

For a Tika Transition strengthen rangatiratanga

Abstract

There is growing respect for and recognition of te ao Māori within Aotearoa's environmental policy and management space. However, to ensure that Aotearoa can build a better future equitably a 'tika transition' must be realised, whereby iwi, hapū and Māori (the rangatiratanga sphere) and the Crown (kawanatanga sphere) exist within distinct and equal political entities, with the rangatiratanga sphere leading and governing tikanga and mātauranga Māori policy and legislation. We examine two prominent environmental issues – sea level rise and taonga species protection – facing iwi, hapū, Māori and the Crown, exploring the barriers, solutions and positive steps towards a 'tika transition' in each area. We recommend that policy and legislation include stronger instruments for shared decision making and specific funding for iwi, hapū and mana whenua to strengthen the rangatiratanga sphere. It is acknowledged that the barriers and solutions are interconnected and will rely on good relationship building and trust, power sharing and knowledge sharing, and policy and legislation that allows for and supports the rangatiratanga sphere as its own distinct space for tikanga-based governance and jurisdiction.

Keywords rangatiratanga, te tiriti o Waitangi, environmental policy, co-governance

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A tika transition to a low-emissions economy is one that embraces tikanga Māori as a source of solutions, upholds the principles of te Tiriti o Waitangi and is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (Bargh, 2019). Tikanga Māori is a

set of beliefs associated with practices and procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do. (Mead, 2003, p.12)

At the core of tikanga Māori is a world view which emphasises the importance of relationships: between people and the natural world and among people. A 'tika transition' is not simply a transition that is compliant with te Tiriti and the UN declaration, but one which also demonstrates respect for tikanga Māori and these relationships. A 'tika' transition has the potential to create transformational change in the environmental, social, economic and scientific realms of our

society. As Ruru et al. argue, ‘recognition of and respect for tangata whenua “ways of knowing and doing” within the New Zealand public are increasing’ (Ruru et al., 2017, p.70), and this acknowledgement creates the conditions to support decision makers at national and local levels to build better ways forward. We suggest that the concept of a tika transition should be used as a guide for all government practices and policies at both national and local levels.

In this article we highlight some of the practices and policies that are standing in the way of a tika transition and propose policy and legislative changes that better align with a tika transition. In particular we examine two areas where difficult decisions are already upon hapū, iwi, Māori and the Crown, and explore how their resolution might be approached in a tika manner, asking the questions: how can a tika transition be realised? Which governance and policy arrangements need to change to make space for a tika transition? We suggest both broad and specific legislative and policy changes that will advance a tika transition and also highlight positive steps already being taken.

We note at the outset that a core idea which underpins our argument for a tika transition, and which we return to throughout this article, is the idea, in part envisaged in te Tiriti o Waitangi itself, that the ‘rangatiratanga sphere’, encompassing whānau, hapū and iwi Māori, co-exists alongside, but distinct from, the kawanatanga sphere of the Crown. Between the two spheres sits a ‘joint sphere’, where engagement of the two occurs. Many of the policies and practices described in this article occur within the joint sphere. We argue, however, that further focus needs to be applied to strengthening the rangatiratanga sphere as a distinct political sphere of authority. For a mutual recognition of distinct political entities and spheres to occur, constitutional transformation is required (Jones, 2016; Matike Mai Aotearoa, 2016; Charters et al., 2019). However, in the interim the steps we identify, we suggest, assist on the path towards more transformational change.

Sea level rise and managed retreat

One of the impacts of climate change that many communities are already observing

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is sea level rise (Statistics New Zealand, 2019). The forms that sea level rise takes vary according to a number of factors, including the shape of the coastline and tidal currents (NIWA, n.d.). Sea level rise is often accompanied by coastal surges, an increase in erosion of coastal land and increasing salination of aquifers in coastal-adjacent areas (Parliamentary Commissioner for the Environment, 2015).

