

THE
HAURAKI GULF
MARINE PARK REPORT

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WAI 728

WAITANGI TRIBUNAL REPORT 2001



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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The Honourable Parekura Horomia
Minister of Maori Affairs



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

cc

The Honourable Sandra Lee
Minister of Conservation

The Honourable Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings
WELLINGTON

17 October 2001

E te rangatira, tena koe

Herewith, we submit our report on the Hauraki Gulf Marine Park Act 2000 (Wai 728). This claim has been separated from the large group of Hauraki claims because it deals with the contemporary issue of the management of the Hauraki Gulf rather than with the historical grievances of the Hauraki people, which are still being heard by this Tribunal.

We make no specific findings in this report because we are not convinced that Hauraki iwi have been prejudiced by the passing of the Hauraki Gulf Marine Park Act. We would encourage all parties to focus on what they agree on: the need for the protection of the Hauraki Gulf environment for future generations. This is the spirit and intention of the Act, which provides a framework for all parties to work together towards this common goal.

Kia ora

LIST OF ABBREVIATIONS

app	appendix
ca	Court of Appeal
ch	chapter
doc	document
ed	edition
inc	incorporated
J	justice (when used after a surname)
ltd	limited
NZLR	<i>New Zealand Law Reports</i>
NZTPA	<i>New Zealand Town Planning Appeals</i>
p, pp	page, pages
para	paragraph
s	section
RMA	Resource Management Act 1991
vol	volume
VUWLR	<i>Victoria University of Wellington Law Review</i>

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers

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Dated at *Wellington* this *17th* day of *October* 2001



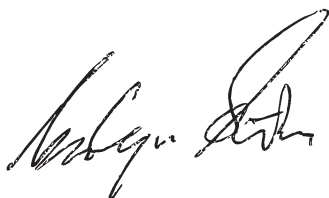
A Wallace, presiding officer



JT Kneebone, member



JW Milroy, member



EM Stokes, member



CHAPTER 1

THE CLAIMS

1.1 WAI 728

The Hauraki Gulf Marine Park claim (Wai 728) is one of a number of claims included in the Hauraki consolidated claims (Wai 686), but, for reasons outlined below, it has been reported on separately by the Hauraki Tribunal before all the other claims have been heard. This claim was made by Toko Renata Te Taniwha and the Hauraki Maori Trust Board on behalf of the 12 iwi specifically mentioned in section 4(2) of the Hauraki Maori Trust Board Act 1988: Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Patukirikiri, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiau, Ngati Rahiri Tumutumu, Ngai Tai, Ngati Tamatera, Ngati Tara Tokanui, and Ngati Whanaunga.

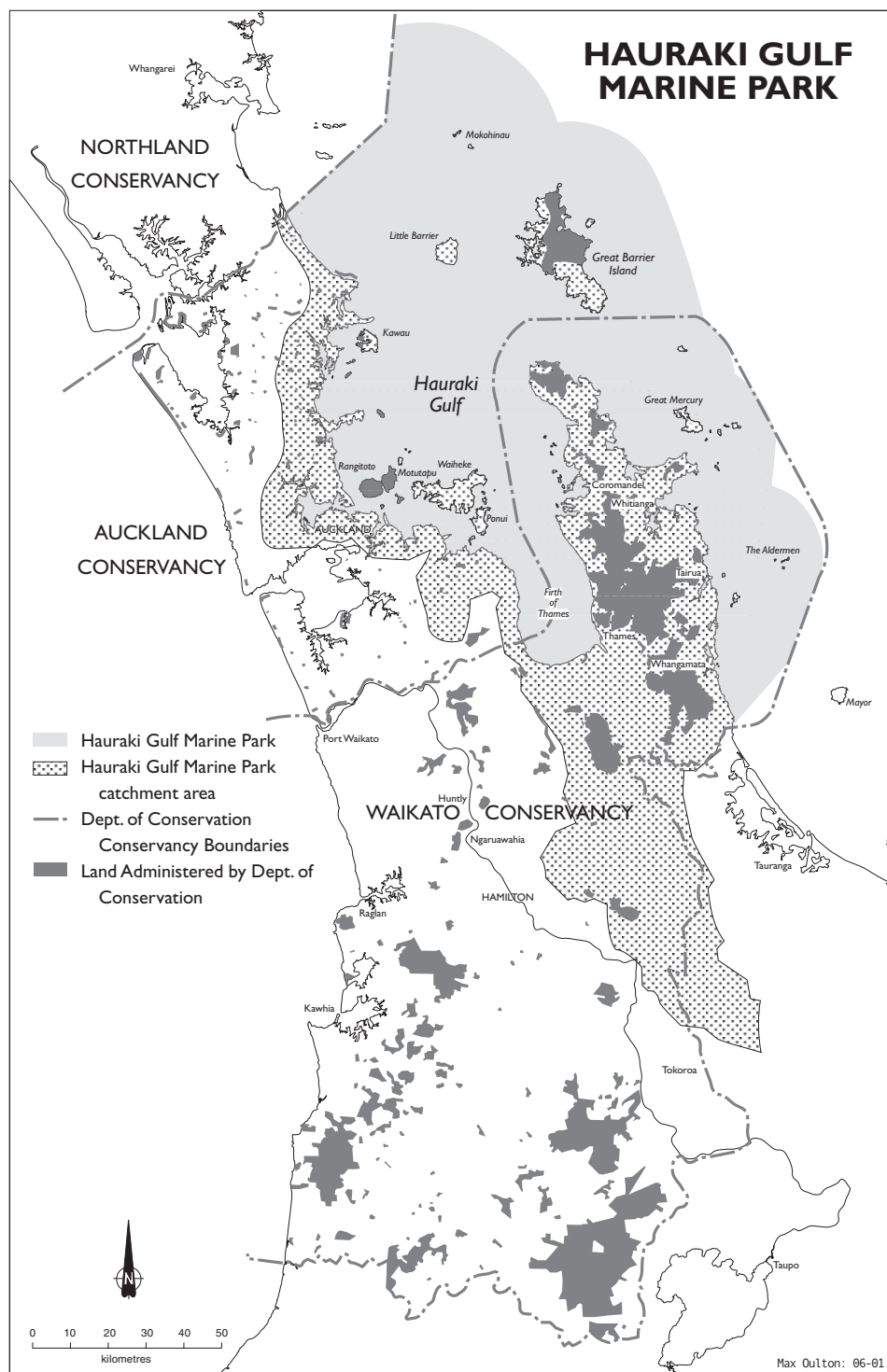
The claimants stated that they are tangata whenua of Tikapa Moana (the Hauraki Gulf), and that Tikapa Moana is an important mahinga kai (food source) and a taonga (highly prized, inherited resource). The trust board iwi further claimed that they are kaitiaki (trustees, guardians), and hold mana whenua and mana moana over the shores, lands, and waters of Tikapa Moana. In their statement, the claimants drew to the attention of the Tribunal their application to the Maori Land Court for recognition of Hauraki iwi's customary title to a significant proportion of the foreshore and seabed of Tikapa Moana.*

* Claim 1.1(b)

The claimants believe that the Crown has established a management regime under the Hauraki Gulf Marine Park Act 2000 that is inconsistent with its duties of active protection of their rangatiratanga and kaitiakitanga, and by doing so has breached the principles of the Treaty of Waitangi. They asserted that their claims to customary title and rights in the foreshore and seabed were prejudiced by this Act. The claimants were particularly critical of the 'Hauraki Gulf Forum' established in this legislation, because they considered that it:

- ▶ did not provide for adequate representation of Hauraki Maori;
- ▶ failed to protect the interests of Hauraki iwi; and
- ▶ failed to allow Hauraki iwi to participate effectively.

The area comprising the Hauraki Gulf Marine Park is shown in map 1.



1.2 THE STATEMENT OF CLAIM

The original Wai 728 statement of claim was lodged on 19 June 1998, shortly after Hauraki iwi had been advised that the Minister of Conservation was intending to introduce special legislation to establish a Hauraki Gulf marine park. The claim noted that in the Wai 100 Hauraki claim the same claimants sought recognition of the customary title of Hauraki iwi to the foreshore and seabed of Tikapa Moana. Attached to the claim was an application by the Hauraki Maori Trust Board to the Maori Land Court, dated 28 January 1998, seeking an investigation of customary title of Hauraki iwi to the foreshore and seabed of a defined area surrounding the Coromandel Peninsula and Firth of Thames. The Wai 728 claimants asserted that the Hauraki claims to the foreshore and seabed would be prejudiced by the proposed special legislation.*

* Claim 1.1 (see app 1)

1.3 THE APPLICATION FOR URGENCY

On 14 July 1998, claimant counsel sought an urgent hearing of the Wai 728 claim on the ground that special legislation for a marine park was currently being drafted but that a Bill to that effect had not yet been introduced to the House of Representatives. Counsel submitted that the Tribunal had jurisdiction pursuant to section 6(1)(c) and (d) of the Treaty of Waitangi Act 1975 to hear the claim, but acknowledged that, once the Bill was introduced to the House, the Tribunal's jurisdiction was specifically excluded under section 6(1)(b), unless the House referred the legislation back to the Tribunal under section 8.[†] The Tribunal also received submissions from a number of Hauraki claimants indicating an interest in the urgency application.[‡] The Crown submission opposed the application on the grounds that the proposed legislation was not intended to affect the claims of customary title to the foreshore and seabed and that a process of consultation by the Department of Conservation with all iwi in the marine park area had already begun in 1991.[§]

† Paper 2.3

‡ Papers 2.6, 2.8, 2.11, 2.12, 2.16

§ Paper 2.10

The Hauraki Tribunal considered all the submissions at a conference held in Auckland on 13 August 1998 and adjourned the application sine die on the ground that there was 'still insufficient information before it to come to a decision'. However, it reserved leave to the claimants to bring on the application later:

The Tribunal records with approval the fact that the Crown and the claimants have entered into discussions which may well prove fruitful.

The Tribunal accepts the advice from the Crown that the draft proposal in relation to the policy to be expressed in the Bill is not yet available. The Tribunal directs that it receive a copy of the draft proposal as soon as it is available.

The Tribunal expresses the hope that the Crown and the claimants will work together so that a formal determination of this application is rendered unnecessary.[¶]

¶ Paper 2.14

On 11 November 1998, Crown counsel supplied a confidential draft of the Hauraki Gulf Marine Park Bill to the Tribunal.

1.4 THE HAURAKI GULF MARINE PARK BILL IN THE HOUSE

Paper 2.22 *

In the meantime, further consultation with Hauraki and other iwi was undertaken by the Minister of Conservation in August 1998. A ‘working group’ of tangata whenua and Crown officials was set up to consider the draft Bill.* (The consultation process is outlined in chapter 2.) The Hauraki Gulf Marine Park Bill was introduced to the House of Representatives on 24 November 1998 and referred to the Transport and Environment Committee, which reported back to the House in July 1999. The Bill was passed through all stages and the Hauraki Gulf Marine Park Act became law on 27 February 2000. (The provisions of the Act are outlined in chapter 3.)

1.5 THE AMENDED STATEMENT OF CLAIM

Claim 1.1(a) †

Paper 2.39 ‡

Paper 2.41 §

On 20 June 2000, counsel for Wai 728 filed an amended statement of claim.† Crown counsel filed a statement of response on 14 July 2000.‡ The hearing of this claim was set down for the next hearing week of the Hauraki Tribunal. On 17 July 2000, the opening submissions of claimant counsel, Grant Powell, and evidence from the claimants was heard at Tararu. At the end of the hearing of this evidence from tangata whenua, claimant counsel raised the issue of an urgent discrete report on the Wai 728 claim. Crown counsel agreed that the Crown’s evidence could be filed by October 2000§ and that the contemporary issues in the claim could be separated from the historical issues which were the concern of most of the Hauraki claims. Evidence from the Crown was heard at Thames on 24 and 25 October 2000.

1.6 THE SECOND AMENDED STATEMENT OF CLAIM

Claim 1.1(b) (see app 1) ¶

On 1 February 2001, counsel for Wai 728 filed a second amended statement of claim. This was identical to the amended statement of claim, with the exception of the addition of paragraph 10.3 under ‘Particulars of Claim’ and two additional subparagraphs, (b) and (e), under the heading ‘Relief Sought’, all of which related to the issue of customary title to the foreshore and seabed of Tikapa Moana.¶

On 13 February 2001, the closing submissions of counsel for Wai 728, counsel for Wai 110 and 475 (on matters relating to Wai 728), and Crown counsel were heard by the Tribunal at

Whangamata. Crown counsel agreed to prepare a statement in response to the second amended statement of claim, and this was filed on 20 February 2001.* Both claimant counsel made oral submissions in reply, and these were later submitted in writing, along with a written version of Crown counsel's interpolations and corrections to her closing submissions.†

* Paper 2.52

† Documents D1–D3

1.7 THE FINDINGS SOUGHT BY THE CLAIMANTS

The Hauraki Maori Trust Board sought a finding that in the Hauraki Gulf Marine Park Act 2000 the Crown has breached the principles of the Treaty of Waitangi by:

- ▶ failing to protect adequately the customary interests of Hauraki iwi in Tikapa Moana; and
- ▶ treating the foreshore and seabed as part of the Hauraki Gulf Marine Park without recognising the customary title of Hauraki iwi.

The claimants sought specific relief in the form of recommendations that:

- ▶ Hauraki iwi be given the opportunity to participate in a review of the Hauraki Gulf Marine Park Act 2000 in order to protect their interests;
- ▶ the Crown take steps to prevent any further implementation of the Act until it be repealed or amended so as to be consistent with the Treaty of Waitangi;
- ▶ the Crown desist from treating the foreshore and seabed as part of the park pending the outcome of the application by Hauraki iwi for recognition of their customary ownership;
- ▶ Hauraki iwi be provided with all necessary resources and funding in order to fulfil their duties as kaitiaki in respect of Tikapa Moana including, where appropriate, funding for legal proceedings affecting Tikapa Moana; and
- ▶ costs be awarded.

A discussion of both the claimants' and the Crown's submissions and evidence on these issues is included in chapters 4 and 5, and in chapter 6 we outline our conclusions.

1.8 THE AMENDMENT OF THE HAURAKI GULF MARINE PARK ACT 2000

We note that, following the hearing of closing submissions in the Wai 728 claim, some matters arose relating to a Whitianga waterways development proposal which led to an amendment to the Hauraki Gulf Marine Park Act 2000. A decision of the Environment Court in the Whitianga waterways case‡ was submitted to the Tribunal as an attachment to the closing submissions by Charl Hirschfeld, counsel for the Wai 110 and Wai 475 claimants in the Hauraki claims.§ However, this decision was submitted in the context of illustrating a

‡ *Te Runanga a Iwi o Ngati Tamatera Inc v The Thames–Coromandel District Council and Whitianga Waterways Ltd*
26 January 2001, Environment Court, A014/01

§ Document C1

legal argument about the problems involved in defining the term ‘tangata whenua’ when it is used in legislation. The Tribunal did not receive submissions on specific developments at Whitianga (or elsewhere), which were within the jurisdiction of the Environment Court, during the hearing of the Wai 728 claim. We therefore make no comment in this report on matters related to any amendment of the Hauraki Gulf Marine Park Act 2000.

CHAPTER 2

THE EVOLUTION OF THE HAURAKI GULF MARINE PARK

2.1 INTRODUCTION

The concept of a Hauraki Gulf marine park evolved in the 1960s and was given status in the Hauraki Gulf Maritime Park Act 1967, which set up the Hauraki Gulf Maritime Park Board. This Act was repealed in 1990 by the Conservation Law Reform Act 1990, which also moved the board's functions to the Department of Conservation. During the 1990s, there were moves to establish a management strategy for the Hauraki Gulf that coordinated the activities of the Department of Conservation, the Auckland Regional Council, and the various local territorial authorities with interests in the gulf. In reviewing the developments leading up to the passing of the Hauraki Gulf Marine Park Act 2000, the Tribunal has relied in this chapter on the evidence of Dr Graeme Campbell and the comprehensive set of documents attached to his evidence.* Dr Campbell was in a unique position to review events through the 1990s, having served as the Auckland regional conservator for the Department of Conservation from 1989 to 1995 and as the corporate adviser (strategic policy) in the Wellington head office of the department between February 1995 and September 1996. From December 1996, he was employed as a conservation adviser in the parliamentary office of the Honourable Dr Nick Smith, the Minister of Conservation, and, from December 1999 to June 2000, he had the same role in the office of the Minister's successor, the Honourable Sandra Lee.

