



Cultural Impact Assessment: A decision-maker's perspective

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Introduction - what triggers a CIA?

Strictly speaking I view every Iwi/Hapū response to a development proposal as a cultural impact assessment, whether it is a formal documented report (formal CIA) or a paragraph on a piece of paper (in-office assessment). This is because all Iwi/Hapū assessments of proposals are viewed through the lens of cultural values. However, to acknowledge the importance of the process taken to develop a formal CIA, I refer here to a formally produced report that follows a particular process rather than a standard in-office assessment. Formal CIA Reports are an ideal tool and are what decision-makers most often work with in a hearing context. This then begs the question - what triggers a formal CIA process?

Two Iwi Management Plans provide guidance on this matter:

Te Taumutu Rūnanga Natural Resources Management Plan 2004

If a proposal impacts on tangata whenua values to the extent that is of concern to the Runanga, the applicant can be required to commission a CIA report. These assessments enable applicants to better understand tangata whenua values and concerns and, suggest ways to avoid, remedy or mitigate adverse effects.

Te Poha o Tohu Raumati - Te Rūnanga o Kaikōura Iwi Management Plan 2005 provides specific triggers:

- *Where an in-office assessment cannot be made because the impacts of an activity on cultural values is unknown or unclear or cannot be determined until research and investigations have occurred.*
- *Where there are a number of activities being proposed that need multiple approvals from both the District and Regional councils and other regulatory authorities such as Heritage New Zealand.*
- *The proposed activity is either on, adjacent to or will impact on a site of cultural importance or within an area of cultural significance.*
- *The size and scale of the proposal is such that multiple values or multiple effects need to be considered.*
- *The proposal is considered to have significant cultural effects*

As we learn and experience we evolve and naturally, so do the triggers. With experience they become more refined while still, importantly, remaining open ended. However, the key message is that there must be potential adverse effects on cultural values to warrant a CIA.



CIA - writing a report and having it heard

Notwithstanding the contributions of the CIA writer, CIA are developed in the main by individual and identified whānau members, sharing their values and explaining how those values may be impacted upon by a development proposal. Whānau members are normally selected because they are known for their knowledge and expertise of those natural resources and values that may be impacted upon by a development proposal.

Developing the CIA can involve a range of things, from spending time interviewing whānau members to facilitating and organising hui, co-ordinating paperwork and feedback with contributors, to organizing and helping to establish working parties, through to finalising the CIA with whānau. The writer spends a lot of time with whānau, learning about and discussing values. A lot of trust and faith is placed in the CIA writer. Whānau would not trust just anyone with their precious information, understandably they would need to have faith and feel secure with the writer.

CIAs are best commissioned early in the project development process, well before resource consent applications are lodged with a council. This will save unnecessary delays and costs at later stages. For example, a CIA process may result in the need to modify or do further technical investigations required for the Assessment of Environmental Effects (AEE), to accommodate whānau concerns or respond to a cultural issue.

Once a CIA is completed and provided to the applicant, the CIA writer may be required to prepare expert evidence to present at the hearing, as part of the applicant's team. This is because the CIA is prepared for both the whānau and the applicant, and usually paid for by the applicant. Having a CIA writer prepare and present evidence on behalf of the applicant can be uncomfortable for whānau, particularly if they are fundamentally opposed to the development proposal. They could see 'their' CIA writer as now giving evidence 'for' the opposition. This could cause discomfort for the CIA writer too. Well delivered evidence, clear, understandable and consistent language, and good communication with whānau are skills any CIA writer must have. They need to be astute, sensitive, responsive and made of sturdy stuff.

A CIA writer's area of expertise is the process followed to develop the CIA. Their role is specific - it is not to answer questions or give their personal view about cultural values. Nor is it to speak on behalf of the whānau or to discuss and answer questions about cultural values. A CIA writer must be independent and work in an independent manner.

CIA, whānau and expert evidence

The *Making Good Decisions resource for RMA decision-makers* describes the value of community submissions and the nature of expert evidence. Various members of the community will make submissions at hearings and all for different reasons. They can range from neighbours who are directly affected by a proposal, to those organisations or individuals who have an interest in the area, to those who have a long term relationship with and use of its natural resources - such as hapū and whānau. Local submissions are necessary and valuable.

Expert witnesses are experts because of their qualifications. Expert witnesses include planners, water quality scientists, biologists, geo-tech engineers, landscape architects for example and are often called upon to give evidence on behalf of applicants and submitters. Expert witnesses have clear obligation under the Environment Court's code of conduct:

- ***have an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise***
- ***are not advocates for the party who engages the witness***

It is important that there is a strong connection between the CIA, whānau evidence and any expert evidence presented by iwi/hapū. I highlight this point because if the whānau evidence is not, even in part, consistent with their expert evidence it can influence decision-making considerations. Two particular hearings come to mind where whānau evidence was very sound and delivered in a powerful and influential way, but the associated expert evidence did not support the whānau evidence to the extent it could have. This resulted in the panel not being able to accommodate the Iwi/Hapū requests and concerns to the extent it could have.

I have also participated in a hearing as a decision-maker for a relatively large piece of infrastructure where no formal CIA was provided to support the whānau evidence. The historical evidence presented by whānau was indisputable; but some other matters outlined in their submissions were not relevant to the hearing. Therefore we as a hearing panel had no authority to consider the points raised. In addition, further supporting information requested by the panel could not be provided, because there was no coordinated or completed assessment of cultural impacts.

In this second example, a formal CIA process would have benefited the decision-making process by providing information relevant to the hearing in a coordinated and comprehensive way. A CIA is advantageous to a hearing because it can reaffirm and consolidate Iwi/Hapū information, and as a decision-maker its best if submissions and evidence is presented to the panel in this way. It is always reassuring to know that submitters and applicants have done their homework when preparing to present at a hearing.

What is a successful outcome?

Sometimes, unless one has a reasonable understanding of the Resource Management Act 1991 process, a successful outcome is not always obvious to those who contribute their values to a CIA process. For instance when an adaptive management process has been put forward to address some potential unexpected effects that could arise as a result of the proposal, it does take a leap of faith to trust in a regime that will adapt its management approach depending on how and to what extent a value has been effected. Even to understand how the regime will work can be challenging.

Further, sometimes the wider hapū/iwi members who have not been part of a CIA process may not realise a success has been achieved if for example, a development proposal is declined, due in part to the significance of cultural impacts as expressed in a CIA. In this case, there will be nothing to see at the end of it so the success may not be fully appreciated or acknowledged.

Conclusion - CIA and decision-making

It is not a decision-makers role to find the solutions. Like the proposal itself and its associated potential issues being presented to a decision-making panel, the panel anticipates and expects that solutions will be put before them too. They cannot consider or change past decisions, nor can they address points that fall outside of a resource consent application. Their decision-making framework is restricted to the application in question and the Resource Management Act.



CIA's make a valuable contribution to the decision-making process, when well written and endorsed by the iwi or hapū for whom they are prepared. CIA's provide a clear assessment of the cultural values that may be impacted by a proposed development, the nature of the impacts, and culturally appropriate ways to avoid, remedy or mitigate adverse effects. This enables decision-makers to recognise and provide for RMA Part 2 matters and to ensure that a project's AEE is comprehensive. A good CIA provides a basis for developing consent conditions. Hence my takeaway message: decision-makers are only as good as the information put before them.