With sea level rise come challenging conversations about how built infrastructure, (both publicly and privately

owned) and natural and social infrastructure might be protected or altered. Several scholarly reports have noted the lack of clear direction in existing legislation to guide local government on how to prepare for sea level rise and increasing coastal hazards (Ministry for the Environment Review Panel, 2020; Parliamentary Commissioner for the Environment, 2015). Hanna, White and Glavovic have noted three core management approaches to responding to sea level rise and hazards – ‘protect, accommodate, retreat’ – which emerged from the first assessment report of the Intergovernmental Panel on Climate Change (Hanna, White and Glavovic, 2017, p.3). The idea of managed retreat follows attempts to protect infrastructure (such as through seawalls, sandbags or vegetative buffers) or accommodate impacts (such as through lifting buildings or strengthening, warnings and evacuations and setting back further from the coast). ‘Managed retreat’ is ‘an adaptive approach to risk reduction, where people, activities and assets are strategically relocated away from hazardous locations’ (ibid., pp.3-4). It can refer to relocation away from many types of hazardous areas, but is commonly used in the context of the hazards emerging in the coastal area from sea level rise (Parliamentary Commissioner for the Environment, 2015).

The Randerson report released in June 2020 made major recommendations that the Resource Management Act 1991 be abandoned and three new Acts established, one being a Managed Retreat and Climate Change Adaptation Act. It noted that current provisions for managed retreat and climate change adaptation were reactive, unclear, and linked with a lack of capacity within local government. The report recommended a more proactive approach, with guidance and clarity largely coming from central government in the form of new legislation and funding (Ministry for the Environment Review Panel, 2020, p.181).

Central and local government and Māori authorities all have different levels of responsibility and priorities in coastal areas. For Māori authorities, many of their responsibilities and priorities in coastal areas are informed by the perspective of mana whenua with intergenerational

kaitiaki obligations to the natural environment in those places and responsibilities to their hapū and iwi and their cultural, political and economic structures and institutions. The tikanga notion of ki uta ki tai, 'mountains to the sea', presents a reminder that for Māori authorities, coastal management is not separated from the rest of the catchment (Te Rūnanga o Kaikōura, 2007, p.4). Local government is guided by the Local Government Act 2002, the Resource Management Act and the New Zealand Coastal Policy Statement (Department of Conservation, 2010) when considering its duties in regard to sea level rise, which all tend to compartmentalise the coastal area as distinct from other natural resources in the geographical area. Alongside the increasing acknowledgement of te ao Māori, some councils do now use Māori words and concepts such as 'ki uta ki tai' to describe some integrated catchment plans (for example, in the Greater Wellington Regional Council whaitua programme) (Greater Wellington Regional Council, 2020).

Sea level rise will continue to put considerable pressure on coastal councils, iwi, hapū and communities to work together effectively to manage new and emerging risks. Within this context, which practices and policies are currently barriers to a tika transition, what changes are needed, and where can positive steps be seen emerging?

Towards a tika transition: barriers and solutions

The protection of Māori rights in decision-making instruments for coastal areas is weak. Largely this results from weak clauses in the Resource Management Act, the Marine and Coastal Area (Takutai Moana) Act 2011 and the New Zealand Coastal Policy Statement, which allow for Māori rights to be 'balanced out' (Ruru in Waitangi Tribunal, 2019, p.25). For example, all use 'take into account' when referring to the principles of the Treaty of Waitangi. The New Zealand Coastal Policy Statement uses other passive phrases, such as 'consider providing practical assistance to iwi or hapū' (policy 2(e)(ii)) and 'as far as practicable in accordance with tikanga Māori' (2(b)) (Department

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of Conservation, 2010, pp.12,11). This language lacks authority or urgency and provides space for limited power sharing. Furthermore, the Foreshore and Seabed Act 2004 (and the subsequent Marine and Coastal Area (Takutai Moana) Act 2011) already limited the scope of Māori rights possible in relation to the marine and coastal area through the vesting of the space in the Crown and extinguishing of Māori customary rights. New legislation that focuses on managing both natural resources and climate adaptation processes must include stronger and action-based instruments for shared or Māori-led decision making.