* Documents B1, B1(a)–(f)

2.2 THE HAURAKI GULF MARITIME PARK, 1967–90

In 1967, the Hauraki Gulf Maritime Park was established under the Hauraki Gulf Maritime Park Act 1967 to preserve and protect the island reserves in the Hauraki Gulf north to the Poor Knights Islands. The reserved areas were expanded by the addition of other Crown land (eg, Titiritiri Matangi, North Head, Cuvier, Burges, etc), by giftings (eg, the Aldermen Islands), or by purchases (eg, Mansion House on Kawau Island). The Hauraki Gulf Maritime Park Board approved a management plan in 1982 that integrated nature conservation, historic heritage management, public recreation, and farming. The board pioneered work on island pest destruction and habitat restoration.

The Conservation Law Reform Act 1990 gave effect to the then government's policy of reducing the very large number of environmental and conservation quangos. The Hauraki Gulf Maritime Park Board was abolished and its establishing legislation repealed. In 1990, the Department of Conservation took over the operation of the park. There was considerable local opposition to the abolition of the board, while the operational, and later policy, responsibilities for the gulf fell into three conservancies – Northland, Auckland, and Waikato – in the Department of Conservation.

2.3 A NEW PARK PROPOSAL

Allan Brewster, a member of the former Hauraki Gulf Maritime Park Board, had lobbied in the mid to late 1980s for a marine park in the inner gulf waters where all commercial fishing would be prohibited. His proposal failed, but the concept of a more substantial park was picked up by the Opposition. In a pre-election speech in 1990, the National Party spokesperson on conservation, Denis Marshall, announced that a National government would promote a 'complete marine park which would protect the natural, recreational and environmental values of the Gulf'.* On 26 November 1991, Mr Marshall, by then the Minister of Conservation, asked officials to provide a scoping paper on how best to implement the park proposal by July 1992. A month earlier, the Minister, with Cabinet approval, appointed a technical working party to draft a discussion paper on the options. The working party called for submissions and, although it received 764 responses and held 30 meetings, from the evidence provided by Dr Campbell, it 'failed to engage tangata whenua'[†] and this had serious consequences in the subsequent relationship.

Cited in doc B1, para 156 *

Document B1, para 161 †

The working party recommended the establishment of a Hauraki Gulf marine park but cautioned that, before any public announcement, the proposal should be discussed with tangata whenua with interests in the Hauraki Gulf.

2.4 CONSULTATION WITH MAORI AND THE MOTUTAPU ACCORD

By the end of 1991, the Minister had received numerous representations about the need to have greater regard for tangata whenua interests, including nine written submissions from Maori. The Minister met with tangata whenua representatives in Auckland on 23 January 1992. These groups included iwi represented by the Hauraki Maori Trust Board, Ngati Paoa, Ngati Whatua, Ngati Wai, and Te Iwi o Wai-o-Hua. In general, tangata whenua groups wanted to prepare separate reports on the proposal. As a consequence, the Minister did not release the working party's report, although in June he gave that report

to tangata whenua to assist them in preparing submissions. Later, in response to public demand, the report was released to the public. In June 1992, the Minister established a caucus subcommittee to review the working party's recommendations. The subcommittee received 230 public submissions. The Department of Conservation made a submission identifying a number of principles, including 'that the interests and rights of tangata whenua under the Treaty of Waitangi must be recognised and provided for'.^{*}

^{*} Document B1, para 168

By August 1992, there had been no response from tangata whenua groups and the position of liaison officer was established by the Department of Conservation. In this role, Ngakete (Ron) Peters instituted hui with the Hauraki Maori Trust Board, Ngati Wai, Ngati Paoa, Ngati Whatua, the Huakina Development Trust (Tainui), and Whanau o Haunui. Payments ranging from \$1041 to \$5000 were made to five of the groups to facilitate the production of reports. Iwi endorsed the concept of a 'Hui-a-Iwi' to develop an overall policy on the park. The hui was held at the Department of Conservation's facility on Motutapu Island on 14 and 15 November 1992. Representatives of the Hauraki Maori Trust Board, Ngati Paoa, Ngati Whatua, Ngati Wai, and Te Iwi o Wai-o-Hua attended. The 'Motutapu Accord' ratified by the meeting is an assertion by tangata whenua of their ownership of this taonga and was the first modern instance where so many iwi of the wider Hauraki Gulf had met together.[†]

[†] A copy of the Motutapu Accord is at document B1(a)(i).

2.5 THE MINISTER MEETS WITH TANGATA WHENUA

On 2 December 1992, the Minister of Conservation met with 21 representatives of the five tangata whenua groups that had attended the Motutapu hui. He was presented with a copy of the Motutapu Accord and seven further reports from the groups. The Minister agreed to further meetings with the groups.

In the first half of 1993, the caucus committee continued its reporting. In July of that year, the Minister advised tangata whenua that prior to forming an opinion on the caucus report he wished to consult with them. A meeting took place on 8 August 1993 in which the Minister proposed to establish:

- ▶ a Hauraki Gulf marine park;
- ▶ a set of principles that would be binding on any authority undertaking statutory functions within the park but that would not conflict with the purposes of other legislation; and
- ▶ a three-person commission to carry out an advocacy and investigative role under the legislation (members, including one tangata whenua representative, were to be appointed by the Minister for the Environment).[‡]

[‡] Document B1, para 181

2.6

2.6 AUCKLAND CITY COUNCIL : 'VISION HAURAKI'

When the Minister put these proposals before Cabinet on 23 August 1993, Cabinet sought a report from officials, particularly on the precedent that might be set by a Hauraki Gulf marine park. Despite a modified proposal being put to the Minister, nothing was finalised before the 1993 election. When the reappointed Minister met with Auckland mayors and discussed the proposal in February 1994, there was considerable confusion about the Crown's intentions, and an intolerance of possible Government intervention, particularly any measure that would impose costs on local bodies. Meanwhile, Maori were still waiting for the Minister to get back to them.

Document 81, para 186 *

Dr Campbell described this period as a 'comparative vacuum' in which Auckland City announced its 'Vision Hauraki' to provide leadership on conservation in the area.* 'Vision Hauraki' served over the next five years to promote the environmental and heritage importance of the Hauraki Gulf. It engaged Pauline Kingi from Te Puni Kokiri to consult with iwi. Given the overlap of the two initiatives, it is not surprising that Maori were confused about the purposes of the consultation.

2.7 THE AUCKLAND REGIONAL COUNCIL AND THE HAURAKI GULF FORUM

In August 1995, Cabinet agreed that a Government Bill be drafted to establish a Hauraki Gulf marine park. The limited consultation with the mayors had indicated their lack of willingness to contribute to the costs, and the project stalled. Following the 1996 election of a National – New Zealand First government, the new Minister of Conservation, the Honourable Dr Nick Smith, announced his goal to pass the legislation within the term of that Government.

In April 1997, the Auckland Regional Council succeeded in negotiating with other councils to establish a collaborative group of local body and Crown representatives – to be known as the Hauraki Gulf Forum – to provide a mechanism for the coordinated management of the Hauraki Gulf. At the forum's first meeting in June 1997, which was attended by the Minister of Conservation, there was considerable discussion of and commitment to consultation with iwi in the management of the proposed Hauraki Gulf marine park. A hui was held with tangata whenua on 13 October 1997 and reported on in a meeting in February 1998.

2.8 THE MINISTER MEETS WITH TANGATA WHENUA

The Minister of Conservation met with tangata whenua for initial discussions on a draft Bill in several meetings in July 1997 at Paeroa, Orakei, Pakiri, and Pukekohe.

The Minister later attended a separate hui with Hauraki Maori in December 1997 at Kauaeranga, in which he made it clear that the marine park proposal would not deal with issues of ownership or compromise the proper prosecution of claims through the Waitangi Tribunal or the courts. At a general meeting with tangata whenua representatives at Ericsson Stadium on 3 March 1998, the Hauraki Maori Trust Board representatives rejected the proposal, partly because, at this stage, it still seemed vague and they were reluctant to be seen to be committed to a proposal that might be changed. The trust board considered that the proposed Hauraki Gulf marine park should be left until after the Maori Land Court had determined an application for the ownership of the foreshore and seabed that had been lodged in late January 1998. It was only after a further meeting between the Minister and the former chief executive of the Hauraki Maori Trust Board, Josie Anderson, that there was sufficient good will for Hauraki Maori to involve themselves in consultation on a draft Bill.

On 20 July 1998, the Minister of Conservation received advice from the Waitangi Tribunal that it had received a claim by Toko Renata Te Taniwha on behalf of the Hauraki Maori Trust Board and that the claim had been registered as the Tikapa Moana (Hauraki Gulf) National Marine Park claim (Wai 728).

2.9 THE TANGATA WHENUA WORKING PARTY

The Minister of Conservation wrote to tangata whenua groups on 10 August 1998 to update them on the progress made in developing policy on how to achieve their representation in the Hauraki Gulf Forum and seeking their advice on the options previously canvassed. On 2 November 1998, Cabinet approved the draft Bill and released it for discussion. The Minister's private secretary, Dr Campbell, wrote to all tangata whenua groups on 30 August 1998 on the Minister's behalf and invited them to send representatives to a working party to study and make recommendations on the draft Bill. The working party met on six occasions during November 1998. The Hauraki Maori Trust Board iwi were represented by Harry Mikaere and Paul Majurey, and there were three other Maori members, one each from Ngati Wai, Ngati Whatua, and Ngai Tai. They were advised by lawyers from Auckland firms Walters Williams and Russell McVeagh. The Department of Conservation met all travel and related costs, as well as the costs of tangata whenua legal advice. The three Crown representatives included Dr Campbell, representing the Minister of Conservation, and Marilyn Fullam of the Auckland office of the Department of Conservation, who also gave evidence before the Tribunal in this claim.

Changes were made to the draft Bill as a consequence of the working party's recommendations. They included the following:

- ▶ the long title was revised to include recognition of the historical, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf and its islands;
- ▶ a new clause was inserted recognising the Treaty and providing that nothing in the Act would affect the obligations of any person under any Act in respect of the principles of the Treaty, and secondly, specifically to require the Hauraki Gulf Forum to have regard to Treaty principles;
- ▶ references to an 'association' of tangata whenua with the land were replaced with references to a 'relationship';
- ▶ the heading of a clause (now section 14) was changed from referring to the Crown's ownership of the land and natural resources to the preservation of existing rights; and
- ▶ the number of tangata whenua representatives on the forum was increased from three to four.

2.10 THE HAURAKI GULF MARINE PARK BILL IN THE HOUSE

The Hauraki Gulf Marine Park Bill was given its first and second reading and referred to the Transport and Environment Committee on 24 November 1998. The select committee called for submissions, and 150, including some from tangata whenua, were received. At a meeting with tangata whenua on 14 June 1999, issues relating to the Treaty clause, the clause relating to the preservation of rights, and the deeds of recognition remained controversial. The committee recommended that the Bill be amended to include provision for the payment to tangata whenua of the costs of communication and consultation in addition to their attendance and travel costs. The Department of Conservation's recommendations included an increase in tangata whenua representatives from four to six, and this was done.

After the Bill was reported back to the House in July 1999, the Minister attempted to consult with all interests expressing concerns. The Minister or senior officials met with the Hauraki Maori Trust Board (10 August), the Auckland Regional Council-initiated Hauraki Gulf Forum (11 August), and the Ngati Wai Trust Board's legal adviser (25 August), and attended public meetings at Clevedon (11 August) and Thames, Whangamata, and Whitianga (12 August), where tangata whenua were present.

At the meeting with the Hauraki Maori Trust Board, there was further discussion and explanation of the intent of the clause concerning the national significance of the Hauraki Gulf, the preservation of existing rights, representation on the Hauraki Gulf Forum, and the provisions for deeds of recognition in the Bill. At a meeting with Ngati Wai, the impact of the Bill on commercial and customary fishing was clarified.

A new government was formed in mid-December 1999 and the Honourable Sandra Lee was appointed Minister of Conservation. In the speech from the throne, the Governor-General indicated that the Government intended to pass the modified Hauraki Gulf marine park legislation in the near future. From mid-January, there were three rounds of intensive negotiation regarding:

- ▶ the transfer of Department of Defence land (HMNZS *Tamaki* reserve) to the park;
- ▶ the administration of the new Hauraki Gulf Forum requiring consultation with local authorities; and
- ▶ Hauraki iwi concerns arising from earlier tangata whenua consultation.

On 9 February, the Cabinet Policy Committee approved a supplementary order paper covering changes in the areas mentioned above.

On 10 February 2000, the Hauraki Maori Trust Board, some Hauraki Maori, and Hauraki member of Parliament John Tamihere raised objections to clauses relating to the Treaty and tangata whenua representation on the forum, the provisions for the payment of the costs of consultation and the costs of tangata whenua representatives, and the provisions relating to deeds of recognition. Representations on these matters were also made by Te Runanga o Iwi o Ngati Tamatera, the Ngati Hei Trust, and Jeanette Fitzsimons, the member of Parliament for Coromandel. Cabinet approved the changes suggested in the supplementary order paper on 14 February 2000 and noted that further amendments had been proposed. The matters raised by tangata whenua were referred to in the Labour and Alliance caucuses on 15 February. These concerns were further referred to the Minister of Conservation and the Minister in Charge of Treaty of Waitangi Negotiations. The Ministers decided that the proposed changes had policy implications wider than the Hauraki Gulf Marine Park and that to include them might pre-empt wider policy discussion and Treaty policy development. The Attorney-General (who was also the Minister in Charge of Treaty of Waitangi Negotiations) advised that she had embarked on a programme of consultation and policy development in relation to the foreshore and seabed. Both caucuses did agree to amend the reference in deeds of recognition from iwi to tangata whenua to allow hapu and whanau groups to be included.

Those changes were included, and the Act was passed on 23 February 2000 on a 104 to 15 vote. The Act received its royal assent on 27 February 2000 and immediately came into force. In the next chapter, we review the provisions of the Hauraki Gulf Marine Park Act 2000.

CHAPTER 3

THE HAURAKI GULF MARINE PARK ACT 2000

In his opening submissions, counsel for the Wai 728 claimants, Grant Powell, made it clear that this was a ‘specific and discrete claim’ which involved ‘the content of the Hauraki Gulf Marine Park Act 2000’.* Claimant submissions are considered in chapters 4 and 5. In this chapter, we provide a summary of the provisions of the Act that are significant in the Wai 728 claim.

