

S33 transfers and Mana Whakahono ā Rohe – notes for the Biodiversity Collaborative Group – June 2018

The Biodiversity Collaborative Group asked for advice on the use of Resource Management Act section 33 transfer of powers and Mana Whakahono a Rohe to better understand how these tools could be used to better integrate Mātauranga Māori into the National Policy Statement for Indigenous Biodiversity (NPS IB) and complementary measures.

The Ministry for the Environment (MfE) is providing the following notes, in addition to the verbal briefing given on 7 June 2018, to inform the group's understanding.

Resource Management Act section 33 transfer of powers

[Section 33](#) enables a local authority to transfer any one or more of its functions, powers, or duties under the Resource Management Act (except the power of transfer) to another public authority.

Ministry stocktake

MfE does not keep an active record of s33 transfers. However, we did carry out a [stocktake in 2015](#) – this looked at transfers between local authorities only, and is therefore of limited use to the Biodiversity Collaborative Group (BCG).

Master's dissertation by Alison Outram

Of greater interest is a 2017 Master's dissertation by Lincoln University's Alison Outram.¹ The dissertation was more comprehensive than the Ministry stocktake. It considered s33 transfers, alongside a range of other agreements with a particular emphasis on agreements with iwi authorities.

The key findings are:

- There have been no transfer of powers to iwi authorities under s33.
- There have been five approaches from iwi to local authorities regarding s33 transfers. Only one of these was a formal approach (to the Tauranga City Council). It was declined for three reasons:
 1. *At the time the group that approached was a hapu and was not a recognised iwi authority.*
 2. *Council was not satisfied that the hapu was sufficiently resourced to undertake the responsibilities transferred.*
 3. *The proposal would have needed to be formally proposed to the community for full public consultation and submission. It was suspected that such a formal proposal was unlikely to succeed.*
- There are a range of other agreements to share functions/powers or duties between local authorities and other public authorities. The research found 30, of which 13 were with iwi or runanga. These are:
 - *S34/34A delegations (1)*
 - *co-governance arrangements (1)*
 - *relationship agreements (1)*
 - *s36B RMA joint management agreements (3)*
 - *mutual agreements (1)*

¹ Outram, A. S. (2017). *Post-colonialism, indigenous power and resource management: Does s33 of the Resource Management Act 1991 have its intended effect for iwi authorities?* Christchurch: Lincoln University.

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- *working relationships (1)*
 - *Memorandums of Partnership (1)*
 - *Memorandums of Understanding (3)*
 - *The commissioning of iwi to prepare a cultural assessment report (1).*²
- The study found five barriers to iwi authorities obtaining transfers under s33
 - a lack of formal process for local authorities to follow
 - a lack of clarity as to what defines an iwi authority
 - concerns that iwi lack the resources to undertake any transferred functions
 - ultimate power in granting transfers remains with local authorities
 - a lack of community support may make councils unwilling to share functions.

The study concluded that these barriers are not necessarily exclusive to iwi, as there have not been any s33 transfers to other public authorities outside local authorities.

Other useful reading includes:

- [Council-Māori Participation Arrangements](#) – undertaken by Paul Beverly on behalf of LGNZ This is further supported by <http://www.lgnz.co.nz/our-work/publications/council-maori-participation-arrangements/>
- [He Tiro Whānui e pā ana ki te Tiaki Taiao 2012: 2012 Kaitiaki Survey Report](#) – published by Te Puni Kōkiri

Mana Whakahono ā Rohe

Mana Whakahono is a relationship agreement framework for iwi authorities and local authorities under sections 58L-U of the Resource Management Act. The provisions were enacted in April 2017.

*Mana Whakahono provide an opportunity for local authorities and tangata whenua (through their iwi authority or hapū) to have a meaningful dialogue about their respective visions and objectives for an area. Parties can record in their Mana Whakahono how they could work together to achieve identified outcomes. This could be done in a range of ways; from participation in the planning process, to consideration of joint decision-making and/or recommendations about transfer of powers, functions, and/or duties.*³

Impact to date

It is too soon to conclude whether Mana Whakahono has made a difference for Māori participation in resource management decision making. No Mana Whakahono arrangements have been finalised, though there is significant interest across the country and there are arrangements being negotiated. The legislation provides 18 months for the negotiation process, or longer if agreed by the parties.

Potential benefits

Mana Whakahono creates a unique shift which requires local authorities to enter into negotiations and once established, that agreement is binding on the parties (unless otherwise negotiated). It is anticipated that this will, to some extent bridge the gap between section 33 transfer of powers and

² Bracketed numbers represent the number of each arrangement as identified by the research.

³ *Mana Whakahono ā Rohe guidance* accessed via: <http://www.mfe.govt.nz/publications/rma/mana-whakahono-%C4%81-rohe-guidance>

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the other Māori participation provisions. In this way, Mana Whakahono could remove some of the barriers iwi face in negotiating s33 transfers.

Mana Whakahono also provides for hapū. While hapū cannot initiate a Mana Whakahono, iwi authorities may delegate a role to hapū to participate in particular RMA processes within the agreement. Local authorities may also initiate with a hapū or iwi authority.

Content

A Mana Whakahono can cover a broad range of agreements. An arrangement can be as simple or detailed as the parties like. However, there are mandatory requirements, including specifying how:

- iwi will participate in plan making/changes
- consultation requirements will work
- the parties will work together on monitoring
- the parties will give effect to requirements set out in iwi participation legislation (Treaty settlements)
- conflicts of interest will be managed
- disputes will be resolved.⁴

Mana Whakahono also includes matters that the parties may discuss, including any other duties function and powers, which includes section 33 transfers of power. It is important to note, that where a section 33 is negotiated as part of a Mana Whakahono, the s33 requirements still apply.

The provisions also enable other relationship agreements to be deemed Mana Whakahono to the extent they cover RMA matters. However, given the limited scope of Mana Whakahono (to the RMA) some parties may not choose to use this framework to formalise their relationship. It is important to continue to recognise, and to not undermine, other existing relationship agreements (such as MOUs) as these have often been negotiated over long periods of time using significant resources.

⁴ Section 58R of the Resource Management Act 1991.