The Waitangi Tribunal has provided examples of stronger language, such as 'must give effect to the principles of the Treaty of Waitangi' and 'shall act in a manner that is consistent with the principles of the Treaty', numerous times (see WAI 1200,167, 796, 785, 863, 304, 145, 2358, 262, 1130). However, the Tribunal acknowledges that strengthening language alone will not fix all issues. For example, the Department of Conservation (DOC) is the leading agency guiding the New Zealand Coastal Policy Statement and has far stronger language in its legislation (to give effect to te Tiriti) and yet this hasn't

resulted in strong language or Treaty compliance in the coastal policy. As the Tribunal indicates, more is required to ensure compliance, and it has in several reports made recommendations about what must be done, such as requiring local authorities to explore options for delegation of powers to Māori (Waitangi Tribunal, 2011, p.281). Mana Whakahono a Rohe arrangements were intended to go some way to achieving this, but it remains to be seen if recognition of their role is carried over into new legislation replacing the Resource Management Act.

In the New Zealand Coastal Policy Statement Māori rights and interests tend to be compartmentalised as 'cultural' and narrowed to pertain to very specific locations. Other than in the specific te Tiriti objective and policy (objective 3 and policy 2), tangata whenua are mentioned in only six other of its policies; however, in each of these the focus is on specific rights or interests, such as relating to 'wāhi tapu' or 'sites of significance' or 'cultural value', rather than decision making or specific values. Policies of note where tangata whenua are not included are policy 7, 'Strategic planning', policy 11, 'Indigenous biological diversity (biodiversity)', and policy 28, 'Monitoring and reviewing the effectiveness of the NZCPS'. The effect of this limited inclusion is that it provides councils that may be already lacking in capacity, capability or will to work effectively in partnership with iwi and hapū the licence to sideline Māori from strategic decision making or planning. Instead, councils are simply 'recognising' or 'taking into account' iwi, hapū or mana whenua rights in relation to specific sites of significance. This fails to acknowledge many elements that are required for a just or tika transition, such as that Māori have te Tiriti-based rights to rangatiratanga and to be part of strategic-level planning across all natural resources, not just in regard to what are considered 'cultural matters'. Furthermore, if the relationships between mana whenua and local governments are not particularly close or well integrated, the combination of weak language and compartmentalising of Māori rights within policy is very likely to result in a low power-sharing arrangement when assessed on a spectrum of power sharing (Wevers, 2011).

The recognition and the enabling of Māori rangatiratanga rights to participate in power sharing and decision making must be clearly indicated in any new legislation relating to managed retreat, and in any amendments to the New Zealand Coastal Policy Statement.

This brings us to our third barrier inhibiting tika processes in regard to sea level rise, but also resource management more generally: relationships between council and iwi, hapū or mana whenua. Relationships between local government and mana whenua and Māori are uneven across the country, and often Māori continue to be treated as one stakeholder of many in the community (Bargh, 2020).

When it comes to council–Māori relationships it is unclear which mechanisms are truly effective in providing for Māori rights and interests and therefore ‘tika’ partnerships. While some councils may engage and utilise formal or legally binding ‘Tiriti tools’ with mana whenua (such as paid iwi representatives with voting rights on council committees or Māori wards), others may engage in informal or what we could describe as ‘te Tiriti-adjacent’ tools. For example, some councils have modest engagement with their partners which primarily involves periodic engagement or consultation with iwi, hapū or marae, instead of a formal inclusion of mana whenua in council decision making (Ashburton District Council, 2020). Councils may also focus on integrating cultural education and the use of te reo or Māori cultural concepts into their workplace as a core part of their engagement strategies (Henderson, 2019). While education and staff training are very important for building capacity within the kawanatanga sphere and assisting effective relationships with Māori, they do not provide for fuller Māori rights to rangatiratanga (Ministry for the Environment Review Panel, 2020).

Auckland Council utilises a range of ‘Tiriti tools’ or avenues to enable and engage with Māori. These include a legally binding partnership through the Independent Māori Statutory Board which includes board members with voting rights sitting on resource committees; the Tāmaki Makaurau Mana Whenua Forum; Ngā Māhārāe (Māori outcomes department);

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and five specific resource co-governance entities, boards or authorities.¹ It is significant to note that many of Auckland Council’s tools were not initiated by the council itself but rather were enforced through Treaty settlement or other legislation (the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014, Local Government (Auckland Council) Amendment Act 2010, Hauraki Gulf Marine Park Act 2000, Ngāti Whātua Ōrākei Claims Settlement Act 2012 and Ngāti Whātua o Kaipara Claims Settlement Act 2013). Ultimately it is difficult to say whether a good relationship between councils and Māori depends on legally enforceable Tiriti tools or not, and different contexts may produce different outcomes. However, formal arrangements do provide for a level of longevity and future-proofing.