* Document A2, para 1

3.1 THE PREAMBLE

The lengthy preamble to the Hauraki Gulf Marine Park Act 2000 outlines the many factors that contributed to a need for legislation providing for the coordinated management of the Hauraki Gulf:

(1) The Hauraki Gulf has a quality and diversity of biology and landscape that makes it outstanding within New Zealand. The islands of the Gulf are valued as the habitats of plants and animals, once common, now rare, and are often the only places in the world where these species exist naturally:

(2) On some islands natural ecosystems remain intact while other islands have ecosystems that are evolving rapidly or are islands that provide opportunities for habitat restoration. A diverse marine environment extends from the deep ocean to bays, inlets, and harbours off the coastline and the shallow sea and broad intertidal flats of the Firth of Thames:

(3) The Hauraki Gulf has a rich history of human settlement and use. The Gulf is one of the earliest places of human settlement in New Zealand and for generations supported and was home to tangata whenua. While tangata whenua have no single name for the Gulf, the names Tikapa Moana and Te Moananui a Toi are recognised as referring to the Gulf. Auckland, the first seat of government, is also on its shore. Along the shores of the Gulf the changing culture and technologies can be traced through places like the pa, kain-ga, and garden sites of antiquity on every island, driving dams, copper and gold mines, whaling stations, timber mills, industrial sites, and grand and ordinary homes:

(4) The Treaty of Waitangi was signed by tangata whenua of the Hauraki Gulf both at Waitangi and on the shores of the Gulf. The Treaty provides guarantees to both the Crown and tangata whenua and forms a basis for the protection, use, and management of the Gulf, its islands, and catchments. The Treaty continues to underpin the relationship between the Crown and tangata whenua. The assembled tribes of the Hauraki Gulf reaffirmed its importance to them in a statement from a hui at Motutapu Island, 14–15 November 1992 (*The Motutapu Accord*):

(5) The hinterland of the Gulf is intensively developed and settled. Its shores contain New Zealand's largest metropolitan area and extensive tracts of productive farm land. The coastal waters are of great importance to commerce in New Zealand. The Gulf contains the Port of Auckland, many smaller ports, and marinas. The Gulf is lived in and worked in, and is used for marine commerce, commercial fishing, and harbour and gulf transport. The Gulf is economically important:

(6) People use the Gulf for recreation and for the sustenance of human health, well-being, and spirit. The natural amenity of the Gulf provides a sense of belonging for many New Zealanders and for them it is an essential touchstone with nature, the natural world, and the marine environment of an island nation:

(7) The Gulf, its islands, and catchments have complex interrelationships that need to be well understood and managed. Many improvements have been made in the administration of statutory jurisdictions in the Gulf, the exercise of individual and collective responsibility, and stewardship of the Gulf. But the need for co-operation, and the need for integrated management, recognised in the establishment by local authorities of the Hauraki Gulf Forum, by Auckland City of 'Vision Hauraki', by tangata whenua in the Motutapu Accord, and by the Government in establishing in 1967 the Hauraki Gulf Maritime Park, still remains. The Gulf must be managed in a manner that crosses territorial jurisdictions, crosses land and water boundaries, and crosses cultures and that respects both conservation and development needs.

3.2 THE PURPOSE OF THE ACT

In section 3 of the Act, the complex set of factors outlined in the preamble have been incorporated in a brief statement of purpose:

3. Purpose—The purpose of this Act is to—

- (a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
- (b) establish the Hauraki Gulf Marine Park:

- (c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments:
- (d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands:
- (e) establish the Hauraki Gulf Forum.

The interpretation of terms used in the Act is set out in section 4, and section 5 states ‘This Act binds the Crown’.

The Act is divided into several parts: part 1 – ‘Management of Hauraki Gulf’; part 2 – ‘Hauraki Gulf Forum’; part 3 – ‘Hauraki Gulf Marine Park’; and part 4 – ‘Miscellaneous’.

3.3 THE TREATY OF WAITANGI

In section 6(1), there is a general provision that the management of the Hauraki Gulf Marine Park ‘must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)’. However, there are qualifications in section 6(2) which provide that this provision does not apply to any area of the park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai. In section 6(3), the Hauraki Gulf Forum is required, when carrying out its functions under part 2 of the Act, to ‘have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)’. In section 6(4), reference is made to the statutes listed in schedule 1 (21 Acts are there listed) and provides that nothing in the Act ‘limits, affects, or extends the obligations’ set out in those statutes and that ‘those obligations must be fulfilled in accordance with those Acts’. The provisions of section 6 were argued by Wai 728 counsel to be inadequate, and this issue is reviewed in chapter 4.

3.4 THE MANAGEMENT OF THE HAURAKI GULF

Part 1 of the Act – comprising sections 7 to 14 – is concerned with the management of the Hauraki Gulf and the relationship of the Act with other statutes. In section 7, the national significance of the Hauraki Gulf is recognised:

7. Recognition of national significance of Hauraki Gulf—(1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.

(2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—

- (a) to provide for—
 - (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
 - (ii) the social, economic, recreational, and cultural well-being of people and communities;
- (b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation;
- (c) to maintain the soil, air, water, and ecosystems of the Gulf.

The provisions of section 8 recognise that these qualities of the Hauraki Gulf must be protected, maintained, and, where appropriate, enhanced. In section 9, the Act's relationship with the Resource Management Act 1991 is set out, requiring regional and territorial authorities to comply with the provisions of sections 7 and 8 of the Hauraki Gulf Marine Park Act in regional and district plans, policy statements, and resource consent processes. In section 10, the provisions of sections 7 and 8 are to 'be treated as a New Zealand coastal policy statement issued under the Resource Management Act'. In sections 11 and 12, the policy provisions of sections 7 and 8 are related to the Conservation Act 1987 (and to the statutes listed in the first schedule to that Act) and the Fisheries Act 1996.

Provision is made in section 14 to preserve existing rights and title to the foreshore, seabed, land, and natural resources within the Hauraki Gulf. The claim of ownership of the foreshore and seabed is a significant component of the Wai 728 claim, and this provision is reviewed in more detail in chapter 4.

3.5 THE HAURAKI GULF FORUM

Part 2 of the Hauraki Gulf Marine Park Act 2000 sets out in sections 15 to 31 the provisions governing a body called the Hauraki Gulf Forum. This body should not be confused with earlier informal groups referred to in chapter 2 which also called themselves the Hauraki Gulf Forum. For the purposes of this report, all following references to the forum mean the body defined in part 2 of the Hauraki Gulf Marine Park Act 2000.

The purposes of the Hauraki Gulf Forum are set out in section 15:

15. Purposes of Forum—The Forum has the following purposes:

- (a) to integrate the management and, where appropriate, to promote the conservation and management in a sustainable manner, of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, for the benefit and enjoyment of the people and communities of the Gulf and New Zealand;

- (b) to facilitate communication, co-operation, and co-ordination on matters relating to the statutory functions of the constituent parties in relation to the Hauraki Gulf, its islands, and catchments, and the Forum:
- (c) to recognise the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands, and, where appropriate, its catchments.

Representation on the Hauraki Gulf Forum is set out in section 16(2):

- (2) The Forum consists of the following representatives:
 - (a) 1 representative appointed by the Minister [of Conservation]:
 - (b) 1 representative appointed by the Minister of Fisheries:
 - (c) 1 representative appointed by the Minister of Maori Affairs:
 - (d) 1 representative appointed by each of the following local authorities:
 - (i) Auckland City Council:
 - (ii) Auckland Regional Council:
 - (iii) Franklin District Council:
 - (iv) Hauraki District Council:
 - (v) Manukau City Council:
 - (vi) Matamata–Piako District Council:
 - (vii) North Shore City Council:
 - (viii) Rodney District Council:
 - (ix) Thames–Coromandel District Council:
 - (x) Waikato District Council:
 - (xi) Waikato Regional Council:
 - (xii) Waitakere City Council:
 - (e) 6 representatives of the tangata whenua of the Hauraki Gulf and its islands appointed by the Minister, after consultation with the tangata whenua and the Minister of Maori Affairs:
 - (f) 2 further representatives appointed by the Auckland Regional Council.

The local authority areas are shown in map 2.

The issue of Maori representation on the Hauraki Gulf Forum is another significant component of the Wai 728 claim. There are six tangata whenua representatives and one person appointed by the Minister of Maori Affairs, making a total of seven representing Maori interests out of a total of 21 voting members. The two additional members appointed by the Auckland Regional Authority under section 16(2)(f) do not have voting rights. The local authority members are all elected in accordance with the Local Government Act 1974 and represent the whole population of their constituent areas. The question of tangata whenua representation is reviewed in chapter 5.

The functions of the Hauraki Gulf Forum are set out in section 17:

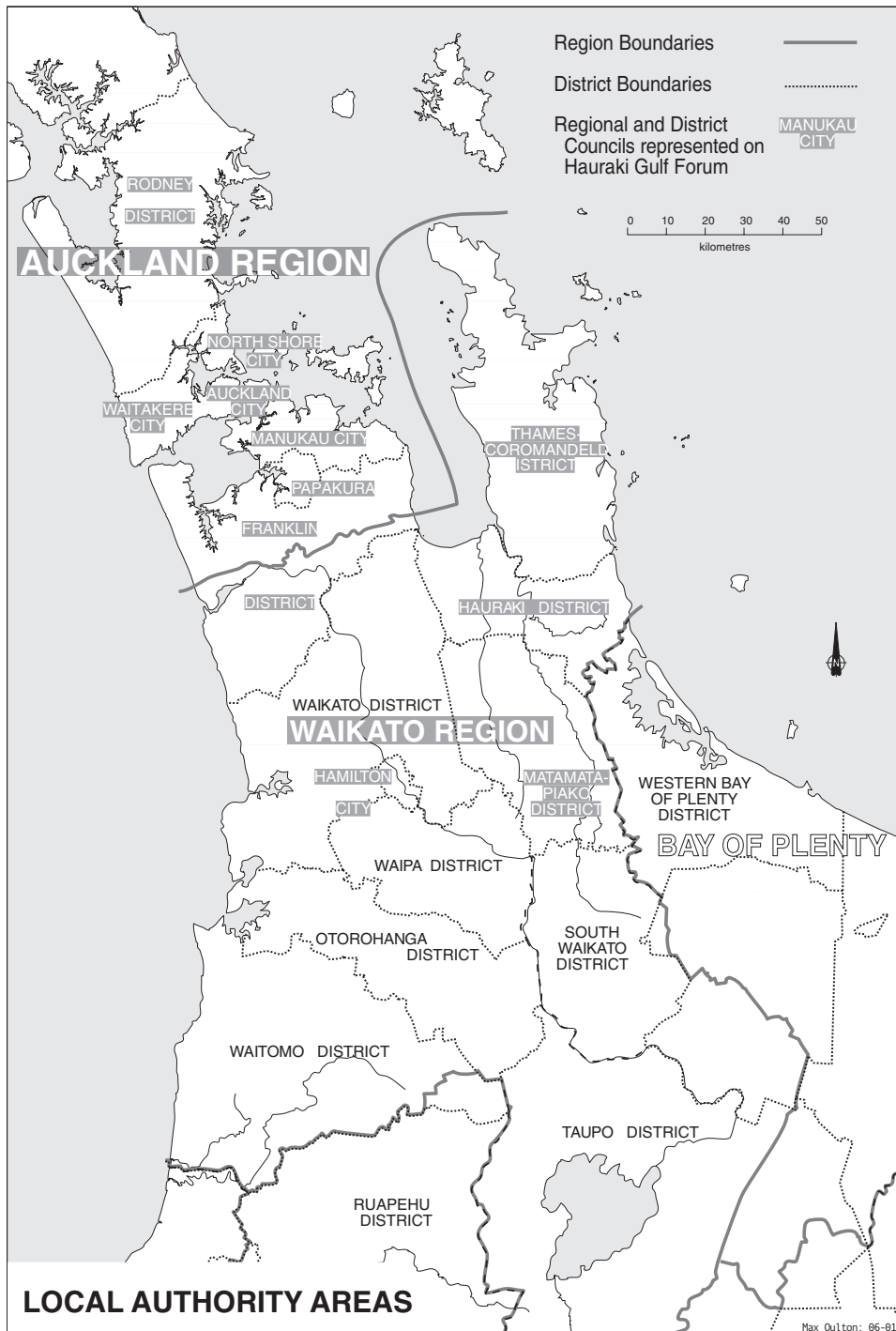
17. Functions of Forum—(1) To promote sections 7 and 8, the Forum has the following functions in relation to the Hauraki Gulf, its islands, and catchments:

- (a) to prepare a list of strategic issues, determine a priority for action on each issue, and regularly review that list:
- (b) to facilitate and encourage co-ordinated financial planning, where possible, by the constituent parties:
- (c) to obtain, share, and monitor information on the state of the natural and physical resources:
- (d) to receive reports on the completion and implementation of deeds of recognition:
- (e) to require and receive reports from constituent parties on the development and implementation of policies and strategies to address the issues identified under paragraph (a):
- (f) to receive reports from the tangata whenua of the Hauraki Gulf on the development and implementation of iwi management or development plans:
- (g) to prepare and publish, once every 3 years, a report on the state of the environment in the Hauraki Gulf, including information on progress towards integrated management and responses to the issues identified in accordance with paragraph (a):
- (h) to promote and advocate the integrated management and, where appropriate, the sustainable management of the Hauraki Gulf, its islands, and catchments:
- (i) to encourage, share, co-ordinate where appropriate, and disseminate educational and promotional material:
- (j) to liaise with, and receive reports from, persons and groups having an interest in the Hauraki Gulf and business and community interests to promote an interest in the purposes of the Forum:
- (k) to commission research into matters relating to the functions of the Forum.

(2) When carrying out its functions under subsection (1), the Forum must have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments.

The powers of the forum are set out in section 18 and are defined as ‘the powers that are reasonably necessary to carry out its functions’. They include the power:

- (a) to consider issues related to [the forum’s] purpose; and
- (b) to receive reports from constituent parties; and
- (c) to make recommendations to constituent parties; and
- (d) to advise any person who requests the Forum’s advice; and
- (e) to commission or undertake those activities that are necessary to achieve [the forum’s] purpose.



Map 2: Local authority areas

The forum must not appear before a court or tribunal except as a witness or take part in any statutory decision-making process other than advise when requested to do so. The Hauraki Gulf Forum therefore has a coordinating and advisory role in the management of

the Hauraki Gulf. It has no statutory powers to make decisions, and the Act clearly leaves those powers with the constituent Government departments and local authorities operating under various other statutes.

The remaining sections of part 2 of the Hauraki Gulf Marine Park Act (ss19–31) are mainly concerned with administrative matters. The Auckland Regional Authority is responsible for maintaining forum records (s27), and certain obligations of constituent members, including that of sharing the costs, are set out. However, section 19(3) states: ‘Administrative and servicing costs are not payable by constituent parties who are tangata whenua representatives’. In section 20 are set out provisions for sharing the costs of any activity that a majority of the members may agree to undertake, but, in section 20(1)(b), tangata whenua are excluded from any obligation to pay for such an activity. This provision, and the provisions of section 29 concerning the making of payments to tangata whenua representatives (for attending meetings, for travel costs, and for related communication and consultation costs), were raised by Wai 728 counsel as matters that were contested by the claimants. The issue of the costs of tangata whenua participation in the Hauraki Gulf Forum is discussed in chapter 5.

3.6 THE HAURAKI GULF MARINE PARK

Part 3 of the Hauraki Gulf Marine Park Act sets out various provisions for the administration of the park (ss32–43) and for the recognition of a ‘tangata whenua statement of relationship’ in a ‘deed of recognition’ (ss44–48).

The purposes of the Hauraki Gulf Marine Park are set out in section 32. They are:

- (a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:
- (b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth:
- (c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:
- (d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

In section 33(1), the park is established, and section 33(2) lists what it consists of:

- (a) all conservation areas, wildlife refuges, wildlife sanctuaries, reserves, marine mammal sanctuaries, and marine reserves held, managed, or administered by the Crown from time to time in accordance with the Conservation Act 1987 or any Act in the First Schedule of that Act within the Hauraki Gulf, its islands, and coastal area:
- (b) any reserve controlled and managed from time to time by an administering body (whether or not that administering body is a local authority) under an appointment to control and manage made in accordance with the Reserves Act 1977 or any corresponding former Act, within the Hauraki Gulf, its islands, and coastal area:
- (c) all foreshore and seabed that is land owned by the Crown within the Hauraki Gulf other than foreshore or seabed held for defence purposes:
- (d) all seawater within the Hauraki Gulf:
- (e) all land of the Crown in the Hauraki Gulf, within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971:
- (f) all land included in the Park in accordance with section 34 or section 35:
- (g) all mataitai reserves and taiapure-local fisheries included in the Park in accordance with section 36.

In sections 34 and 35, provisions for the inclusion in the park of other public lands and private lands are set out, and section 36 provides for certain fisheries. In section 33(3), the status of seawater is clarified:

- (3) The inclusion of seawater in the Hauraki Gulf Marine Park is to give effect to the purposes of the Park and does not—
 - (a) give the Crown or any other person ownership of seawater; or
 - (b) affect the responsibilities of a regional council in the coastal marine area.

In section 37(3), provision is made for land areas in the park to be 'held, managed, or administered in accordance with the Conservation Act 1987, or any Act in the First Schedule of that Act, if any of those Acts applies to that land'. The Department of Conservation is therefore responsible for the management and administration of areas of public land in the park within its jurisdiction, but in section 37(2)(c) the Act does not otherwise change the ownership or management of areas of the land, foreshore, seabed, or waters of the Hauraki Gulf. In sections 38 to 41 are set out provisions for the removal of lands or fisheries from the park.

