Quality (Water, Air, Soil) includes a range of methods to deal with water quality issues. During consultation to identify issues, the IWG repeatedly highlighted the significance of water to Marlborough’s tangata whenua iwi. Marlborough’s tangata whenua iwi see water as a “life force,” both spiritually (in terms of the connection to Atua), and physically in Marlborough’s dry climate. Wetlands, streams and rivers were likened to the “arteries” of the environment and the health of these water bodies is reflected in the wellbeing of the people.

The new methods of implementation are as follows:

### **Recognising statutory acknowledgements**

A statutory acknowledgement is an acknowledgement by the Crown that recognises the mana of a tangata whenua group in relation to specified areas, particularly the cultural, spiritual, historical and traditional associations with an area. These acknowledgements relate to statutory areas, which include areas of land, geographic features, lakes, rivers, wetlands and coastal marine areas, but are only given over Crown-owned land. The statutory areas are set out in the Deeds of Settlement that have been signed by iwi and the Crown.

A statutory acknowledgement requires the Council to:

- forward summaries of all relevant resource consent applications to the relevant claimant group governance entity and to provide the governance entity with the opportunity to waive its right to receive summaries;
- have regard to a statutory acknowledgement in forming an opinion as to whether the relevant claimant group may be adversely affected in relation to resource consent applications concerning the relevant statutory area; and
- within the claim areas, attach for public information a record to all regional policy statements, district plans and regional plans of all areas affected by statutory acknowledgements.

Inclusion of this method is a direct consequence of the settlement of claims before the Waitangi Tribunal.

***Cultural indicators***

Inclusion of this method reflects that the use of cultural indicators, based upon human sensory perceptions and spiritual association, has long been used by Marlborough’s tangata whenua iwi to determine the health (mauri) of the natural world. Environmental monitoring is not new to New Zealand, but to date this Council has relied upon scientific indicators to determine the health of Marlborough’s natural and physical resources. The Council has given an undertaking by including this method, to work with Marlborough’s tangata whenua iwi to develop cultural indicators to assist in monitoring the state of Marlborough’s natural and physical environment. Using cultural indicators alongside existing scientific indicators will assist in the collective understanding of the health of Marlborough’s environment.

***Cultural impact assessment reports and cultural value reports***

A cultural impact assessment report is a professionally prepared assessment of the potential impacts of a given activity on resources and values of importance to tangata whenua. Such a report documents iwi values associated with an area and provides appropriate measures to avoid, remedy or mitigate any adverse effects on those values. Cultural value reports are similar to cultural impact reports but are focussed on providing information on the nature and extent of cultural interests in a given area, as opposed to assessing impacts of a specific proposal.

This method has been included as it identifies that these types of reports are an effective means of providing cultural and technical input, mainly with respect to resource consent applications under the RMA. Such reports are considered to be an important part of an application, just as reports on landscape, natural character, ecology and so on are important.

***Māori place names***

This method identifies that the MEP and other Council documents will use the Māori place names set out in Deeds of Settlements and will consider the use of dual place names for other Māori place names that are not set out in Deeds of Settlement.

**Other options considered to achieve Objectives 3.1 to 3.5**

The IWG, in conjunction with Council staff, did not identify any other reasonably practicable options for achieving the objectives. The only other option that could have been considered was to retain the existing provisions of the MRPS, MSRMP and WARMP. However, these provisions do not adequately address the wide range of issues identified by the IWG during consultation, nor do they reflect directions in the NZCPS or NPSFM developed subsequent to the MRPS, MSRMP and WARMP. Accordingly, the policies of these current resource management documents were not considered a reasonably practicable option to the provisions included in the MEP, not only within Chapter 3 but within the other chapters where issues of concern to the wider community are also issues of concern to Marlborough’s tangata whenua iwi.

**Risk of acting or not acting**

In terms of Section 32(2)(c) of the RMA, which requires an assessment of the “*risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions,*” the Council considers that it does have certain and sufficient information about matters related to issues of significance to Marlborough’s tangata whenua iwi.

## Appendix A – Section 32 of the RMA

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### 32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
  - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
  - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
    - (i) identifying other reasonably practicable options for achieving the objectives; and
    - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
    - (iii) summarising the reasons for deciding on the provisions; and
  - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
  
- (2) An assessment under subsection (1)(b)(ii) must—
  - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
    - (i) economic growth that are anticipated to be provided or reduced; and
    - (ii) employment that are anticipated to be provided or reduced; and
  - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
  - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
  
- (3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—
  - (a) the provisions and objectives of the amending proposal; and
  - (b) the objectives of the existing proposal to the extent that those objectives—
    - (i) are relevant to the objectives of the amending proposal; and
    - (ii) would remain if the amending proposal were to take effect.
  
- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.
  
- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
  - (a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
  - (b) at the same time as the proposal is publicly notified.

**Section 32: Chapter 3 – Marlborough’s tangata whenua iwi**

(6) In this section,—

**objectives** means,—

- (a) for a proposal that contains or states objectives, those objectives:
- (b) for all other proposals, the purpose of the proposal

**proposal** means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

**provisions** means,—

- (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:
- (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.



## Appendix B – Bibliography

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