In the Waitangi Tribunal *Ko Aotearoa Tenei* report (WAI 262) the Tribunal noted that ‘iwi should not have to spend valuable Treaty credits in full and final settlements to achieve what the RMA was supposed to deliver in any case’, and nor should they have to wait until Treaty breaches are settled to have proactive, positive and functional

relationships with regional and local councils (Waitangi Tribunal, 2011, p.273; Freshwater Iwi Leaders Group, 2015, p.5). Local government needs to actively invest in creating meaningful relationships with mana whenua and Māori that involve collaborative and adaptive decision making, where the different needs of mana whenua in specific regions are at the forefront. These relationships should not rely solely on Treaty settlement-based initiatives. A tika scenario would include ensuring that mana whenua have the resources to engage as a Treaty partner within the joint sphere, but also the capacity and resources to build the rangatiratanga sphere (Matike Mai Aotearoa, 2016). A tika scenario would also provide for greater weight to be given to iwi environmental management plans, where iwi outline their aspirations and policies relating to natural resources in their rohe. We recommended that the Local Government Act 2002 be amended to acknowledge the significance and importance of local governments’ te Tiriti obligations that accompany roles and responsibilities that have been devolved to them from central government. New legislation, such as the proposed Natural and Built Environments Act, should also include provisions for monitoring and auditing local government for te Tiriti compliance and achievement as recommended by the Randerson report, to better foster te Tiriti relationships (Ministry for the Environment Review Panel, 2020, p.91).

A fourth barrier inhibiting a tika transition is that mātauranga Māori is not always respected and considered in planning and decision making by local government, and as a consequence there is a lost opportunity for mutually beneficial decision making (Parahi, 2019). The processes that occurred following the 2005 Matatā flood have become an infamous example of poorly planned and executed coastal management (ibid.; Iorns, 2019). Catherine Iorns argues that ‘Treaty interests [were] insufficiently protected’ for many reasons, including lack of adequate consultation, effective engagement, active protection and good faith (Iorns, 2019, p.140). Matatā also provides a good example of the ways mātauranga Māori could have aided in better decision making. Dan Hikuroa has related a traditional story told by mana whenua in the Matatā area

about a taniwha in the form of a ngārara in the Waitepuru stream that would whip its tail around, reflecting the way the stream would change course when there was flooding or high water flow, as well as indicating the danger associated with this river (Hikuroa, 2016, p.7). This narrative helped to inform the placement of the four marae in the area. In the 2005 flood the four marae were undamaged and became safe zones, while many residential properties were severely damaged (ibid.; Iorns, 2019). In 2007 residents were told they could rebuild and continue living in the flood-damaged area (Iorns, 2019; Shand, 2017). The Whakatane District Council proposed building a dam-like structure to manage the flood risk of the Waitepuru and Awatarariki streams. Many of the iwi of Matatā were against the dam due to its closeness to wāhi tapu and urupā and had instead recommended looking into alternative options, such as retreat (Boffa Miskell, 2018, p.7; Tangata Whenua of Te Awa o Te Atua, 2007, p.9).

In 2021 many of the community completed the process of ‘managed retreat’ after further research and planning saw the council reclassify areas of land as ‘red-zoned debris flow risk area[s]’ (Bell, 2021). Unsurprisingly, people were angry and upset at having to move from their homes, particularly as many had rebuilt or bought into the area following the flood (Shand, 2017). If iwi values and knowledge, including the pūrākau of the ngārara, had played a more significant role in the decision-making processes the community of Matatā may have faced a more open, straightforward and tika managed retreat experience. Councils need to invest in cultural knowledge building within their own organisations, but also support the capacity of iwi and hapū to share and engage their mātauranga with the council as te Tiriti partners. Again, new legislation or policy should specify funding mechanisms for iwi, hapū and mana whenua to do so.

Positive steps towards a tika transition

What practices or policies are working to enable a tika transition?