3.7 DEEDS OF RECOGNITION

The Crown or a local authority may acknowledge any historic, cultural, and spiritual relationship of tangata whenua of the Hauraki Gulf with any land, foreshore, or seabed in the park under a deed of recognition. The deed must also identify specific opportunities for contribution by tangata whenua to the management of the stated area. However, that deed may not relate to any water or any private land included in the park (s 44).

Deeds of recognition do not affect the exercise of any power over that land and, under section 46(b), ‘must not be taken into account by any person in the exercise of any power or the carrying out of any function or duty under any Act, regulation, or bylaw’. A deed is a form of acknowledgement of the existence of a relationship tangata whenua have with a particular place for a specific reason, but it does not override other statutory provisions. A deed’s existence should not give any greater or lesser weight to a statement of relationship of tangata whenua to an area and does not affect the rights of any other person, and it is not in any way to be considered an estate (s 46(c)–(e)). The usefulness of deeds of recognition was questioned by the claimants, and this issue is discussed in chapter 4.

CHAPTER 4

THE TREATY AND THE HAURAKI GULF MARINE PARK

4.1 THE FOCUS OF THE CLAIM

Grant Powell, counsel for the Wai 728 claimants, emphasised in his closing submissions that ‘the focus of the claim is on the provisions of the Marine Park Act itself and whether those provisions are in breach of principles of the Treaty’. The claimants supported moves to protect the Hauraki Gulf and accepted the need for integrated management: ‘The grievance in this claim is not at the conceptual level, but rather the solution adopted – the terms of the Marine Park Act.’* In this chapter, the focus is on Treaty-related issues in the management of the Hauraki Gulf Marine Park. Issues relating to the Hauraki Gulf Forum are reviewed in chapter 5. The issues in this chapter include the Treaty clause (section 6 of the Hauraki Gulf Marine Park Act 2000), the ownership of the foreshore and seabed, kaitiakitanga, and the deeds of recognition provided for in the Act.

* Document c2, para 2

4.2 THE TREATY OF WAITANGI

The Treaty of Waitangi is recognised in section 6 of the Hauraki Gulf Marine Park Act 2000:

6. Treaty of Waitangi (Te Tiriti o Waitangi)—(1) Subject to subsections (2) and (4), the provisions of Part 3 relating to the Park must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

(2) Subsection (1) does not apply in respect of any area of the Park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai.

(3) When carrying out its functions under Part 2, the Forum must have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

(4) Nothing in Part 1 or Part 3 or Part 4 limits, affects, or extends the obligations any person has in respect of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under any of the Acts listed in Schedule 1, and those obligations must be fulfilled in accordance with those Acts.

4.2.1

4.2.1 Claimant submissions

Document C2, paras 8–9; *
 section 5(3) of the
 Interpretation Act 1999
 Document C2, para 10.1 †

Counsel for the Wai 728 claimants suggested in closing submissions that the Crown recognised an obligation to include a Treaty clause in the legislation. This was explicit in paragraph 4 of the preamble. However, the strong commitment to the Treaty in the preamble was not replicated elsewhere in the Act. In terms of the Interpretation Act 1999, the preamble is known as an ‘indication’ that can be used alongside the text of the enactment to clarify only where the legislation is not clear.* Claimant counsel further maintained that the Treaty clause under section 6 of the Act provided no single standard by which the Treaty could be incorporated into the management of the Hauraki Gulf Marine Park.† Counsel contended that, in the critical part 1 of the Act, which prescribed a system for integrating management, there was no effective Treaty clause. He argued that this cannot be justified as ‘Treaty compliant’, given paragraph 4 of the preamble and the fact that part 1 sets out the management requirements for the Hauraki Gulf that underpin the rest of the Act.

Counsel highlighted the importance of Tikapa Moana to Hauraki Maori in his opening submissions, and this was the principal theme of the claimants’ evidence at the first hearing. The claimants’ view was that the Treaty provisions in the Hauraki Gulf Marine Park Act were inadequate. Claimant counsel stated that the ‘Treaty clause’ in section 6(1) does not apply to a number of parts of the marine park of significance to tangata whenua, specifically the foreshore and the seabed. While section 6(1) follows the strong Conservation Act 1987 precedent that the Act is to be interpreted to ‘give effect to’ the principles of the Treaty, this is applied only to part 3 of the Act. However, even then, the clause is heavily qualified in section 6(2) because it does not apply ‘in respect of any area of the Park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai’. Claimant counsel raised the question as to which parts of the marine park remain that are subject to this apparently strong Treaty clause. However, it is clear that the requirement to ‘give effect to the principles of the Treaty’ applies to Department of Conservation land within the Hauraki Gulf Marine Park.

Document A2, para 21; ‡
 doc C2, para 10.4

Counsel suggested that the Treaty clause applicable to the Hauraki Gulf Forum (s 6(3)) renders the Treaty simply a relevant consideration. This subsection requires the forum, when carrying out its functions under part 2 of the Act, merely to ‘have regard to’ the principles of the Treaty. Counsel argued that this means that the Treaty is simply something to be taken into account rather than a direction, and is a much weaker position than that suggested by the preamble or under the Conservation Act 1987.‡

Document A2, para 23; §
 doc C2, para 10.5

Claimant counsel maintained that section 6(4) has the effect of rendering not only the Treaty clause in section 6(1) but also other sections that could be interpreted as imposing Treaty-type obligations null and void for decision-makers operating under other statutes. Counsel was critical of this watering-down of the limited recognition of the Treaty: ‘This subsection effectively provides that nothing in Parts 1, 3 or 4 of the Marine Park Act imposes any Treaty obligations on those exercising powers or functions under other Acts.’§

4.2.2 Crown submissions

Crown counsel described section 6 as a ‘complex Treaty provision’ and accepted that there are different ‘levels’ of Treaty clause applying.* Crown counsel examined each part of the legislation and argued that the overall effect is to increase the relative importance of tangata whenua concerns under other existing legislation, while coordinating local body efforts to improve the quality of the environment in the Hauraki Gulf. Crown counsel argued that the improvement in the position of tangata whenua in this legislation is significant and amounts to the Crown carrying out its partnership role.†

* Document C3, para 21

† Ibid, paras 55, 64

The Crown submitted that the Hauraki Gulf Marine Park Act 2000 can be seen as embracing the concept of a relationship akin to a partnership. It was argued that this is done ‘by references in the Preamble to the Treaty, by Treaty references, and by the various requirements to consider, or have particular regard to, the historic, cultural, spiritual and traditional relationships of tangata whenua to the Gulf’.‡

‡ Ibid, para 54

Crown counsel specifically highlighted:

The maintenance of Treaty obligations in the legislation affected by the Act in section 6(4). By supplementing the more general Treaty clauses with requirements to provide for and consider historic, traditional, cultural and spiritual relationships of tangata whenua (s 7, 8, 15c, 17c, 32c). These requirements are applied to local authorities which are not subject to Treaty clauses, and apply to exercises of power in legislation which does not contain Treaty clauses.

- ▶ Section 14 positively preserves existing rights, including any claims made to lands within the Hauraki Gulf, its islands, and catchments, and preserves the Crown’s ability to make redress.
- ▶ The Forum when carrying out its functions under Part 2 must have regard to the principles of the Treaty (s 6(3)).
- ▶ Tangata whenua representation on the Forum was in addition to the representation of tangata whenua interests which might be expected from local authorities. Tangata whenua interests were also part of the role for the representative of the Minister of Maori Affairs.
- ▶ The requirement that provisions relating to the Marine Park must be so interpreted and administered as to give effect to the principles of the Treaty (s 6(1)).
- ▶ The provision of Deeds of Recognition to encourage tangata whenua to contribute to the management of the area within the Park (s 44(3)).§

§ Ibid, para 55

Crown counsel referred to the evidence of Dr Campbell, who reviewed the degradation of the environment from the past history of goldmining and forest clearing, as well as the pollution of the gulf by increased human activity on its shores. He said that, even though the Resource Management Act 1991 had been a response to the need for improved environmental management, there was a need for a more coordinated response for the Hauraki

4.2.3

Gulf. He argued that it was an appropriate use of the Crown's kawanatanga to provide this coordination. If the Crown failed to take such steps, it might in some future time be argued to be in breach of the Treaty. The Crown was sure that the legislation could lead to substantial progress in the right direction and have ongoing benefits which may not be measurable at the outset. Crown counsel argued that 'The broad question has to be asked whether the Crown has exercised its right to govern with due recognition and accommodation of the Treaty guarantees'.^{*}

Document C3, paras 56–57 *

In support of the view that the Hauraki Gulf Marine Park Act needs to be seen as a whole, the Crown cited the findings in the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, where that Tribunal identified the 'principle of mutual benefit'. Crown counsel highlighted the sentences:

But neither partner in our view can demand their own benefits if there is not also an adherence to reasonable state objectives of common benefit. It ought not to be forgotten that there were pledges on both sides.[†]

Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed, Wellington, Government Printing Office, 1989, p 195

The Crown also referred to comments on mutual obligations in the *Te Whanau o Waipareira Report*:

Thus, the concept of a partnership was founded in large part on the Maori acceptance of a Crown's right of governance, or kawanatanga, and the Crown's general recognition of a Maori rangatiratanga. The two are not in conflict but are indicative of the undertaking of mutual support, at the time and in the future. In this situation neither rights of autonomy nor rights of governance are absolute but each must be conditioned by the other's needs and their duties of mutual respect.[‡]

Waitangi Tribunal, *Te Whanau o Waipareira Report*, Wellington, GP Publications, 1988, pp 29–30

4.2.3 Tribunal comment

The Tribunal accepts that the Hauraki Gulf has national significance (as outlined in Dr Campbell's evidence) and requires special legislation to facilitate coordination in managing the area comprising the Hauraki Gulf Marine Park.

Over one-third of New Zealand's population is situated near or within easy driving distance of the shores of the Hauraki Gulf. The Port of Auckland alone lands 65 per cent of New Zealand's imports, while about 35 per cent of all economic activity in New Zealand occurs in the gulf and its catchment area. The gulf is a major venue for yachting and will again serve as the course for the next defence of the America's Cup. Much of the environment has been modified and is under commercial pressure. However, it is also the site of great natural areas, including the forest of Moehau, the wetland bird habitats between Thames and Kaiaua, and the island habitat of Rangitoto. Other islands in the gulf have a high level of endemism of animals and plants, and are the 'last precarious stronghold for

many species’.* We agree with Dr Campbell that the Government ought to take an active role to ensure that those with management responsibilities are fulfilling their duty and coordinating their activities in the gulf.

* Document B1, paras 21–22

The Tribunal believes it is very positive that both the claimants and the Crown support the concept of preserving and protecting the Hauraki Gulf. It would seem that there is potentially a large area of agreement over the goals for the Hauraki Gulf Marine Park and recognition that coordinating the work of various authorities with responsibilities in the gulf would facilitate its preservation and protection. Section 6 of the Hauraki Gulf Marine Park Act contains provisions recognising the obligation of these various authorities under existing legislation to take into account, have regard to, or give effect to the principles of the Treaty of Waitangi. The Act does not add to existing provisions, and it is noted that there is no Treaty provision in the Local Government Act 1974. However, it cannot be expected that specific legislation such as the Hauraki Gulf Marine Park Act can remedy this deficiency in the Local Government Act. There are strong provisions in the Conservation Act 1987 and the Resource Management Act 1991, as well as in a number of other statutes relevant to the management of the Hauraki Gulf. The provisions of section 6 serve to remind all those authorities responsible for the gulf that they do have obligations under the Treaty of Waitangi when making decisions about managing the resources of the region.

4.3 THE OWNERSHIP OF THE FORESHORE AND SEABED

The principal grievance underlying the Wai 728 claim is that the Crown has proceeded with enacting the Hauraki Gulf Marine Park Act 2000 before Hauraki claims to the ownership of the foreshore and seabed have been determined. All the statements of claim refer to an attached application to the Maori Land Court for the investigation of customary rights and title to the foreshore and seabed of a defined area of the Hauraki Gulf (see map 3 and appendix 1). The Hauraki claimants view the issue of customary use of and title to Tikapa Moana to be inextricably linked with contemporary issues of management of the Hauraki Gulf.

4.3.1 Crown submissions

Crown counsel pointed to specific provisions in the Hauraki Gulf Marine Park Act, particularly section 6(2), which excludes the foreshore and seabed, and section 14, which generally preserves existing rights and title:

14. Preservation of existing rights—(1) Nothing in this Act limits or affects any title or right to ownership of the foreshore, seabed, or other land or natural resources of the

4.3.2

Hauraki Gulf, its islands, and catchments, whether that title or right to ownership is conferred by Act, common law, or in any other manner.

(2) Nothing in this Act limits or affects the ability of any person to bring a claim or to continue any existing claim in any court or tribunal relating to the foreshore, seabed, or other land or natural resources of the Hauraki Gulf, its islands, and catchments arising out of the application of the Treaty of Waitangi, or any Act, or at common law, or in any other manner.

(3) Nothing in this section limits or affects any remedy associated with any claim referred to in subsection (2).

Crown counsel saw this provision as ‘positively’ preserving all existing rights, including any claims to the foreshore and seabed. However, counsel acknowledged that ‘the key stumbling block for the claimants in the consultation process has been their view that nothing should be done until such time as the Crown accepted their claims to the foreshore and seabed’.* The Crown also referred to the conclusion of the Tribunal in the *Report of the Waitangi Tribunal on the Manukau Claim* that Maori interest in the harbour and foreshore could not be denied under the Treaty but that it was not an exclusive interest:

That interest is certainly something more than that of a minority section of the general public, more than just a particular interest in particular fishing grounds, but less than that of exclusive ownership. It is in the nature of an interest in partnership the precise terms of which have yet to be worked out. In the meantime any legal owner should hold only as trustee for the partnership and acknowledge particular fiduciary responsibilities to the local tribes, and the general public, as distinct entities.[†]

Crown counsel also submitted that ‘it would be quite unreasonable and unworkable for proposed legislation . . . to wait the outcome of customary title applications on wider Treaty policy’.[‡]