The new National Policy Statement for Freshwater Management 2020 includes much stronger, action-based language that

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the New Zealand Coastal Policy Statement should aim to emulate. It specifically states that ‘Tangata Whenua are actively involved in freshwater management (including decision-making processes)’ (policy 2), and also requires that every regional council involve tangata whenua in developing and implementing mātauranga Māori monitoring to the extent they wish to be involved (New Zealand Government, 2020, pp.9–11). Furthermore, the new policy is written and structured in a very different way from the New Zealand Coastal Policy Statement and the previous National Policy Statement for Freshwater Management (2014), as it has a framework and concept-based structure. The framework involves six principles, including three based within te ao Māori: mana whakahaere, kaitiakitanga and manaakitanga. Within its integrated management subclause, the policy also uses the concept of ‘ki uta ki tai’ (ibid., p.13). The use of these values and concepts alongside strong, action-based language regarding tangata whenua and decision making is a step in a tika direction.

Across the country, many councils are showing goodwill to improve their te Tiriti

relationships with Māori. Hamilton City Council is an example of a council that has taken active steps to improve its relationships with iwi and mana whenua in recent years. In 2015 it hired its first amorangi Māori (Māori relationship manager), who faced the enormous task of working to build better relationships between the council, iwi, mana whenua and maataa waka (Leaman, 2021a). In 2018 the council appointed paid iwi and maataa waka representatives, māngai Māori, who now sit on all subcommittees and have voting rights (Rowland, 2020). In early 2021 the council released its ‘He Pou Manawa Ora – Pillars of Wellbeing’ strategy, which ‘celebrates its special Māori heritage, rich history, natural environmental wonders and ensures everyone has a voice in developing its future’ (Hamilton City Council, 2021). The strategy was developed in partnership with Waikato-Tainui, Te Rūnanga Ō Kirikiriroa and Te Haa Ō te Whenua Ō Kirikiriroa and involves four pou of wellbeing: history, unity, prosperity and restoration. What is significant about this strategy is that it covers a broad range of issues, such as increasing Māori senior leadership within the council, increased inclusion of mātauranga Māori to inform development and the response to challenges such as climate change, increased co-management and engagement with iwi and mana whenua, and supporting Māori culture and businesses within Hamilton. The council in May 2021 voted in favour of Māori wards for their next election in 2022 (Leaman and Mather, 2021). While the council still has a long way to go, there has been clear progress and dedication to facilitating better partnerships with Māori.

Similarly, mātauranga Māori is beginning to be more significant to other councils around the country. The Bay of Plenty Regional Coastal Environment Plan acknowledges that ‘Mātauranga Māori is not always incorporated or considered in resource management, including monitoring, assessment and decision-making’ and the plan includes a range of policies advocating for the inclusion of mātauranga Māori (Bay of Plenty Regional Council, 2019a, p.14). Furthermore, the Bay of Plenty Regional Council has also created its own framework for respecting and supporting mātauranga Māori, He

Korowai Mātauranga, which includes a range of strategies and objectives for the council to better understand and include mātauranga Māori within its decision making (Bay of Plenty Regional Council, 2019b). Currently there are no examples of this practically occurring within the council with regard to the coastal area, as both the plan and framework are relatively new, but they are encouraging steps.

Taonga and kaitiaki obligations

The second area we will discuss relates to taonga and the obligation of Māori as kaitiaki to protect taonga and taonga species, commonly understood as comprising Aotearoa's 'native biodiversity'. These issues connect with the Resource Management Act changes, but also to strategic policy formulated by the Department of Conservation and Ministry for the Environment. Māori have consistently demonstrated their interest in actively fulfilling their kaitiaki obligations (Waitangi Tribunal, 2011). Ensuring that kaitiaki are able to assist in halting the biodiversity decline in Aotearoa is central to mitigating and adapting to climate change. Within this context, what arrangements are currently barriers to a tika transition, what changes are needed, and where can positive steps be seen emerging?