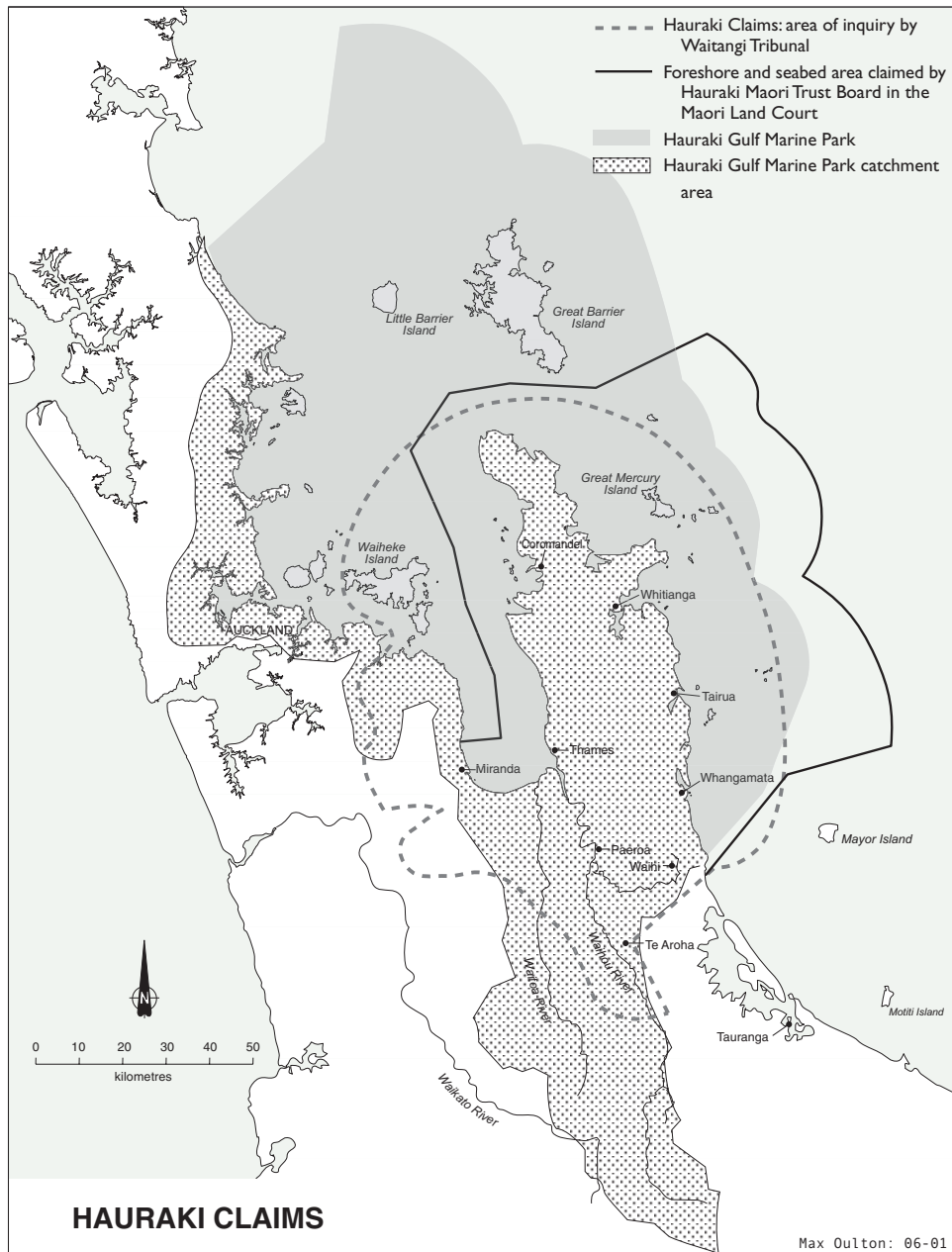
4.3.2 Tribunal comment

The Tribunal makes no finding on the ownership of the foreshore and seabed in the Hauraki Gulf Marine Park, because this issue is currently before courts in other jurisdictions. We note that the Hauraki Maori Trust Board application to the Maori Land Court covers only a portion of the foreshore and seabed of the park. The Tribunal has already heard a good deal of evidence about the traditional uses of Tikapa Moana in the course of hearing the Hauraki claims. Some of that evidence was also referred to by counsel for Wai 728 during the first hearing of this claim. There is no doubt that Tikapa Moana holds a significant place in the perspective of Hauraki tribes, and this will be reviewed in more detail in the main report of the Hauraki claims. However, we make the following general observations here:

Document c3, paras 55, 75 *

Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed, Wellington, Department of Justice, 1985, p 70

Document c3, para 82 ‡



Map 3: Hauraki claims

- In tikanga Maori, no boundary is recognised between the land above the high-water mark, the foreshore between the mean high- and low-water mark, and the seabed beyond.
- Maori (and many Pakeha too) often have difficulty in comprehending the compartmentalised nature of statute law, especially that relating to the management of the resources of the land and sea.

4.4

- ▶ Maori custom law recognises an inextricable relationship between ancestry, mana, rangatiratanga, and rights of use, occupation, and ‘ownership’ of the resources of the land and sea.
- ▶ Environmental law, such as the Resource Management Act 1991 and others (including the Hauraki Gulf Marine Park Act 2000), recognises that management and control is severable from ownership.
- ▶ The definition of the nature of Maori interests in the foreshore and seabed is a matter of national concern and is not confined to the Hauraki Gulf.

4.4 RECOGNISING RELATIONSHIPS WITH TANGATA WHENUA

Claim 1.1(b), para 11 *

In their statement of claim, the Wai 728 claimants stated that they have been prejudiced by being denied the right to exercise tino rangatiratanga and kaitiakitanga, and that their mana in respect of Tikapa Moana has been challenged.* These terms are not used in the Hauraki Gulf Marine Park Act but under the heading ‘purpose’ in section 3 is listed ‘recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands’. This could be construed as recognition of mana and rangatiratanga, which is a Treaty obligation.

4.4.1 Kaitiakitanga

For example, see Nin Thomas, †
‘Implementing Kaitiakitanga
under the RMA’, *New Zealand
Environmental Law Reporter*,
July 1994, pp 39–42

The concept of kaitiakitanga over resources of the land and sea within an ancestral region is inherent in the concepts of mana and rangatiratanga. In section 9 of the Hauraki Gulf Marine Park Act 2000, the relationship with the Resource Management Act 1991 is set out. The term ‘kaitiakitanga’ is defined in the Resource Management Act as ‘the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship’. Exactly how far this role extends is still the focus of considerable discussion and debate.† The claimants did not define their kaitiaki role, but they appeared to view it as considerable, even where the ownership of land had passed from their control.

Toko Renata Te Taniwha, the chairman of the Hauraki Maori Trust Board, explained why the Wai 728 claim was lodged with the Waitangi Tribunal:

We filed the claim to remind the Crown that:

- ▶ Tikapa Moana is a taonga of the iwi of the Hauraki region;
- ▶ the tangata whenua are kaitiaki of Tikapa Moana; and,
- ▶ the Crown shouldn’t impose its own management over our taonga.‡

Document A3, para 4 ‡

He explained what he meant by kaitiaki:

The key is that our relationship with Tikapa Moana is about a balance between rights and obligations.

We consider that our obligations as kaitiaki extend, perhaps most importantly, to future generations. This is about passing down our traditions and tikanga with regard to Tikapa, in particular how Tikapa Moana should be treated, and how we can ensure that the generous gifts of Tikapa Moana will continue to be available for those future generations.*

* Document A3, paras 22, 23

Since 1987, environmental law has recognised that ancestral land may include more than that currently owned by Maori, although continuous ownership would be a relevant factor:

Likewise it may be an important factor to consider the extent to which a special relationship by Maoris has been claimed or recognised by them throughout the generations. More importantly the effect of the proposed use of the land on that relationship will have to be considered in each case. These instances are clearly not intended to be exhaustive. I can see no logical or legal reason why s3(1)(g) of the [Town and Country Planning Act 1977] should be of no application solely because the land is no longer owned by Maoris.†

† Holland J in *Royal Forest and Bird Protection Society v Habgood* (1987) 12 NZTPA 76 (quoted in *Resource Management*, 3 vols, Wellington, Brooker's Ltd, 1991, vol 1A, para TW2.03(3))

Within the context of this earlier environmental law and the provisions of the Resource Management Act 1991, the Hauraki Gulf Marine Park Act 2000 seems to expand the role of kaitiaki in the area of planning, although clearly it leaves resource administration with territorial authorities under the 1991 Act. This Tribunal has not been asked to examine the Resource Management Act, but we note that the Waitangi Tribunal has done so in other reports.‡

‡ Waitangi Tribunal, *The Ngawha Geothermal Resource Report 1993*, Wellington, Brooker and Friend Ltd, 1993, p 145; Waitangi Tribunal, *The Whanganui River Report*, Wellington, GP Publications, 1998, ch 10, esp s 10.7; for a commentary, see *Resource Management*, vol 1A, para TW3.01

4.4.2 Deeds of recognition

The deeds of recognition provided for in sections 44 to 48 of the Hauraki Gulf Marine Park Act were described by counsel for Wai 728 as being of 'decorative effect only', because all they can do is 'identify opportunities for contribution by tangata whenua to the management of an area by the Crown or a Local Authority'. Specifically, they do not affect any person carrying out their duties under another Act, and must not be taken into account by such persons. They do not affect another person's legal rights and do not create any legal interest in the areas referred to in the deeds.§ In closing submissions, claimant counsel suggested that sections 44(3)(d), 45, and 46 were contradictory in effect, and that 'In essence the creation of Deeds of Recognition . . . do not disturb the status quo or create any new rights for tangata whenua'.¶

§ Document A2, para 27

The purpose of deeds of recognition in section 45 is limited to 'identifying opportunities for contribution by tangata whenua to the management of an area by the Crown or local authority'. They simply identify significant sites for tangata whenua and are not exclusive. Local authorities are already required to record wahi tapu and significant cultural

¶ Document C2, paras 40–41

sites on their district plans. On balance, however, the Tribunal does see some value in the deeds, albeit for a distinct and limited purpose. Deeds of recognition do reinforce the Resource Management Act 1991 provisions that oblige territorial authorities to identify sites of significance (including wahi tapu).*

For an overview of this process *
and processes under the
Historic Places Act 1993, see
Te Puni Kokiri, *Sites of
Significance: A Step-by-Step
Guide to Protecting Sites of
Cultural, Spiritual and
Historical Significance to Maori*,
Wellington, Te Puni Kokiri,
1996, esp pp 20–25.

4.5 RECOGNISING TANGATA WHENUA INTERESTS

Claimant counsel argued that the provisions in part 3 of the Hauraki Gulf Marine Park Act 2000 do not adequately recognise or protect tangata whenua interests and values. Section 32 sets out the purposes of the marine park, one of which is ‘to recognise and have particular regard to’ the relationship of tangata whenua to Tikapa Moana. Counsel submitted that there is ‘no primacy’ in this clause and that it amounts to a ‘watered-down’ Treaty clause.[†]

Document A2, para 25 †

Crown counsel emphasised the novelty of the Hauraki Gulf Marine Park, which was established to protect ‘landscapes and seascapes of national significance’, but also recognised that ‘it is a “lived in, worked in” place where a variety of property rights are affected’. Counsel reminded the Tribunal that the marine park is a subset of lands within the boundaries of the Hauraki Gulf and includes much of the seabed and foreshore, the Department of Conservation estate, reserves controlled by administering bodies, seawater, Crown land (including the Ramsar wetland), other publicly owned land, and private land appropriate to the purposes of the park (where the landowner has given consent). However, the creation of the park did not impact on the ownership of any resources in the Hauraki Gulf.[‡]

Document C3, paras 41–43 ‡

4.6 TRIBUNAL COMMENT

The claimants’ attitudes are clearly influenced by their determination to include the issue of their claim to customary rights in the foreshore and seabed of Tikapa Moana and their belief that this should have been determined before the Hauraki Gulf Marine Park was established. The Crown takes the view that existing rights to title, and the right to take a claim before a court or tribunal, are not affected by the management regime provided for in the Hauraki Gulf Marine Park Act 2000. A number of claimants expressed concern about environmental degradation in Tikapa Moana. On the need for better management of the Hauraki Gulf, both the Crown and the claimants agree. The divergence of opinion appears to be a matter of interpretation of certain provisions of the Hauraki Gulf Marine Park Act. Counsel for Wai 110 and Wai 475 was in support of Wai 728 claimant submissions, but also raised the issue of who is tangata whenua, since this term is not defined in the Act. He referred specifically to the status of Ngati Hei.[§] We believe this issue is one for Hauraki Maori to determine.

Document C1 §

CHAPTER 5

THE HAURAKI GULF FORUM

The establishment and operation of the Hauraki Gulf Forum is provided for in part 2 of the Hauraki Gulf Marine Park Act 2000. The intention was to provide for a representative advisory body to coordinate the management of the Hauraki Gulf. The last sentence of the preamble to the Act states:

The Gulf must be managed in a manner that crosses territorial jurisdictions, crosses land and water boundaries, and crosses cultures and that respects both conservation and development needs.

During the hearing of the Wai 728 claim, two principal issues emerged relating to the Hauraki Gulf Forum: tangata whenua representation and the payment of the costs of tangata whenua participation in forum activities. These two issues are reviewed in this chapter, and we briefly comment on the proposal for a ‘logo’ for the park.

5.1 TANGATA WHENUA REPRESENTATION

The membership of the Hauraki Gulf Forum is set out in section 16 of the Hauraki Gulf Marine Park Act and consists of three Government-appointed representatives, one each appointed by the Ministers of Fisheries, Conservation, and Maori Affairs; one representative of each of the 12 regional and territorial authorities; six tangata whenua representatives; and two further non-voting representatives appointed by the Auckland Regional Council. The focus of submissions by the claimants was on the perceived inadequacy of having only six tangata whenua representatives.

While the appointment of tangata whenua representatives is made under the Act, the Minister of Conservation had to establish a procedure, and this proved controversial. What follows is a brief description of the process, as explained in Dr Campbell’s evidence.* The appointment of the tangata whenua representatives was done through nominations by established Maori groups, particularly those organisations that had contributed to the discussions and negotiations leading up to the passing of the Act. The Hauraki Maori Trust Board was one of these groups, but it had insisted that only the Hauraki board and

* Document B1, paras 245–256

5.1.1

the Ngati Wai Trust Board should be represented. The Hauraki board specifically denied that Ngati Whatua had any right to representation. On 1 May 2000, the Minister formally wrote to the Ngati Paoa Whanau Trust Board, the Ngati Wai Trust Board (representing Ngati Wai and Ngati Rehua), the Ngai Tai ki Tamaki Trust, the Kawerau a Maki Trust, Ngati Whatua o Orakei, and Te Wai o Hua seeking advice and nominations for the appointment of representatives. Dr Campbell stated that 14 nominations were received representing 19 groups of tangata whenua. The Minister decided to provide for the widest possible representation over time from all the groups within the marine park's boundaries. To facilitate this representation, the Minister decided, first, to appoint alternatives to cover any absences and, secondly, to 'stagger' the length of the appointments, so that not all of them terminated in the same year. Using these procedures, it was possible to appoint 11 people to the forum over a three-year period. This attempt to respond to the Hauraki Maori Trust Board's wishes fell short of the five members the trust board had insisted on. These issues coloured the inaugural meeting of the forum. The Hauraki representatives did not attend that meeting, although they did attend a second one.

5.1.1 Claimant submissions

Claimant counsel submitted that the level of Maori representation on the Hauraki Gulf Forum was inadequate. Of the 23 forum members (including two non-voting Auckland Regional Council representatives), only six were from tangata whenua, and only three of the six were representatives of the 12 Hauraki iwi represented by the Hauraki Maori Trust Board. Counsel submitted that this level of representation does not equate with Treaty partnership, particularly when claimants are 'arguably the owner' of the foreshore and seabed. Claimant counsel submitted that, even if iwi are unsuccessful in their application before the Maori Land Court, the Crown ought, in terms of the Treaty, to protect Maori involvement in matters which affect the area because the Crown has never extinguished Maori rights to that area with the consent of the iwi.

The claimants further submitted that equal representation was the minimum requirement for a Treaty partnership. It was not clear in this submission whether representatives should be only from iwi represented by the Hauraki Maori Trust Board or whether there should be representatives of other groups.* However, the board had earlier indicated that Ngati Wai were acknowledged but not other groups in the Auckland area. In closing submissions, Wai 728 counsel suggested that, in the ratio of 15 Crown or statutory voting members to six tangata whenua representatives, Maori could be out-voted and argued strongly for equal representation on the forum:

There should be one tangata whenua representative for every Crown/Statutory delegate member. Given that the Forum has no actual powers to manage Tikapa Moana, but

Document A2, paras 29–31 *

instead has a planning and co-ordinating role, equal representation will not mean that tangata whenua gain control but it will ensure that they can play an active and prominent part in determining policy and the Hauraki Gulf Forum can become a blueprint for a Treaty partnership in practice.*

* Document c2, para 56

5.1.2 Crown submissions

Crown counsel submitted that the establishment and recognition of the Hauraki Gulf Forum was an important element of the Act. A forum was originally established in 1997 by the Auckland Regional Council (three members), Environment Waikato, and nine district and city councils (one member each). Representatives of the Ministers of Fisheries and Maori Affairs were invited to join the original body, which was a committee of the Auckland Regional Council. Under section 22 of the Hauraki Gulf Marine Park Act 2000, the forum is treated as a 'special joint committee' under section 114s of the Local Government Act 1974.

The purpose of the forum is to 'integrate the management' of the Hauraki Gulf, its islands, and its catchment areas. There is a particular requirement set out in section 17(2) of the Act that, when carrying out its functions, the forum have 'particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments'. Crown counsel made the point that the forum has no particular management or policy responsibilities and that the constituent parties, other than tangata whenua, have those responsibilities under other legislation. Crown counsel also submitted that the fact that there is no overarching body for the management of the Hauraki Gulf underlined the point that the forum's role is to integrate and facilitate, rather than usurp, the management role of its constituent local authorities.†

† Document B4, paras 31–33

Crown counsel submitted that the number of tangata whenua members 'chosen for their ability to represent tangata whenua interests' was reasonable when set alongside the constituent local authority and Crown members who had statutory functions and given the tasks the forum was expected to perform under the Act:

The relationships developed on the Forum will be important and will enhance the capacity of tangata whenua to have effective involvement in the democratic and statutory processes affecting the Gulf. The representatives of the Minister and local authorities are not there as a block vote, they are there to represent particular interests.‡

‡ Document c3, para 85

Counsel also referred to the *Coal* case, which acknowledged that partnership did not mean a 50:50 split of 'every asset or resource in which Maori have some justifiable claim', and suggested that this was also appropriate in the context of the Hauraki Gulf Forum.§

§ *Tainui Maori Trust Board v Attorney-General* [1989] 2 NZLR 513 (CA) (the *Coal* case); doc c3, para 84

5.2 COSTS OF TANGATA WHENUA PARTICIPATION

Document A2, para 32 *

Claimant counsel was critical of how the Hauraki Gulf Marine Park Act appears to constrain action by the forum: first, by the requirement that any activity must be agreed to by a majority of representatives and, secondly, by the requirement that one or more of the territorial authorities – but not tangata whenua – must agree in advance to fund any proposal.* The claimants' position was that section 20 of the Act makes it very difficult for tangata whenua to initiate activity.

There was some disagreement between Crown and claimant counsel as to whether tangata whenua representatives could choose to fund activities. The provisions of section 20 are:

20. Costs of other activities—(1) The Forum may undertake an activity under section 18(2)(e) if—

- (a) a majority of the representatives agrees to undertake the activity; and
- (b) one or more of the constituent parties (other than tangata whenua representatives) agree in advance to pay the costs of the activity.

- (2) If the costs of an activity are not agreed in advance, the Forum must not proceed with the activity.

(3) Section 18(3) does not affect the powers of a constituent party to take proceedings and, in particular, does not affect the powers of a constituent party to enforce an agreement made in accordance with subsection (1).

(4) This section does not apply to the administrative and servicing functions in section 19.

The provisions of section 18(3) restrict the forum to appearing only as a witness in any proceedings before a court or tribunal and to participating only in an advisory capacity in any statutory decision-making process. The provisions of section 19 require the costs of administration and servicing to be shared equally among the constituent parties, unless otherwise agreed, but section 19(3) states that such costs are not payable by tangata whenua representatives.

Document C2, para 61 †

Counsel for Wai 728 submitted that 'the effect of section 20 is that it will be difficult for tangata whenua to initiate an activity', even when 'tangata whenua choose to pay the costs'.[†] The Crown countered with the submission that the intention of these provisions was 'the Crown's desire to promote tangata whenua representation and participation on an equal basis with other constituent parties' and also to ensure that 'tangata whenua were not disadvantaged' by the lack of resources that would be available to other representative

Document C3, para 138 ‡

members of the forum.[‡] In a list of interpolations and corrections made to his closing submissions, a document submitted after the last hearing, Crown counsel conceded that it was likely that, if 'the interpretation of "constituent parties" in s20(1)(b) does preclude the Forum from undertaking the activity that tangata whenua wish to fund, that is an

unintended effect of the drafting and should be amended’.^{*} This issue needs to be clarified, possibly by an amendment to the Act. However, there is nothing in the Act to prevent tangata whenua from taking the initiative and persuading the local authority and Crown members of the forum to fund a particular activity or investigation.

^{*} Document D2, para 35

Crown counsel also drew attention to section 29 of the Act, which provided ‘innovative funding for tangata whenua representatives over and above the levels normally permitted to Crown appointees on Boards’. Again, the intention was ‘to place the tangata whenua representatives in a similar position to other Forum members’.[†] The provisions of section 29 are:

[†] Document C3, para 39

29. Payment of tangata whenua—(1) The Minister must pay to tangata whenua representatives on the Forum, from any appropriation by Parliament for this purpose,—

- (a) remuneration by way of allowances, travelling allowances, and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951; and
- (b) after agreement between the Minister and tangata whenua representatives, made before any costs are incurred, actual and reasonable communication costs and consultation costs incurred in the course of their work as tangata whenua representatives on the Forum.

(2) If there is no agreement between the Minister and tangata whenua representatives under subsection (1)(b), the Minister may make such payment to tangata whenua representatives as the Minister considers appropriate in the circumstances.

(3) The provisions of the Fees and Travelling Allowances Act 1951 apply to any payment made under subsection (1)(a).

Counsel for Wai 728 made no comment on these provisions in his closing submissions.

5.3 THE HAURAKI GULF FORUM ‘LOGO’

One of the grievances outlined in the amended statement of claim was that a ‘logo’ had been proposed for the Hauraki Gulf Forum ‘without consultation with, and which is offensive to, Hauraki iwi’.[‡] In opening submissions, Crown counsel suggested that this was a non-issue:

[‡] Claim 1.1(b), para 10.2 (see app 1)

The ‘Logo’ or branding exercise was originally a concept put together for the proposed Marine Park. The Minister of Conservation [the Honourable Sandra Lee] made it clear to her officials that it would not proceed unless tangata whenua endorsed the idea and consultation with tangata whenua was undertaken.[§]

[§] Document B4, para 67

Counsel also referred to the Crown evidence of Marilyn Fullam, of the Auckland office of the Department of Conservation, who indicated that it was the then Minister of

Conservation, the Honourable Dr Nick Smith, not the Hauraki Gulf Forum, who had ‘initiated a process with a creative design consultant’ in 1999. The Minister had already asked Department of Conservation staff to consult with tangata whenua on this issue, and to discuss proposed legislation, and Ms Fullam was involved with this. Progress on the design of a logo was halted when the Hauraki Maori Trust Board refused to have anything to do with it, although other tangata whenua representatives involved were happy with the concept.* In closing submissions, Wai 728 counsel commented that he was ‘pleased to note the Crown’s submission that the logo concept was effectively parked’.[†] The issue may be revisited at some future date in the Hauraki Gulf Forum, but the Tribunal sees no need to comment on this matter.

Document B2, paras 32–41 *

Document C2, para 51 †

5.4 TRIBUNAL COMMENT

The provision of parks and the coordination of environmental management are legitimate functions of modern governments. Environmental management must include the maintenance of kaitiakitanga. This is given expression in section 17(2) of the Hauraki Gulf Marine Park Act 2000, where ‘the Forum must have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments’. The Hauraki Gulf Marine Park includes Crown land, land administered by local authorities, and, at least potentially, private land – on the initiative and with the agreement of the owner. The focus on providing information that can influence policy should help achieve the objective of protecting the gulf, a responsibility which is shared by Maori and the Crown.

That the kaitiaki role is a vital one is unquestioned, and a significant part of its expression lies in ensuring that the park’s management policy is consistent with these values. It is also important that tangata whenua be closely involved in the administration of areas of cultural significance within the park, irrespective of the ownership of those sites. The multiple territorial authorities that are mainly responsible for the administration of the environmental legislation are required to develop a positive relationship with the tangata whenua at this forum.

The Tribunal has been asked to consider making a recommendation for the equal representation of Hauraki iwi with territorial authorities and governmental appointees. The Tribunal has already noted that those who have tangata whenua status in the park are a considerably wider group than the iwi represented by the Hauraki Maori Trust Board and that it would be a breach of the Treaty if these other groups were not also recognised. The Tribunal also thinks that the lengthy arguments put to us on the make-up of the board were ultimately not very helpful. Here is an opportunity for close cooperation between

tangata whenua and local authorities. It is also noted that, in section 22(4) of the Act, the forum is empowered to 'appoint such subcommittees as it considers appropriate'.

The forum is not a governing body of a park and neither is it a local authority, although it could well become influential in how the area of the Hauraki Gulf Marine Park is administered and how territorial authorities make resource consent decisions. The forum is an advisory body only, but it could also act as a facilitator and promote communication among the various decision-makers. Territorial authorities have considerable responsibilities to tangata whenua under the Hauraki Gulf Marine Park Act, and these responsibilities can be carried out only as long as there is regular communication between all the groups. The Tribunal does not see any obvious Maori or local authority groupings that would necessarily vote on any strict 'party' lines. If this were to develop, then much of the intention of the legislation would be subverted. It would also seem that there are considerable benefits in having a body to coordinate the efforts of territorial authorities to consult with tangata whenua. Therefore, the creation of a forum where tangata whenua and elected local body representatives can meet regularly is to be welcomed. While tangata whenua are intimately involved in the activities of the forum, they are not burdened with funding responsibilities, which fall instead on the ratepayers of the territorial authorities. Crown funding of tangata whenua consultation with the various groups in the Hauraki Gulf is to be welcomed.

CHAPTER 6

CONCLUSIONS

The Tribunal acknowledges the considerable area of agreement between the claimants and the Crown on the need to enhance preservation and protection of the Hauraki Gulf. There is also agreement that a forum, where tangata whenua and territorial authorities can regularly meet to monitor the development of the park and formulate policy, is a sound idea. The Tribunal accepts that the iwi represented by the Hauraki Maori Trust Board are tangata whenua of Tikapa Moana. However, the physical boundaries of the park are greater than the rohe of Hauraki iwi represented by the board and include other groups who equally can claim to be tangata whenua of the park. As part of its Treaty obligations, the Crown must include those tangata whenua in the Hauraki Gulf Forum, and it has done so.

Toko Renata Te Taniwha told the Tribunal:

We have understood that the protection of Tikapa Moana's environment is a major concern of the Crown and can therefore not understand why the Crown and tangata whenua cannot work in partnership to protect what is clearly a mutual concern.*

* Document A3, para 17

The Hauraki Maori Trust Board has sought to delay implementation of the Hauraki Gulf Marine Park Act 2000 until the issue of Maori customary rights in the foreshore and seabed has been resolved. This is an issue of wider national significance which cannot be resolved in an Act of local significance. It is also an issue currently before the courts in other jurisdictions.

At a wider level the Crown's role in coordinating and facilitating conservation activities through the Hauraki Gulf Marine Park Act is generally consistent with the Tribunal's findings on conservation policy in the Ngawha and Whanganui River reports. The Tribunal acknowledges that the Crown must recognise the kaitiakitanga of tangata whenua. Kaitiakitanga is a dynamic concept and needs to be defined in terms relevant to the physical and social environment of the day. Both the claimants and the Crown have noted that the Hauraki Gulf Marine Park Act expands the kaitiaki role over previous practice. While the claimants argue that this is insufficient, this Tribunal would like to see how it works in practice. This has not been possible so far because of the reluctance of Hauraki Maori to attend initial forum meetings. Claimants have also been concerned about the level of funding available for consultation. The Tribunal has no particular difficulty with the regime set out

in the Act but notes that all parties will need to negotiate to determine the appropriate funding.

In conclusion, the Tribunal does not see any fundamental Treaty breach in the legislation per se. There is basic agreement between the parties that there is a need for protection of the Hauraki Gulf environment, and the marine park is an effective way of working toward that goal. The Hauraki Gulf Forum will operate efficiently only if the tangata whenua, territorial authorities, and other representatives develop a positive relationship based on goodwill. The principle that the Treaty established a partnership whereby both partners had a duty to act reasonably and in good faith was agreed to by all five members of the Court of Appeal in the *Lands* case. The president of that court, Sir Robin Cooke, stated that:

the duty to act reasonably and in the utmost good faith is not one-sided. For their part the Maori people have undertaken a duty of loyalty to the Queen, full acceptance of her Government through her responsible ministers, and reasonable co-operation.*

New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641, 663 (CA) (the *Lands* case)

We make no specific findings, because we are not convinced that Hauraki iwi have been prejudiced by the passing of the Hauraki Gulf Marine Park Act 2000. We would encourage all parties to focus on what they agree on: the need for the Hauraki Gulf environment to be protected for future generations. This is the spirit and intention of the Act, which provides a framework for all parties to work together towards this common goal.

APPENDIX I

STATEMENTS OF CLAIM

IN THE WAITANGI TRIBUNAL

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF A claim by Toko Renata Te Taniwha and
the Hauraki Maori Trust Board

STATEMENT OF CLAIM

DATED the 19th day of June 1998

The claimants say:

1. The first named claimant is the Chairman of the second named claimant and the second named claimant is a Maori Trust Board under the Maori Trust Boards Act 1955 having been established by the Hauraki Maori Trust Board Act 1988.
2. For the purposes of this claim they together represent the iwi known as Ngai Tai, Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiau, Ngati Rahiri Tumutumu, Ngati Tamatera, Ngati Tara Tokanui, Ngati Whanaunga and Patukirikiri (*‘the Hauraki iwi’*).
3. The Hauraki iwi are tangata whenua of the Hauraki Gulf (*‘Tikapa Moana’*).
4. Tikapa Moana is a mahinga kai and a taonga of Hauraki iwi. Hauraki iwi are kaitiaki of Tikapa Moana.

5. As tangata whenua Hauraki iwi have mana whenua and mana moana over the shores and waters of Tikapa Moana and hold customary title in respect of the foreshore and seabed of Tikapa Moana.

6. By application dated 28 January 1998, Hauraki Maori Trust Board has applied to the Maori Land Court on behalf of Hauraki iwi for recognition of Hauraki iwi's customary title to a significant portion of the foreshore and seabed of Tikapa Moana (a copy of the application is annexed and marked 'A').

7. The Hauraki Maori Trust Board has also lodged a claim with the Waitangi Tribunal on behalf of Hauraki iwi seeking recognition of the customary rights of Hauraki iwi to the foreshore and seabed of Tikapa Moana (Wai 100).

8. The Minister of Conservation has advised the Hauraki iwi and the claimants that it intends to introduce special legislation to turn Tikapa Moana into a national marine park.

9. The introduction of special legislation to turn Tikapa Moana into a national marine park is likely to prejudice the claim of Hauraki to the Foreshore and Seabed and thereby the claimants and Hauraki iwi.

Relief Sought

A. A recommendation that any special legislation introduced to constitute Tikapa Moana as a national marine park will be in breach of the Treaty of Waitangi if it in any way affects the customary rights claim of Hauraki to the Foreshore and Seabed.

B. Costs.

'A'

APPLICATION FOR AN INVESTIGATION OF MAORI CUSTOMARY LANDTE TURE WHENUA MAORI ACT 1993, SECTIONS 18, 131 AND 132IN THE MAORI LAND COURT OF NEW ZEALANDWAIKATO-MANIAPOTO DISTRICT

IN THE MATTER OF AN APPLICATION BY HAURAKI MAORI TRUST BOARD ON
BEHALF OF HAURAKI IWI NAMELY NGATI HAKO, NGATI HEI,
NGATI MARU, NGATI PAOA, PATUKIRIKIRI, NGATI POROU KI
HARATAUNGA KI MATAORA, NGATI PUKENGA KI WAIIAU,
NGATI RAHIRI-TUMUTUMU, NGAI TAI, NGATI TAMATERA,
NGATI TARA TOKANUI AND NGATI WHANAUNGA

Application is hereby made for the following orders:

1. An order under ss131 and 18(h) determining and declaring that the land as defined in Schedule One hereof (*'the land'*) is customary Maori land; or
2. An order under s18(i) declaring that the land is held by the Crown in a fiduciary capacity in favour of all or any of the applicants; and
3. An order under s132 that an investigation be carried out as to the relative interests of the applicants in the land; and
4. Costs; and
5. Such other orders as the Court thinks just.

UPON THE GROUNDS:

1. The applicant is Hauraki Maori Trust Board on behalf of Hauraki Iwi as set out in s4(2) of the Hauraki Maori Trust Board Act 1988 namely Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Patukirikiri, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiau, Ngati

THE HAURAKI GULF MARINE PARK REPORT

APPI

Rahiri-Tumutumu, Ngai Tai, Ngati Tamatera, Ngati Tara Tokanui and Ngati Whanaunga. These iwi are, and at all relevant times were tangata whenua in respect of the region generally known as Hauraki. This region includes within it the land referred to in Schedule One hereof.

2. The land was, in 1840, customary Maori land of some or all the applicants and was held by some or all of them in accordance with tikanga Maori.

3. The customary Maori title to this land has not been relinquished by the applicants or in any other manner extinguished since that time.