Towards a tika transition: barriers and solutions

The use of Māori taonga and cultural knowledge without the active recognition and protection of Māori rights and interests in taonga species and biodiversity management is a major area of concern and inhibits a tika transition. While many of DOC's policies appear to be supportive of Māori rights, they have not translated yet into a sharing of power (the Conservation Act 1987 does not currently allow for delegation to iwi or hapū authorities) or funding, and concepts like 'kaitiakitanga' are increasingly in danger of being appropriated away from their cultural and political context of the rangatiratanga sphere. Te Mana o te Taiao is a DOC-led strategy on biodiversity in Aotearoa which emphasises 'placing the Treaty partnership at the centre of biodiversity work', and many objectives and outcomes are aimed

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at enabling iwi, hapū and whānau to be 'rangatira and kaitiaki' (Department of Conservation, 2020c, pp.17, 43). The strategy also identifies seven key values needed 'to achieve Te Mana o te Taiao', all of which are based within te ao Māori: kaitiakitanga, mahi whaipanga, ngākaunui, mahi tahi, whakapapa, tohungatanga and manaakitanga (ibid., p.44). The values described by DOC fundamentally rely on iwi, hapū and whānau to co-design, co-deliver and engage with DOC in the joint sphere. However, conservation legislation and policy as it stands does not provide adequate leadership or governance roles for Māori (Ruru et al., 2017).

The Ngā Whenua Rāhui Fund administered by DOC has provided some good opportunities for Māori landowners to protect their lands and ecosystems. However, the fund operates within the kawanatanga and joint spheres, and ultimately continues to limit the extent and exercise of Māori rangatiratanga (Department of Conservation, 2020a). It is imperative that the rangatiratanga sphere be supported, resourced and provided jurisdiction separate and distinct from the joint and kawanatanga spheres. For the biodiversity strategy to genuinely reflect a Treaty partnership it would need to provide resourcing and decision-making power for the rangatiratanga sphere. It is unclear

from its 2020 budget how the Department of Conservation is actively investing in iwi, hapū and whānau (the rangatiratanga sphere) to be at the centre of its biodiversity work programme as it claims (Department of Conservation, 2020b). In 2021 an audit by Deloitte of DOC's percentage revenue framework (its fee structure for activities on public conservation land) found many issues and opportunities regarding the ways the department has engaged and could engage with iwi, hapū and mana whenua, specifically relating to the financial management of conservation lands but also to management of the lands more generally (Deloitte, 2021). Commercial concessions on conservation land often rely on the taonga within the area for businesses success: for example, guided bird watching tours (<https://wrybill-tours.com/services-tours/>).

When DOC-led strategies and policies use Māori concepts, such as Te Mana o te Taiao, it is particularly important, as part of a tika transition, that Māori and their political entities within the rangatiratanga sphere either lead or are equal parties in the design, implementation and evaluation of these strategies, and that includes being equally funded. Otherwise, those Māori concepts and Māori taonga are simply being appropriated or exploited by the Crown, and third parties, without consent, likely creating te Tiriti breaches. We hope that the current review of the department's general conservation policies ensures the active protection of Māori rights and co-design, co-implementation and co-evaluation with Māori in the joint sphere, and supports the capacity and leadership of the rangatiratanga sphere.

A second area inhibiting a tika transition is the lack of recognition of existing Māori practices to protect biodiversity, providing carbon sinks and supporting environmental resilience for adaptation. The Climate Change Commission has noted the contribution Māori have made to emissions reductions 'either through carbon sequestration, culturally significant lakes and rivers being utilized to produce renewable energy, or the opportunity cost of not converting and developing natural environments' (Climate Change Commission, 2021, p.12). 47% of Māori land is covered in indigenous forest

or scrub, 13% in exotic forests and 29% in exotic grasslands. Compared to land managed under other land tenure forms, Māori land has proportionally more Indigenous and exotic forests and less exotic grasslands (Harmsworth, 2003, p.33; Ministry for the Environment and Statistics New Zealand, 2018). However, current mechanisms available to support forested areas have excluded pre-1990 forests and contributed to the failure to recognise Māori contributions.