4. The land remains customary Maori land of some or all of the applicants at the date of this application and continues to be held by them in accordance with tikanga Maori.

5. In the alternative if the land is found by the Court to be land of the Crown then the applicants never consented to the abrogation of their title by the Crown and by the principles in *R v Symonds*, the Crown holds such title as fiduciary on behalf of the applicants.

6. It is appropriate in those circumstances for the Court to determine and declare that the land is Maori customary land and to order an investigation into the particular owners thereof and their relative interests therein.

AND upon the further grounds set out in the affidavit of Toko Renata Te Taniwha and to be provided in evidence before this Court in support of this application.

This application is made in reliance on sections 18, 131 and 132 Te Ture Whenua Maori Act 1993 and Rule 108 of the Maori Land Court Rules 1994.

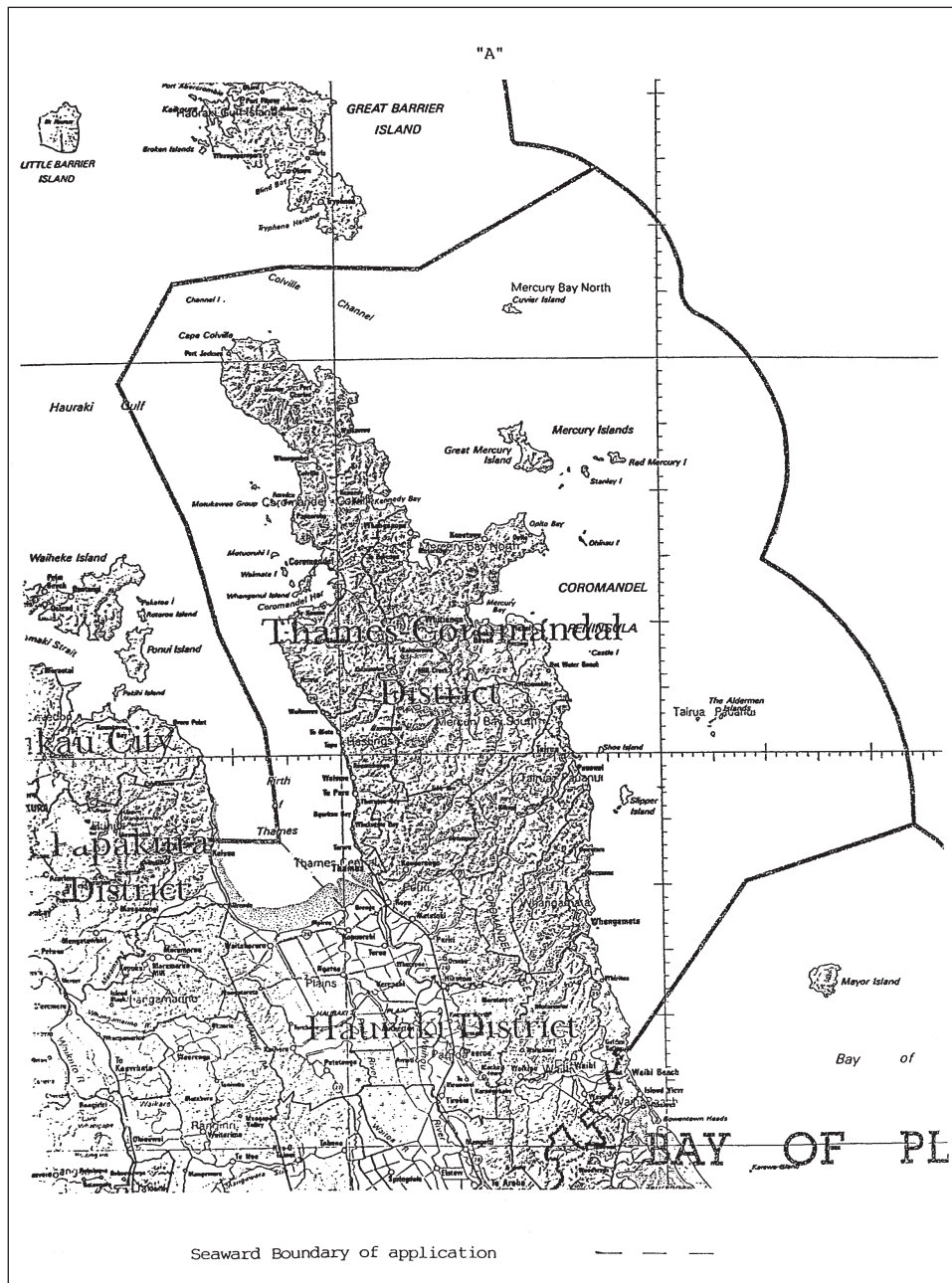
DATED at AUCKLAND this 28th day of January 1998

J V Williams/L G Powell
Counsel for the applicants

SCHEDULE ONE

For the purposes of this application *'the land'* means:

1. All that land having as its landward boundary mean high water mark and having as its seaward boundary a line running 318° from the middle of a baseline drawn across the mouth of the Piako River to the point where such line intersects with the seaward boundary of the region administered by the Waikato Regional Council ('the Regional Boundary') and thereafter following the line of the regional boundary to the point on the eastern side of the Coromandel Peninsula at which the regional boundary intersects the mean high water mark, as delineated out on the map annexed hereto and marked 'A'.



THE HAURAKI GULF MARINE PARK REPORT

Note: The first amended statement of claim was filed on 20 June 2000 and this second amended statement of claim was filed on 1 February 2001. The two documents are identical, except for the addition of paragraph 10.3, and subparagraphs (b) and (e) under the heading 'Relief Sought'. Application A was also appended to this statement of claim (see pp 49–51).

IN THE WAITANGI TRIBUNAL

WAI 728

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF A claim by Toko Renata Te Taniwha and
the Hauraki Maori Trust Board

SECOND AMENDED STATEMENT OF CLAIM

Dated 1 February 2001

The claimants say

1. This claim is lodged by:

1.1 Toko Renata Te Taniwha; and

1.2 the Hauraki Maori Trust Board, being a Maori Trust Board under the Maori Trust Boards Act 1955 and having been established by the Hauraki Maori Trust Board Act 1988.

2. This claim is lodged on behalf of the iwi known as Ngai Tai, Ngati Hako, Ngati Hei, Ngati Maru, Ngati Paoa, Ngati Porou ki Harataunga ki Mataora, Ngati Pukenga ki Waiau, Ngati Rahiri Tumutumu, Ngati Tamatera, Ngati Tara Tokanui, Ngati Whanaunga and Patukirikiri (*'Hauraki iwi'*).

3. The claimants say that they and their tupuna have been, are, and are likely to be, prejudicially affected by the legislation and the policies, practices, acts or omissions of the Crown which were and are inconsistent with the principles of the Treaty of Waitangi as further set out in this amended statement of claim.

The Claim

4. The Hauraki iwi are tangata whenua of Tikapa Moana (also known as the Hauraki Gulf).

5. Tikapa Moana is a mahinga kai and a taonga of Hauraki iwi. Hauraki iwi are kaitiaki of Tikapa Moana.

6. As tangata whenua Hauraki iwi have mana whenua and mana moana over the shores, lands, and waters of Tikapa Moana and hold customary title in respect of the foreshore and seabed of Tikapa Moana.

Particulars

6.1 By application dated 28 January 1998, the Hauraki Maori Trust Board has applied to the Maori Land Court on behalf of Hauraki iwi for recognition of Hauraki iwi's customary title to a significant proportion of the foreshore and seabed of Tikapa Moana (a copy of the application is annexed and marked 'A').

6.2 The Hauraki Maori Trust Board has also lodged a claim with the Waitangi Tribunal on behalf of Hauraki iwi seeking recognition of the customary rights of Hauraki iwi to the foreshore and seabed of Tikapa Moana (WAI 100).

7. Pursuant to article 2 of the Treaty of Waitangi, Hauraki Iwi were guaranteed tino rangatiratanga over, and full exclusive and undisturbed possession of, their lands and taonga, including Tikapa Moana.

8. As a consequence of the guarantee set out in paragraph 5 above, the Crown was and remains under an obligation:

8.1 To actively protect the exercise by Hauraki Iwi of tino rangatiratanga and kaitiakitanga in respect of Tikapa Moana.

8.2 To actively protect and legally recognise customary rights of ownership held by Hauraki Iwi in respect of Tikapa Moana.

9. In breach of the Principles of the Treaty of Waitangi and in particular the obligations in paragraphs 7 and 8 hereto, the Crown has enacted the Hauraki Gulf Marine Park Act 2000 which:

9.1 Implements a management regime which is inconsistent with the kaitiakitanga responsibilities and the exercise of tino rangatiratanga by Hauraki Iwi (Part 1).

9.2 Fails to give effective recognition to the principles of the Treaty of Waitangi (s 6).

9.3 Establishes a Hauraki Gulf Forum which

(a) Does not provide for adequate representation for Hauraki Iwi (s 16); and

(b) Fails to protect the interests of Hauraki Iwi (Part 11).

(c) Fails to allow Hauraki Iwi to participate effectively.

9.4 Fails to give adequate recognition to the interests of Hauraki Iwi.

10. In further breach of the principles of the Treaty of Waitangi and in particular the obligations in paragraphs 7 and 8 hereto, the Crown has implemented the Hauraki Gulf Forum the Hauraki Gulf Marine Park and:

10.1 Appointed iwi representatives to the Hauraki Gulf Forum without support of Hauraki iwi.

10.2 Proposed a logo for the Hauraki Gulf Forum without consultation with, and which is offensive to, Hauraki iwi.

10.3 Administered the Marine Park as though the foreshore and seabed within the Marine Park boundary is a part of the park notwithstanding that the ownership has not been determined and nothing in the Hauraki Gulf Marine Park Act 2000 changes or affects the ownership of the foreshore and/or seabed.

11. As a result of the breaches set out in paragraph 9 and 10 hereto Hauraki Iwi have been prejudiced in that they have:

11.1 Been denied the right to exercise tino rangatiratanga in respect of Tikapa Moana; and

11.2 Been denied the right to exercise kaitiakitanga in respect of Tikapa Moana.

11.3 Suffered and continue to suffer a challenge to their mana in respect of Tikapa Moana.

Relief Sought

(a) A finding that the Hauraki Gulf Marine Park Act 2000 breaches the principles of the Treaty of Waitangi by failing to adequately protect the customary and other interests of Hauraki iwi in Tikapa Moana.

(b) A finding that the Crown's decision to treat the foreshore and seabed of Tikapa Moana as part of the Hauraki Gulf Marine Park breaches the principles of the Treaty of Waitangi.

(c) A recommendation that Hauraki iwi be given the opportunity to fully participate in a review of the Hauraki Gulf Marine Park Act 2000 in order to adequately protect the interests of Hauraki iwi in Tikapa Moana.

(d) A recommendation that the Crown should take steps to prevent any further implementation of the provisions of the Hauraki Gulf Marine Park Act 2000 until it has been repealed or amended so as to be consistent with the principles of the Treaty of Waitangi.

(e) A recommendation that the Crown desist from treating the foreshore and seabed of Tikapa Moana as part of the Hauraki Gulf Marine Park pending the outcome of the application by Hauraki iwi for recognition of customary ownership of the foreshore and seabed.

(f) A recommendation that Hauraki iwi are provided with all necessary resources and funding necessary in order to fulfill their duties as kaitiaki in respect of Tikapa Moana including where appropriate funding for legal proceedings on issues affecting Tikapa Moana.

(g) Any other recommendations the Tribunal thinks fit.

(h) Costs.

APPENDIX II

RECORD OF INQUIRY

RECORD OF HEARINGS

THE TRIBUNAL

The Tribunal constituted to hear the Hauraki claims, which included Wai 728, comprised Dame Augusta Wallace (presiding), John Kneebone, Professor Wharehuia Milroy, and Professor Dame Evelyn Stokes.

THE COUNSEL

Grant Powell appeared for the Wai 728 claimants, Charl Hirschfeld for the Wai 110 and Wai 475 claimants, and Annsley Kerr for the Crown.

THE HEARINGS

The first hearing was held at the Thames Boat Club, Tararu, on 17 July 2000. Submissions (in support of the claim) were received from Laura Te Rore Hiku, Kenneth Linstead, Terrence John McEnteer, Te Hiiri Ngamane, Richard Rakena, Toko Renata Te Taniwha, and Betty Whaitiri Williams.

The second hearing was held at Thames Racecourse, Thames, on 24 and 25 October 2000. Submissions (on behalf of the Crown) were received from Dr Graeme Campbell and Marilyn Fullam.

The third hearing was held at Luck at Last Restaurant, Whangamata, on 13 February 2001. Closing submissions were received from Charl Hirschfeld, Annsley Kerr, and Grant Powell.

RECORD OF PROCEEDINGS

Note: The reference in parentheses after each entry or list of entries gives the location of that paper or papers in the Wai 686 record of proceedings.

1. Claims

1.1 Claim by Toko Renata Te Taniwha and the Hauraki Maori Trust Board concerning the Hauraki Gulf Marine Park, 19 June 1998 (claim 1.33)

(a) Amended statement of claim, 20 June 2000 (claim 1.33(a))

(b) Second amended statement of claim, 1 February 2001 (claim 1.33(b))

2. Papers in proceedings

2.1 Direction of deputy chairperson registering claim 1.1 as Wai 728, referring application for urgency to the Hauraki Tribunal for consideration, and consolidating the Wai 728 record with that of Wai 686, 15 July 1998 (paper 2.142)

2.2 Declaration that notice of registration of Wai 728 given, 16 July 1998

Letter from Tribunal to concerned parties advising of registration of Wai 728, 16 July 1998

Letter from Tribunal to claimant counsel advising of registration of Wai 728, 16 July 1998

List of parties sent notice of registration of Wai 728, 16 July 1998

(paper 2.143)

2.3 Application for urgency from claimant counsel, 14 July 1998 (paper 2.144)

2.4 Memorandum from Crown counsel to Tribunal concerning proposed Hauraki Gulf Marine Park Bill, 31 July 1998 (paper 2.150)

2.5 Memorandum from claimant counsel to Tribunal in response to paper 2.4, 3 August 1998 (paper 2.151)

2.6 Memorandum from Wai 720 claimants to Tribunal supporting application for urgency, 12 August 1998 (paper 2.152)

2.7 Memorandum from Wai 289 claimant counsel to Tribunal supporting application for urgency, 12 August 1998 (paper 2.153)

- 2.8** Claim by Rawiri Tooke and others concerning Tikapa Moana and giving notice of interest in Wai 728, 8 August 1998 (paper 2.154)
- 2.9** Submissions of claimant counsel, 13 August 1998 (paper 2.155)
- 2.10** Submissions of Crown counsel opposing application for urgency, 13 August 1998 (paper 2.156)
- 2.11** Memorandum from Wai 454 claimant counsel to Tribunal supporting application for urgency and giving notice of interest in Wai 728, 13 August 1998 (paper 2.157)
- 2.12** Memorandum from Wai 349 claimant to Tribunal supporting application for urgency, 13 August 1998 (paper 2.158)
- 2.13** Facsimile from Department of Conservation to Tribunal concerning catchment areas of proposed Hauraki Gulf Marine Park, 14 August 1998 (paper 2.159)
- 2.14** Direction of Tribunal adjourning application for urgency sine die, 19 August 1998 (paper 2.160)
- 2.15** Direction of Tribunal concerning deadlines for filing of evidence, 21 August 1998 (paper 2.162)
- 2.16** Memorandum from Wai 522 claimant counsel to Tribunal supporting application for urgency and giving notice of interest in Wai 728, 19 August 1998 (paper 2.163)
- 2.17** Letter from Crown counsel to registrar concerning scheduled meeting of Minister of Conservation and Hauraki iwi to discuss proposed Hauraki Gulf Marine Park Bill, 27 August 1998 (paper 2.166)
- 2.18** Notice of first hearing of Hauraki inquiry, 2 September 1998 (paper 2.169)
- 2.19** Declaration that notice of first hearing of Hauraki inquiry given, 4 September 1998
Notice of first hearing of Hauraki inquiry, 2 September 1998
List of parties sent notice of first hearing of Hauraki inquiry, 4 September 1998
(paper 2.170)
- 2.20** Notice of second and third hearings of Hauraki inquiry, 7 October 1998 (paper 2.178)