Another area where Māori contributions are not well recognised or supported relates to the numerous kaitiaki activities that Māori engage in, many of which are in the public interest, not simply of benefit to Māori. At present, hapū, iwi and Māori bear the burden and costs associated with nurturing the environment, such as through riparian planting and managing lands and other resources in a manner which tends to sacrifice short-term maximisation of economic profit for longer-term sustainability goals, conducting environmental monitoring, upholding mātauranga practices, and engaging in biosecurity protection using tikanga methods, such as rāhui based on mātauranga, often without financial reward or recognition (see, for example, Parininihi ki Waitotara, 2020). Māori are also expected by the Crown to participate at a low level in 'engagement' processes around the exploitation of natural resources, which they may have opposed and which include no recognition of their rights, such as for petroleum or minerals (Bargh and Van Wagner, 2019). At present most hapū and iwi either use parts of their Treaty settlement monies, which were 'redress' for previous and usually separate breaches of te Tiriti, or cobble together grants on an ad hoc basis from the Crown to fulfil their kaitiaki duties. It is not tika for Māori to have to expend resources received in acknowledgement of previous Treaty breaches and failures of the Crown for the purposes of trying to prevent further breaches.

A tika transition will involve funding Māori to build capacity for kaitiaki operations and to fulfil their rangatiratanga role alongside the Crown's kawanatanga. This was reiterated in the Randerson report, which recommended that funding be

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provided to Māori who are undertaking resource management duties in the public interest (Ministry for the Environment Review Panel, 2020, p.116). The Waitangi Tribunal has also recommended that 'the Crown take urgent action on the problem of under-resourcing of Māori participation in RMA processes' (Waitangi Tribunal, 2019, p.xxiv). Funding for Māori authorities is also required nationally to support Māori maintaining and improving forests and wetlands, such as through seed collection, native plant nurseries and selectively replanting. The Zero Carbon Act needs amendment to financially acknowledge the carbon stored in native forests, scrub and wetlands on Māori land, and a new Natural and Built Environments Act needs to specify funding for iwi to participate in resource management and governance processes.

Māori efforts to protect biodiversity with tikanga Māori law tools such as rāhui are not widely or consistently supported despite their ability to provide environmentally positive outcomes. In 2017 Te Kawerau ā Maki, mana whenua of the Waitākere Ranges, placed a rāhui over this area in response to the alarming rates of kauri dieback in the forest. The iwi encouraged Auckland Council to issue a controlled area notice to stop the public entering the forest (Te Kawerau ā Maki, 2017; King, 2017). Auckland Council was slow to officially support the iwi rāhui, while much of the Waitākere community, the Tree Council, Forest & Bird, the

Independent Māori Statutory Board and Te Tira Whakamātaki (the Māori biosecurity network) were all supportive of the rāhui (Mark-Shadbolt, Wood and Ataria, 2018). It was not until late in 2018 that a controlled area notice was put in place and areas of the Waitākere Ranges became 'legally' closed to the public (Auckland Council, 2018). During the council's inaction thousands of people visited the forest, not acknowledging or not registering the rāhui as a form of law (Lei'ataua, 2018).

There are many other examples of iwi or hapū around the country applying rāhui, often in coastal areas and in relation to specific marine species (for example, Ngāti Hei, Ngāti Paoa, Ngāti Kahu) (Rolleston, 2021; Swannix, 2018; Ngāti Hei Trust, 2017). While the Fisheries Act 1996 does hold provisions for customary tools such as rāhui to be 'legally enforced' (s186), this can be a lengthy process, involving official requests, consultation and reviews by the Ministry for Primary Industries, and does not always result in support for or endorsement of iwi requests. Therefore, many iwi and hapū rely on support from the community, including councils.

Councils and government authorities need to better support and trust hapū, iwi and Māori as they enact tikanga Māori, such as with rāhui. The New Zealand Council of Legal Education is currently considering changes to the university legal studies curriculum to include the teaching of tikanga Māori as Aotearoa's first source of law (Borrin Foundation, 2020). Such moves suggest further funding is needed for the tikanga expertise which sits within the rangatiratanga sphere.

Positive steps towards a tika transition

What practices or policies are working to enable a tika transition?

There is evidence internationally that indigenous peoples better manage the biodiversity on their lands than other landowners (BC First Nations Energy, Mining Council and UVic Environmental Law Centre, 2021; Waller and Reo, 2018; Borrows and Praud, 2020). An example of this in Aotearoa is the Riri A Te Hori 2 wetland restoration development. In 2011 owners of the Māori freehold land reserve decided to change what was happening on

their whenua, previously being leased out and managed by an external administrator (Bailey, 2015). The Riri A Te Hori 2 A Whenua Trust reserve land is located south-east of Pūtihi in Whanganui. In 2014, through funding from Te Wai Māori Trust, the low-lying lands were restored into a wetland, connected to the Whanganui River by the Awarua stream (ibid., p.3). The wetland brings not only ecological and biodiversity gains, such as increased bird life, tuna and native bush, but social and cultural gains too. The landowners and wider community, including kura kaupapa students, the city council, DOC and Fish & Game have all engaged with and shown enthusiasm for this project and its successes. Across the country there are similar stories of Māori communities small and large engaging in practices and processes that are beneficial for the environment and taonga species. The protection of biodiversity and the sustainable management of forests and wetlands assists in mitigating climate change by supporting 'carbon sinks' and adaptation by creating resilience of local economies and ecologies (Williams-Davidson and Sarra, 2021). As discussed above, a tika transition would include a systematic acknowledgement of and reward for this kind of wetland restoration by the government.

There are numerous examples across the country of iwi and hapū consistently investing in creative sustainable management options when they have supportive funding mechanisms. As part of their Treaty claims settlement Ngāti Whātua Ōrākei were returned the land now called Whenua Rangatira and the Pourewa Creek Recreation Reserve. The lands are managed by the Ngāti Whātua Ōrākei Reserves Board, a co-governance entity with representatives of the iwi and Auckland Council. A significant clause in the arrangement is that all 'costs and

expenses incurred in and incidental to the control and management' of both the Whenua Rangatira and Pourewa Reserve must be paid by the Auckland Council, 'to the extent that any income arising from the reserve is insufficient to defray those costs and expenses' (Auckland Council, 2021; Ngāti Whātua Ōrākei Claims Settlement Act 2012, ss69(1), 46(7)).

The Reserve Board aims to manage the land in an integrated way that supports both the iwi and the people of Auckland, culturally, socially and environmentally (Auckland Council, 2021). A large-scale visual framework has been created by Ngāti Whātua Ōrākei to envision the future potential of both the Pourewa Reserve and the Whenua Rangatira lands (Ngāti Whātua Ōrākei, 2018). The framework describes a vision for the land that incorporates aspects of land protection, education, celebration, culture, community, entrepreneurship and engagement with hapū and the wider community. Already projects have begun to restore native bush on the whenua, create seed banks for the iwi and share food and rongoā with the whānau of Ngāti Whātua through their māra kai and māra rongoā (Farming and Nature Conservation, 2021; Ngāti Whātua Ōrākei, 2021). A tika transition would include mechanisms in legislation and in national direction provided to local government to ensure that these kinds of projects are systematically created, funded and supported nationally and locally.

Conclusion and recommendations

In this article we suggest that a tika transition should guide policies related to climate change adaptation and mitigation. We have highlighted a selection of practices and policies that are standing in the way of a tika transition.

New legislation that focuses on both managing natural resources and the

climate adaptation process must include stronger and action-based instruments for shared decision making. A prerequisite for ensuring that Māori participate on an equal footing in shared decision making in the joint sphere is for hapū, iwi and Māori to have their distinct political identities in the rangatiratanga sphere of equal strength to the kawanatanga sphere. Central and local government must also continue to build their own capacity to understand, engage and respect mātauranga Māori. We have argued that when Māori concepts and mātauranga are used by government agencies within policies and strategies, these must be led, developed and evaluated from the rangatiratanga sphere by hapū, iwi and Māori. Many of the barriers and solutions discussed are interconnected. Better relationships will mean stronger trust; stronger legislation and policy (including funding for the rangatiratanga sphere) will support better relationships. This will all support better outcomes for the environment.

The hopeful examples provided here indicate that the growing recognition of te ao Māori is accompanied by an acknowledgement that tikanga Māori possesses many of the key ingredients to support the transition to a low-carbon economy, and one which uses natural resources in a more thoughtful way. Increasing recognition of tikanga and te ao Māori by the Crown and non-Māori has provided reaffirmation for hapū and iwi Māori who have continued to practice tikanga in diverse and changing ways, and it provides hope that modest and bolder steps in a tika direction might continue to proliferate.

¹ Tūpuna Maunga o Tamaki Makaurau Authority, Te Poari o Kaipatiki ki Kaipara, Ngāti Whātua Ōrākei Reserves Board, Hauraki Gulf Forum and Kaipara Harbour Management Group.

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