2.21 Declaration that notice of second and third hearings of Hauraki inquiry given, 7 October 1998

Notice of second and third hearings of Hauraki inquiry, 7 October 1998

List of parties sent notice of second and third hearings of Hauraki inquiry, 21 October 1998
(paper 2.179)

2.22 Memorandum from Crown counsel to Tribunal concerning draft Hauraki Gulf Marine Park Bill, 11 November 1998 (paper 2.184)

2.23 Notice of fourth hearing of Hauraki inquiry, 16 November 1998 (paper 2.187)

2.24 Declaration that notice of fourth hearing of Hauraki inquiry given, 16 November 1998
(paper 2.188)

2.25 Notice of fifth hearing of Hauraki inquiry, 1 February 1999 (paper 2.195)

2.26 Declaration that notice of fifth hearing of Hauraki inquiry given, 5 February 1999

Notice of fifth hearing of Hauraki inquiry, 1 February 1999

List of parties sent notice of fifth hearing of Hauraki inquiry, 9 February 1999
(paper 2.196)

2.27 Notice of sixth hearing of Hauraki inquiry, 23 March 1999 (paper 2.198)

2.28 Declaration that notice of sixth hearing of Hauraki inquiry given, 25 March 1999

Notice of sixth hearing of Hauraki inquiry, 23 March 1999

List of parties sent notice of sixth hearing of Hauraki inquiry, undated
(paper 2.199)

2.29 Direction of chairperson appointing Joanne Morris presiding officer for sixth hearing of Hauraki inquiry, 29 March 1999 (paper 2.200)

2.30 Notice of seventh hearing of Hauraki inquiry, 31 May 1999 (paper 2.217)

2.31 Declaration that notice of seventh hearing of Hauraki inquiry given, 1 June 1999

Notice of seventh hearing of Hauraki inquiry, 31 May 1999

List of parties sent notice of seventh hearing of Hauraki inquiry, 31 May 1999
(paper 2.218)

2.32 Notice of eighth hearing of Hauraki inquiry, 12 July 1999 (paper 2.224)

- 2.33** Declaration that notice of eighth hearing of Hauraki inquiry given, 12 July 1999
Notice of eighth hearing of Hauraki inquiry, 12 July 1999
List of parties sent notice of eighth hearing of Hauraki inquiry, 12 July 1999
(paper 2.225)
- 2.34** Direction of Tribunal scheduling conference to allocate further hearing dates for Hauraki inquiry and setting closing date for consolidation or aggregation of new Hauraki claims with Wai 686, 26 October 1999 (paper 2.248)
- 2.35** Direction of Tribunal concerning hearings scheduled for July and August 2000, 21 March 2000 (paper 2.310)
- 2.36** Notice of thirteenth hearing of Hauraki inquiry, 14 June 2000 (paper 2.318)
- 2.37** Declaration that notice of thirteenth hearing of Hauraki inquiry given, 27 June 2000
Notice of thirteenth hearing of Hauraki inquiry, 14 June 2000
List of parties sent notice of thirteenth hearing of Hauraki inquiry, undated
(paper 2.319)
- 2.38** Direction of Tribunal registering amendment to statement of claim, 3 July 2000 (paper 2.323)
- 2.39** Statement of Crown in response to amendment to statement of claim, 14 July 2000 (paper 2.323A)
- 2.40** Declaration that notice of amendment to statement of claim given, 13 July 2000
Direction of Tribunal registering amendment to statement of claim, 3 July 2000
Notice of amendment to statement of claim, 13 July 2000
List of parties sent notice of of amendment to statement of claim, 13 July 2000
(paper 2.323B)
- 2.41** Memorandum from Crown counsel to Tribunal concerning presentation of Crown submissions and filing of Crown evidence, 18 August 2000 (paper 2.338)
- 2.42** Notice of fifteenth hearing of Hauraki inquiry, 25 September 2000 (paper 2.345)
- 2.43** Declaration that notice of fifteenth hearing of Hauraki inquiry given, 25 September 2000
Notice of fifteenth hearing of Hauraki inquiry, 25 September 2000
List of parties sent notice of fifteenth hearing of Hauraki inquiry, undated
(paper 2.346)

THE HAURAKI GULF MARINE PARK REPORT

APPII

2.44 Memorandum from Wai 728 and Wai 110 claimant counsel to Tribunal objecting to parts of document B1, 24 October 2000 (paper 2.351)

2.45 Joint memorandum from Crown counsel and Wai 110, 475, and 728 claimant counsel to Tribunal concerning presentation of closing submissions, 30 November 2000 (paper 2.356)

2.46 Entry vacated

2.47 Notice of seventeenth hearing of Hauraki inquiry, 31 January 2001 (paper 2.363)

2.48 Declaration that notice of seventeenth hearing of Hauraki inquiry given, 1 February 2001
Notice of seventeenth hearing of Hauraki inquiry, 31 January 2001
List of parties sent notice of seventeenth hearing of Hauraki inquiry, undated
(paper 2.364)

2.49 Entry vacated

2.50 Entry vacated

2.51 Direction of Tribunal registering second amended statement of claim, 13 February 2001
(paper 2.367)

2.52 Statement of Crown in response to second amended statement of claim, 20 February 2001 (paper 2.368)

2.53 Declaration that notice of second amended statement of claim given, 27 February 2001
List of parties sent notice of second amended statement of claim, 27 February 2001
(paper 2.369)

RECORD OF DOCUMENTS

Note: The reference in parentheses after each entry or list of entries gives the location of that document or documents in the Wai 686 record of documents.

A. DOCUMENTS RECEIVED PRIOR TO END OF FIRST HEARING, 17 JULY 2000

A1 The Hauraki Gulf Marine Park Act 2000 (doc M1)

A2 Opening submissions of claimant counsel, 17 July 2000 (doc M26)

A3 Brief of evidence of Toko Renata Te Taniwha, undated (doc M27)

A4 Brief of evidence of Te Hiiri Ngamane, undated (doc M28)

A5 Brief of evidence of Richard Rakena, undated (doc M29)

A6 Brief of evidence of Kenneth Linstead, undated (doc M30)

A7 Brief of evidence of Betty Whitiri Williams, undated (doc M31)

A8 Brief of evidence of Laura Hiku, undated (doc M32)

A9 Brief of evidence of Terrence John McEnteer, undated (doc M33)

A10 Brief of evidence of Terrence John McEnteer, undated (doc M34)

B. DOCUMENTS RECEIVED PRIOR TO END OF SECOND HEARING, 25 OCTOBER 2000

B1 Brief of evidence of Dr Graeme Campbell, 13 October 2000 (doc 04)

(a) List of contents of documents B1(a)(A)–(s), 13 October 2000 (doc 04(a))

(a)(A) Department of Conservation, *Tapui Taimoana: Reviewing the Marine Reserves Act 1971*, Wellington, Department of Conservation, 2000, pp 48–50 (doc 04(a)(A))

(a)(B) The first schedule to the Conservation Act 1987 (doc 04(a)(B))

(a)(C) Dr Kenneth Palmer, ‘The Hauraki Gulf Marine Park Act 2000’, paper presented at the New Zealand Centre for Environmental Law seminar, 8 September 2000 (doc 04(a)(C))

(a)(D) Hauraki Gulf Forum, ‘Report of the Hauraki Gulf Forum for the Period 27 February 2000 to 30 June 2000’, report to the Minister of Conservation, August 2000 (doc 04(a)(D))

(a)(E) International Union of Conservation Nations Commission on National Parks and Protected Areas, *Guidelines for Protected Area Management Categories*, Cambridge, International Union of Conservation Nations, 1994, pp 7–13, 16–23 (doc 04(a)(E))

(a)(F) Department of Conservation, *Conservation Management Strategy for Auckland, 1995–2005*, 3 vols, Auckland, Department of Conservation, 1995, vol 1, pp 70–75 (doc 04(a)(F))

(a)(G) Hauraki Gulf Working Party, ‘Report of the Hauraki Gulf Working Party to the Minister of Conservation’, report to the Minister of Conservation, February 1992 (doc 04(a)(G))

(a)(H) Department of Conservation, ‘Department of Conservation Submission on the Future of the Hauraki Gulf’, submission to caucus subcommittee, September 1992 (doc 04(a)(H))

B1—*continued*

(a)(I) Document entitled 'Statement from Hui at Motutapu Island, 14–15 November 1992', 1992 (doc 04(a)(I))

(a)(J) Minutes of a meeting on 2 December 1992 between the Minister of Conservation and iwi for the presentation of iwi reports on the Hauraki Gulf park proposals (doc 04(a)(J))

(a)(K) 'Hauraki Gulf Proposal: Summary of Consultation', COA0244, Department of Conservation briefing paper to Minister of Conservation, 9 October 1995 (doc 04(a)(K))

(a)(L) Letter from Minister of Conservation to Hauraki iwi concerning Hauraki Gulf legislation, 10 August 1998

Mailing list for above letter

(doc 04(a)(L))

(a)(M) 'Additional Item: Hauraki Gulf Marine Park Bill: Drafting Approval', CAB(98) M35/20, Cabinet minutes, 14 September 1998

'Hauraki Gulf Marine Park Bill: Further Information', CAB(98) M41/14, Cabinet minutes, 2 November 1998

(doc 04(a)(M))

(a)(N) Russell McVeagh McKenzie Bartleet and Company and Walters Williams and Company, 'Report on the Hauraki Gulf Marine Park Bill', report to tangata whenua representatives of the Hauraki Gulf Legislation Working Party, undated (doc 04(a)(N))

(a)(O) Minister of Conservation, 'Hauraki Gulf Marine Park Bill', submission to Transport and Environment Select Committee, 21 April 1999 (doc 04(a)(O))

(a)(P) Letter from Minister of Conservation to Hauraki Maori Trust Board concerning representation on Hauraki Gulf Forum, 18 April 2000 (doc 04(a)(P))

(a)(Q) Letter from Hauraki Maori Trust Board to Minister of Conservation concerning representation on Hauraki Gulf Forum, 2 May 2000

Letter from Hauraki Maori Trust Board to Minister of Conservation concerning representation on Hauraki Gulf Forum, 12 May 2000

(doc 04(a)(Q))

(a)(R) Letter from office of Minister of Conservation to Hauraki Maori Trust Board concerning appointment of tangata whenua representatives to Hauraki Gulf Forum, 17 May 2000 (doc 04(a)(R))

(a)(S) 'Additional Item: Hauraki Gulf Forum: Appointment of Tangata Whenua Representatives', POL(00) M11/4, Cabinet Policy Committee minutes, 17 May 2000 (doc 04(a)(S))

(b) 1:300,000 colour map entitled 'Hauraki Gulf and Catchment – Hauraki Gulf Marine Park', Auckland Regional Council, 24 November 1998 (doc 04(b))

(c) Department of Conservation, *Conservation Management Strategy for Auckland, 1995–2005*, 3 vols, Auckland, Department of Conservation, 1995 (doc 04(c))

(d) Document entitled 'Te Ia O'Nuku: A Waiata for the Department', undated (doc 04(d))

- (e)(i) 'Hauraki Gulf Marine Park Bill: Drafting Approval', STR(98) M28/12, Cabinet Strategy Committee minutes, 2 September 1998 (doc 04(e)(i))
 - (e)(ii) 'Hauraki Gulf Marine Park Bill: Drafting Approval', ECO(98) 152, Cabinet Economic Committee paper, 1 September 1998 (doc 04(e)(ii))
 - (f)(i) 'Hauraki Gulf Marine Park Bill: Further Changes to SOP', LEG(OO) M1/4, Cabinet Legislation Committee minutes, 17 February 2000 (doc 04(f)(i))
 - (f)(ii) 'Hauraki Gulf Marine Park Bill: Further Changes to SOP – Late Paper', LEG(OO) 4, Cabinet Legislation Committee paper, 16 February 2000 (doc 04(f)(ii))
 - (f)(iii) 'Consideration of Further Changes to the Hauraki Gulf Marine Park Bill', paper to Government caucuses from Sandra Lee, Minister of Conservation, and John Tamihere, member of Parliament for Hauraki, undated (doc 04(f)(iii))
 - (f)(iv) 'Hauraki Gulf Marine Park Bill: Changes to the SOP', CAB(OO) M4/1D(1), Cabinet minutes, undated
- Facsimile from Jeanette Fitzsimons, Green Party co-leader, to Helen Clark, Prime Minister, and Sandra Lee, Minister of Conservation, concerning Hauraki Gulf Marine Park Bill, 13 February 2000
- (doc 04(f)(iv))

B2 Brief of evidence of Marilyn Fullam, 6 October 2000 (doc 05)

B3 List of contents of documents B3(1)–(6), being supporting documents to document B1, (doc 07)

- (1) The Hauraki Gulf Marine Park Act 2000 (doc 07(1))
- (2) The Hauraki Gulf Marine Park Bill 1998 (PCO134/10) (doc 07(2))
- (3) The Hauraki Gulf Marine Park Bill 1998 (244–1, PCO134/15) (doc 07(3))
- (4) The Hauraki Gulf Marine Park Bill 1998 (244–2) (doc 07(4))
- (5) The Hauraki Gulf Marine Park Bill 1998 (244–3) (doc 07(5))
- (6) 'Hauraki Gulf Marine Park Bill Proposed Amendments', Supplementary Order Paper 2, 17 February 2000 (doc 07(6))

B4 Opening submissions of Crown counsel, 24 October 2000 (doc 010)

- (a) *In Tandem Marine Enhancement Ltd v Waikato Regional Council* 10 May 2000, Environment Court, A58/2000 (doc 010(a))
- (b) *GR and EE Kemp and EA Billoud v Queenstown Lakes District Council* 22 December 2000, Environment Court, C229/99 (doc 010(b))
- (c) List of contents of document C(1)–(4) (doc 010(c))
- (c)(1) *Deed of Settlement between Te Runanga o Ngai Tahu and the Crown*, Wellington, Office of Treaty Settlements, 1999, attachment 12.65 (deed of recognition for Hananui (Mount Anglem)) (doc 010(c)(1))

B4—*continued*

(c)(2) *Deed of Settlement between Te Runanga o Ngai Tahu and the Crown*, Wellington, Office of Treaty Settlements, 1999, attachment 12.140 (topuni for Kura Tawiti (Castle Hill) (doc 010(c)(2))

(c)(3) *Deed of Settlement between Te Runanga o Ngai Tahu and the Crown*, Wellington, Office of Treaty Settlements, 1999, attachment 12. 10 (statutory acknowledgement for Kura Tawhiti (Castle Hill)) (doc 010(c)(3))

(c)(4) *Deed of Settlement between Te Runanga o Ngai Tahu and the Crown*, Wellington, Office of Treaty Settlements, 1999, attachment 12. 74 (deed of recognition for Kura Tawhiti (Castle Hill)) (doc 010(c)(4))

(d) Department of Conservation, *Kura Tawhiti – Treasure from Afar*, Christchurch, Department of Conservation, 2000 (doc 010(d))

C. DOCUMENTS RECEIVED PRIOR TO END OF THIRD HEARING, 13 FEBRUARY 2001

C1 Closing submissions of Wai 110 and 475 claimant counsel

Te Runanga a Iwi o Ngati Tametera Inc v The Thames–Coromandel District Council and Whitianga Waterways Ltd 26 January 2001, Environment Court, A014/01 (doc Q10)

C2 Closing submissions of claimant counsel, 1 February 2001 (doc Q11)

C3 Closing submissions of Crown counsel, 9 February 2001 (doc Q12)

C4 Fergus Sinclair, ‘Kauwaeranga in Context’ (1999) 29 VUWLR 139 (doc Q5)

D. DOCUMENTS RECEIVED SUBSEQUENT TO THIRD HEARING

D1 Submissions of Wai 110 and 475 claimant counsel in response to closing submissions of Crown counsel, 22 February 2001 (doc R1)

D2 List of interpolations and corrections made to closing submissions of Crown counsel during oral presentation, 23 February 2001 (doc R2)

D3 Submissions of claimant counsel in response to closing submissions of Crown counsel, 1 March 2001 (doc R3)